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Committee Secretary
Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

By email: jscfadt@aph.gov.au

Dear Committee Secretary,

Submission on Inquiry into establishing a Modern Slavery Act in Australia

Australian Lawyers for Human Rights **(ALHR)** thanks the Joint Standing Committee on Foreign Affairs, Defence and Trade for the opportunity to make this submission.

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

ALHR supports the implementation of a *Modern Slavery Act* in Australia by building on the lessons learned from other countries including, but not limited to, the United Kingdom.

Terms of Reference

The Committee is to examine whether Australia should adopt legislation comparable to the United Kingdom's *Modern Slavery Act 2015* (referred to here as "**MSA (UK)**") in the light of findings from the Committee's report, *Trading Lives: Modern Day Human Trafficking*, and with particular regard to:

- 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;
- The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery;
- 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;
- Whether a Modern Slavery Act should be introduced in Australia; and
- Any other related matters.

Table of Contents

1. Summary

1. Australian companies should be prevented from disavowing their overseas liabilities. An Australian *Modern Slavery Act* should be introduced as a positive step in maintaining and continuing Australia's leadership in the global fight against modern slavery.
2. A comprehensive strategy is needed including the imposition of due diligence obligations and prohibition of the importation of goods tainted by unlawful labour practices such as slavery. Such an Act would impose legal obligations on Australian companies in respect to reporting and encourage companies to recognise and act so as to avoid slavery.
3. An Australian statute should be informed by:
    - current Australian law and policy provisions (such as Divisions 270 and 271 of the *Criminal Code 1995* (Cth) which criminalise human trafficking, slavery and slavery-like practices, the *Migration Act 1958* (Cth) which imposes restrictions on employment of non-Australian citizens or permanent residents and the *Illegal Logging Prohibition Act 2012* which penalises Australian companies for illegal activities overseas),
    - international principles and guidelines such as the *UN Guiding Principles for Business and Human Rights* ("**UNGPs**"), OECD *Guidelines for Multinational Enterprises*, state-based legislative best practice and corporate best practice, and
    - similar legislation from other jurisdictions, including the United Kingdom's *Modern Slavery Act 2015* and Californian, French and Swiss legislation,

    further details of which are set out in this submission.
4. However the United Kingdom's *Modern Slavery Act 2015* has a number of weaknesses which should be corrected in any similar Australian legislation, as set out in the Recommendations in Section 9.
5. The issue of modern slavery raises significant human rights issues for people living with disabilities in Australia, as explained in Section 2.2. People with disabilities are subjected to slavery and slavery-like exploitation in a number of ways when it comes to work. People with disabilities are collectively amongst the most disempowered and marginalised members of Australian society insofar as they are:
    - denied access to the pre-conditions necessary to facilitate fair and equal participation in the labour market, including inclusive, non-discriminatory education and training;
    - lacking access to the same or equivalent industrial conditions that people without disability enjoy, including payment of at least the minimum wage, security of employment and adequate industrial benefits including superannuation entitlements;
    - subjected to adverse discrimination on the basis of their disability, both at the point of access to the labour market and within the labour market; and
    - often expected to perform unpaid labour by service providers such as employers for extended periods far in excess of 'internship' training periods.

    For the above reasons and because employment is a core human rights concern, ALHR has chosen to dedicate specific attention to the importance of having an Australian *Modern Slavery Act* which will prevent human rights abuses against, and realise equality for, people living with disabilities in Australia.

We address the individual Terms of Reference below.

2. 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

2.1 General situation

The concept of modern slavery, while having no agreed definition, includes human trafficking, sex trafficking, forced labour, debt bondage, child marriage, domestic servitude and the use of child soldiers. The United Nations Office on Drugs and Crime (UNDOC) notes that "[t]he common denominator of these crimes is that they are all forms of exploitation in which one person is under the control of another."[1] As explained further in the following sub-section 2.2, we submit that the mistreatment of persons with disabilities, including them being systemically underpaid and expected to provide voluntary labour for extended periods, should also be considered as a form of servitude which should be addressed by an Australian *Modern Slavery Act*.

In 2011, the International Labour Organisation (ILO) estimated that there were approximately 21 million victims of forced labour globally, with 11.4 million of them women and girls and 9.5 million men and boys.[2]. The ILO further estimated that 19 million victims were exploited by individuals and companies (4.5 million of whom are subject to sexual exploitation), while 2 million were subject to State exploitation. However, the ILO recognises that it is very difficult to accurately measure forced labour, trafficking and slavery due to the hidden nature of the phenomenon.[3] The Global Slavery Index, an annual report published by the Walk Free Foundation, estimates that 45.8 million people are enslaved, double the ILO figure, though the ILO is updating its research and updated figures will be released in November of this year.[4]

It is estimated that forced labour creates illegal profits of US$159 billion per year.[5]

The *Global Report on Trafficking in Persons* by UNDOC shows that human trafficking is a global problem that affects both developed and developing countries. More than 500 different trafficking flows were detected between 2012 and 2014.[6]

While it is evident that human trafficking and slavery are happening on an international scale, they are also happening in Australia. The Global Slavery Index (2016) estimates that at present there are 4,300 people living in slavery in Australia.[7] Australia is primarily a destination country for human trafficking victims from Asia, particularly Thailand, Malaysia, Korea and the Philippines.[8] However, in recent years, the Australian Federal Police (AFP) has also found victims from countries such as Sudan, Pakistan and Afghanistan.[9]

Australia has criminalised human trafficking, slavery and slavery-like practices under Divisions 270 and 271 of the *Criminal Code 1995* (Cth), as well as having comprehensive employer sanctions to prevent illegal work under the *Migration Act 1958* (Cth). These resulted in the Commonwealth Attorney General documenting a National Action Plan to combat human trafficking, which includes working with overseas law enforcement agencies, NGOs (to support victims) and, most importantly, businesses.

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1 United Nations Office on Drugs and Crime, "Global Report on trafficking in Persons 2016," https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.

2 International Labour Organisation, *Forced labour, modern slavery and human trafficking;* <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

3 International Labour Office, "Profits and Poverty: The Economics of Forced Labour" (2014) http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf,3.+

4 Global Slavery Index, *Global Findings*; < http://www.globalslaveryindex.org/findings/>.

5 International Labour Organisation, "Forced labour, modern slavery and human trafficking" http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm.

6 United Nations Office on Drugs and Crime, "Global Report on trafficking in Persons 2016" https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf., 6.

7 The Global Slavery Index (2016) http://www.globalslaveryindex.org/findings/

8 Australian Federal Police, *Human Trafficking,* https://www.afp.gov.au/what-we-do/crime-types/human-trafficking

9 Commonwealth of Australia*, Trafficking in Persons: The Australian Government Response* (2016), p 4. https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Report-of-the-interdepartmental-committee-on-human-trafficking-and-slavery-july-2015-to-June-2016.pdf

In 2015-2016, the AFP received 169 referrals on human trafficking and slavery matters. [10] Of these, 69 related to forced marriage, 39 related to sexual exploitation, 36 related to labour exploitation, and the remainder related to other types of exploitation.[11] To date, the majority of victims identified by Australian authorities have been trafficked to work in the sex industry.[12] However, there have also been allegations of employers and labour agencies using forced labour in agriculture, construction, hospitality, and domestic service industries.[13] Since 2004, only 17 people have been convicted of trafficking in persons and slavery-related offences.[14]

Human trafficking and slavery is a growing problem in Australia, with the total number of AFP investigations doubling in the past two years.[15] Given that these offences are grossly under-reported, often due to victims living in fear, it is likely that these numbers only tell part of the picture.

While Australia is categorised as one of the States taking the most action against modern day slavery,[16] it is yet to hold businesses accountable for slavery and slavery-like practices in their supply chains. The introduction of a Modern Slavery Act in Australia would be a positive step in addressing this issue, and would continue Australia's leadership in the global fight against modern slavery. It would give companies legal obligations in respect to reporting, which will assist in the monitoring of slavery. It would also encourage companies to manage incidences of slavery, as has happened in the United Kingdom (see Section 6).

2.2 The nature and extent of modern slavery for people living with disabilities in Australia

In Australia, people with disabilities are subjected to slavery and slavery-like exploitation in a number of ways when it comes to work.

People with disabilities are collectively amongst the most disempowered members of Australian society insofar as they are:

- denied access to the pre-conditions necessary to facilitate fair and equal participation in the labour market, including inclusive, non-discriminatory education and training;
- lacking access to the same or equivalent industrial conditions people without disability enjoy, including payment of at least the minimum wage, security of employment and adequate industrial benefits including superannuation entitlements;
- subjected to adverse discrimination on the basis of their disability, both at the point of access to the labour market and within the labour market; and
- expected to perform unpaid labour by service providers such as employers.

This is particularly concerning given that employment is a core human rights concern. Having a secure job, and an adequate and dependable source of income, is a fundamental prerequisite to the enjoyment of basic rights by all adults. Being a valued part of the workforce protects people from other vulnerabilities – it helps to safeguard people from homelessness and enables them to access adequate health care. It is a buffer against becoming involved in the criminal justice system. As people with disability often have complex needs that may result in heightened financial expenses, the ability to earn a decent wage and to have their basic industrial rights protected is particularly important.

The disempowerment that people with disabilities experience within the labour market occurs notwithstanding that the right to work on fair and just terms and to be treated in a non-discriminatory way in the work and pre-work arenas are established and protected by a number of international treaties and conventions, both for all people and specifically for people with a disability (among other specified vulnerable groups).

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10 Ibid, p 1
11 Ibid.
12 Ibid, p 4.
13 2016 *Trafficking in Persons Report, US Department of State* https://www.state.gov/j/tip/rls/tiprpt/2016/index.htm
14 N8
15 Walk Free Foundation, 'Modern Slavery- An Issue for Australia? (2017) http://www.walkfreefoundation.org/news/modern-slavery-issue-australia/
16 The Global Slavery Index (2016) http://www.globalslaveryindex.org/findings/

Article 23 of the *Universal Declaration of Human Rights* ('UDHR'), which was adopted by the UN General Assembly in December 1948 and was the initial touchstone and compass for human rights, includes an express assertion of the universal right to work and to equitable remuneration. Article 23 provides as follows:

> ***Article 23***
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> 1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
> 2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
> 3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
> 4. *Everyone has the right to form and to join trade unions for the protection of his interests.*

The right to work, which includes the right of all people to the opportunity to gain a living by undertaking work freely chosen or accepted by them, and to just and favourable working conditions, is expressed in Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), which provide as follows:

> ***Article 6***
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> 1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
> 2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*
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> ***Article 7***
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> *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*
>
> *(a) Remuneration which provides all workers, as a minimum, with:*
>
> *(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
>
> *(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
>
> *(b) Safe and healthy working conditions;*
>
> *(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
>
> *(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

As is apparent from its terms, Article 6 expressly recognises the importance of education, training and guidance in equipping a person to engage in appropriate work and Article 7 imposes the obligation on all member states to ensure equity in terms of wages and industrial conditions.

The right of persons with disabilities to work, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities, is specifically proclaimed in Article 27 of the *Convention on the Rights of People with Disabilities*, which provides as follows:

> 1. *States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen*

or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

In Australia, domestic legislation protects the human rights, rights to equality and non-discriminatory treatment and industrial rights of persons with disabilities. At a Federal level, the stated objectives of the *Disability Discrimination Act 1992* (Cth) include to eliminate, as far as possible, discrimination against persons on the grounds of disability in the area of work and to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community. The *Fair Work Act 2009* (Cth) incorporates anti-discrimination requirements into workplace law.

Each Australian state and territory has also enacted roughly equivalent jurisdiction-specific legislation – for example in Queensland, the *Anti-Discrimination Act 1991* (Qld) and the *Industrial Relations Act 1999* (Qld) protect the rights of vulnerable people, including specifically people with a disability, to equal treatment in the workplace realm. The issues with State anti-discrimination laws in Australia are well recognised – the laws are reactive, rather than proactive; place an unjust onus on the person subjected to discriminatory treatment to bring a legal action against their employer or potential employer notwithstanding the significant power imbalance that exists between an individual and an employer; and fail to provide appropriate remedies to compensate an aggrieved party where

discrimination is proved.[17] In this abyss, ALHR is leading the push for robust Human Rights Acts at a Commonwealth level and also in other Australian states where they are lacking, in an attempt to create much-needed legal protection for workers with disabilities.

At present, despite these express guarantees and protections provided by all levels of legal regulation, there remains a significant discrepancy between the promises of equality and opportunity made by the international human rights treaties and the lived experiences of people with disability in Australia. As the Australian Human Rights Commission's recent 'Willing to Work' inquiry found, Australians with disability are employed at significantly lower rates than Australians without disability,[18] with a high proportion of Australians with disability reporting an experience(s) of discrimination or unfair treatment within the work sphere because of their disability.[19] Statistical data on the rates of employment of persons with disabilities may also be positively skewed by the exclusion of the numbers of people with disability on the Disability Support Pension who are deemed 'unemployable', with the result that the true unemployment rates of people with disability are higher than documented. Further, people with very high or complex support needs are not considered in the employment sphere because they are not regarded as employable in open employment by most employers and government bureaucrats. People with high support needs are rarely offered nor succeed in applications for appropriate levels of support to work in paid employment, because Australia has yet to move from a patriarchal view of people with high support needs. Until this is addressed, people with disability will continue to be viewed as charity recipients and pitiable. This situation extends even to voluntary, unpaid work.

2.2.1 Australian Disability Enterprises ('ADEs') and the Business Services Wage Assessment Tool ('BSWAT')

Despite the guarantees contained in the international human rights treaties to equitable industrial conditions, including equal pay and just and favourable remuneration and conditions of work,[20] the use of the BSWAT and ADEs (colloquially known as sheltered workshops) has flourished in Australia.

Despite their stated intent, ADEs have not been beneficial for people with disability but have rather oppressed them into slavery-like conditions, segregating them from 'normal', mainstream working environments, subjecting them to repetitive and boring tasks generally below their abilities and skill sets and paying them rates of pay that are well below the legal minimum and are insufficient to sustain a decent standard of living.

The use of wage subsidies within open employment is also contrary to the terms and spirit of international law and adversely impacts on the value and status of people with disability in the workforce, creating the perspective that a worker with a disability is of lesser value than an equivalent worker without the disability. The supported wage system functions as a significant disincentive to

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17 Well documented in Thornton's still pertinent critique: M. Thornton. *The Liberal Promise: Anti-Discrimination Legislation in Australia.* (Oxford University Press, 1990). This critique has been subsequently affirmed by numerous scholars, including B.Smith and T. Orchiston, 'Domestic violence victims at work: A role for anti-discrimination law?' (2012) 25 *Australian Journal of Labour Law*, 209, 220; Mark Davis, 'Employment Selection Tests and Indirect Discrimination: The American Experience and its Lessons for Australia' (1996) 9 *Australian Journal of Labour Law* 1, 16, 18; Sara Charlesworth and Iain Campbell, 'Right to Request Regulation: Two New Australian Models' (2008) 21 *Australian Journal of Labour Law* 116, 127; Anna Chapman, 'Care Responsibilities and Discrimination in Victoria: The Equal Opportunity Amendment (Family Responsibilities) Act 2008 (Vic)' (2008) 21 *Australian Journal of Labour Law* 200, 201; Dr Belinda Smith, 'From Wadley to Purvis – How far has Australian anti-discrimination law come in 30 years?' (2008) 21 *Australian Journal of Labour Law* 3; Phillip Tahmindjis, 'Sexual Harrassment and Australian Anti-Discrimination Law' (2005) 7 *International Journal o Discrimination and the Law* 87, 104; Peter Handley, ' 'Caught Between a Rock and a Hard Place': Anti-discrimination Legislation in the Liberal State and the Fate of the Australian Disability Discrimination Act' (2001) 36 *Australian Journal of Political Science* 515.

18 Only 27% of people with disability are employed full-time, compared to 53.8% of people without disability, in Australia. The rates of unemployment are also inequitable – 10% of Australians with disability, as compared with 5.3% of Australians without disability, are presently unemployed: Australian Human Rights Commission. *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability.* 2016, 16.

19 In the 12 months preceding release of the report, 8.6% of Australians with disability reported that they had experienced discrimination or unfair treatment because of their disability. Discriminatory treatment is particularly prevalent among young people, with over 20% of those within the 15-24 years age category reporting discriminatory treatment: Australian Human Rights Commission. *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability.* 2016, 16.

20 See Article 23 of the UDHR, Article 7 of the ICESCR and Article 27 of the CRPD.

employment for people with disability and can have the effect of demeaning and undervaluing the contribution made by people with disability to the labour market, in terms of the grossly insufficient remuneration provided and the concentration and confinement of workers to a small and undervalued sector of the labour market.

In 2012, the Full Federal Court of Australia held that using the BSWAT assessment tool to determine reduced rates of pay for persons with an intellectual or cognitive disability constituted unlawful discrimination in breach of the federal laws.[21] Subsequent to this finding, the Commonwealth Government sought and was granted a twelve month exemption to the operation of the anti-discrimination laws, purportedly as a transitional arrangement pending the implementation of a new wage setting approach - yet this 'transitional arrangement' has recently been extended by the Federal Court.

2.2.2 Payment Scheme Legislation Introduced

Following the 2012 decision another claim was filed against the Federal Government on behalf of those affected by the discriminatory assessment ('the Group').[22] Shortly after commencement of the claim the Federal Government introduced the *Business Services Wages Assessment Tool Payment Scheme Act 2015* and the *Business Services Wage Assessment Tool Payment Scheme (Consequential Amendments) Act 2015.*

The legislation established a payment scheme for those affected by the BSWAT rights violations. Payment amounts were calculated based on 50% of the amount the worker would have been paid had the productivity element of BSWAT been solely applied. A letter of offer is sent to the applicant, with an acceptance period of no less than 14 days. Independent financial and legal advice was funded and provided by the Scheme.

Importantly, acceptance of a payment under the Scheme is not compensation, but does waive any liability of the Commonwealth, ADE and all other persons in relation to unlawful discrimination in the BSWAT assessment process.

The Consequential Amendments Act amended various pieces of legislation to ensure that all Scheme Payments were tax free. A useful summary was provided in *Duval-Comrie.*[23]

2.2.3 Settlement of class-action and subsequent legislative amendments

The Federal Government settled the Group Claim in *Duval-Comrie.* The terms included among other things an increase in the amount payable under the legislation to 70% and extension of 12 months to the Application Period (settlement was valued at approximately $100,000,000.00).[24] The Deed made further mention of safeguards in place in the legislation for persons with disabilities.[25] These amendments were passed on 18 March 2016.

2.2.4 Volunteer Work and the importance of safeguarding against abuse

Work is valued by many people for reasons that extend beyond being financially remunerated. Work can give meaning, identity and direction to a person's life, it can create a sense of belonging and community and it can create feelings of pride and self-worth. These benefits of working, extending beyond financial remuneration, also flow from volunteer work. The elevated status and sense of community that work can bring can be highly important to a person with disability, and the work role can provide meaning and purpose to each day, bringing with it much satisfaction, informal supports and social connections. Volunteer work can therefore be a very satisfying, meaningful and important role for a person. In many cases, volunteer work can offer a much-needed bridge to paid employment.

However, for many people with disability, volunteering opportunities that can and should lead to paid employment do not have that result. There are many documented instances where persons with disabilities are exploited in their capacity as volunteers, required to perform repetitive, boring tasks

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21 *Nojin v Commonwealth of Australia* [2012] FCAFC 192.

22 *Duval-Comrie v Commonwealth of Australia* [2016] FCA 1523.

23 *Duval-COmrie v Commonwealth of Australia* [2016] FCA 1523 [21].

24 Josh Bornstein, 'Disabled workers win $100m fair pay case: a 2016 good news story', *The Guardian* (online), 27 April 2017 < https://www.theguardian.com/commentisfree/2016/dec/19/finally-a-good-news-story-for-2016-disabled-workers-win-fair-pay-case>.

25 *Duval-Comrie v Commonwealth of Australia* [2016] FCA 1523, [25].

that are below their skill-set and ability and do not help to develop their potential. Similarly, there are circumstances where persons who enjoy their work and are proficient at it are exploited indefinitely because their willingness to work for free is expected and perpetuated. They may be kept in unpaid roles in circumstances where they should legitimately be paid for their work (and where, for others in that situation without a disability, their experiences do lead to paid work).

3. The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia

The reference to "supply chains" alludes to Australian companies' overseas subsidiaries. In order that 'supply chain' legislation can be enforced there is a need to specifically prevent Australian companies disavowing their overseas liabilities.

There is currently limited data about the prevalence of modern slavery in the supply chains of Australian companies. Much of the information available is found in research and reports published by NGOs and civil society groups. Despite the limited data available, Australian companies and businesses are undoubtedly affected by, and participate in, modern slavery. As mentioned, in the domestic context, modern slavery conditions have been prevalent in the agricultural, construction, manufacturing, hospitality and domestic sectors.[26]

As reported in the Joint Standing Committee on Foreign Affairs, Defence and Trade's report *Trading Lives: Modern Day Human Trafficking*, there has been evidence that in the 2009-2010 financial year, Australian companies whose supply chains used forced labour, or exploited child labour, imported products to the value of $600 million.[27]

In recent years, Australian companies have been implicated in instances of modern slavery, including Rip Curl using forced labour in their supply chain in North Korea, and major retailers such as Coles importing seafood products that were processed in Thai factories utilising forced labour.[28]

Two reports published in 2016 by Baptist World Aid Australia provide some data for Australia's electronics and fashion industries. The *Behind the Barcode* project assesses and grades key companies and businesses, providing some indication of Australian supply chains and their performance regarding labour conditions (among other assessment criteria). In 2016, the majority of the fashion companies that were assessed had knowledge of their final stage (first tier) suppliers. In the electronics industry, only half the companies had knowledge of final stage suppliers. However, for all companies, there was much less knowledge of suppliers further down the supply chain. Knowledge of the identity of inputs suppliers was recorded as existing for 16% of fashion companies, compared to only 11% of the electronics companies. Very few companies in either industry had knowledge of their raw materials suppliers.[29]

With the introduction of mechanisms such as the *EU Directive for Non-Financial Reporting* and the MSA (UK), Australian companies will be required to meet some level of disclosure and knowledge regarding their overseas subsidiaries and suppliers. As reported by the Walk Free Foundation, ASX listed companies such as Qantas, Wesfarmers and the Commonwealth Bank of Australia, have begun filing modern slavery statements pursuant to the MSA (UK).[30]

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[26] Walk Free Foundation, *The Case for an Australian Modern Slavery Act* (2017), 5 <http://walkfreefoundation.org-assets.s3-ap-southeast-2.amazonaws.com/content/uploads/2017/03/20160209/The-Case-for-an-Australian-Modern-Slavery.pdf>.

[27] Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Trading Lives: Modern Day Human Trafficking* (2013) 88.

[28] Walk Free Foundation, *Harnessing the Power of Business to End Modern Slavery* (2016) 6, 12 <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>.

[29] Baptist World Aid Australia, *2016 Electronics Industry Trends* (9 February 2016) Behind the Barcode, 3, 23 <https://baptistworldaid.org.au/wp-content/uploads/2016/06/Feb16-Electronics-Report-Aus-version-FINAL.pdf>; Baptist World Aid Australia, *2016 Australian Fashion Report* (20 April 2016) Behind the Barcode, 4-7, < https://baptistworldaid.org.au/wp-content/uploads/2016/05/2016-Australian-Fashion-Report.pdf>.

[30] Walk Free Foundation, *The Case for an Australian Modern Slavery Act* (2017) above n1, 16.

4. 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

Australia has endorsed or otherwise been involved in the development of international guidance to prevent slavery in corporate supply chains which has been successfully used by large corporates such as Nestle and Unilever. International guidelines include:

- the *UN Guiding Principles on Business and Human Rights* ("**UNGPs**"), drafted by the UN Special Representative on Business and Human Rights, which were unanimously endorsed at the UN Human Rights Council ("HRC") in 2011, including with co-sponsorship from the Australian government;[31] and
- the Organisation for Economic Co-operation and Development ("OECD") *Guidelines for Multinational Enterprises* ("MNEs").

Both of these provide detailed guidance for companies to manage human rights and would complement an Australian *Modern Slavery Act*.

4.1 UN Guiding Principles for Business and Human Rights

4.1.1 Background

The UNGPs is founded on 3 central pillars:[32]

1. State signatories' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
2. The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights;
3. The need for rights and obligations to be matched by appropriate and effective remedies.

While the UNGPs are designed to have broad scope to address a variety of human rights issues associated with the activities of business enterprises, and do not specifically target modern slavery, the principles outlined in the UNGPs go to the heart of best practice required to extinguishing practices of modern slavery in domestic and global supply chains.

It is stated in the UNGPs that:

> *"These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization."*

The HRC, in its resolution endorsing the UNGPs, encouraged the implementation of these principles into national legislation, stating that:[33]

> *"proper regulation, including through national legislation, of transnational corporations and other business enterprises and their responsible operation can contribute to the promotion, protection and fulfilment of and respect for human rights and assist in channelling the benefits of business towards contributing to the enjoyment of human rights and fundamental freedoms,"*

The HRC further expressed in its resolution its concern that:[34]

> *"weak national legislation and implementation cannot effectively mitigate the negative impact of globalization on vulnerable economies, fully realize the benefits of globalization or derive*

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[31] 'Australian Dialogue on Business and Human Rights: Challenges and opportunities for Australian businesses at home and abroad: a multi-stakeholder dialogue' (Summary and Outcomes Document, Sydney, 30 April 2014, Sydney).

[32] Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,* UN Doc HR/PUB/11/04 (16 June 2011) ('UNGPs'), 1.

[33] *Human rights and transnational corporations and other business enterprises*, HRC, 17th sess, UN Doc A/HRC/Res/17/4 (6 July 2011).

[34] Ibid.

maximally the benefits of activities of transnational corporations and other business enterprises, and that further efforts to bridge governance gaps at the national, regional and international levels are necessary…"

4.1.2 Expression of Commitment

Guiding Principle 16 of the UNGPs requires business enterprises to express a commitment to meet the enterprise's responsibility to respect human rights though a statement of policy. Guiding Principle 16 recommends that the policy statement must:

- be approved at the most senior level of the business enterprise;
- be informed by relevant internal and / or external expertise;
- stipulate the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; and
- be reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

The embedding of the human rights policy commitment throughout all the relevant business functions is required to ensure that human rights due diligence procedures are properly understood, given due weight, and acted upon by the relevant business function responsible.[35]

4.1.3 Human Rights Due Diligence

Guiding Principle 17 of the UNGPs recommends that business enterprises carry out human rights due diligence in order to identify and address any adverse human rights impacts of the business (including the prevention of modern slavery). The UNGPs specify that due diligence processes should "include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."[36]

While it is possible for human rights due diligence to be included in broader enterprise risk management systems, the UNGPs require the due diligence to go beyond simply identifying material risks to the company itself, and to include the identification o frisks to right-holders.[37] The purpose of this due diligence is to understand the specific impacts on specific people, in the context of the particular business operation.[38]

Effectively, the UNGPs outlines 4 integral components to any human rights due diligence:

1. Identifying and assessing actual or potential adverse human rights impacts;
2. Preventing and mitigating adverse human rights impacts;
3. Tracking effectiveness of response; and
4. Communicating human rights impacts externally.

Guiding Principles 18 to 21 elaborate on these essential components of human rights due diligence.

(1) Identifying and Assessing Actual or Potential Adverse Human Rights Impacts

The assessment of human rights impacts provides the foundation for subsequent steps under the human rights due diligence process.[39]

Guiding Principle 18 requires that in identifying and assessing any actual or potential adverse human rights impacts, business enterprises should:

- draw on internal and/or independent external human rights expertise;

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35 UNGPs, 21.
36 UNGPs, 17.
37 UNGPs, 18.
38 UNGPs, 19.
39 UNGPs, 20.

- involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Typically, the assessment should where possible occur prior to a proposed business activity: identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.[40] The business enterprise should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.[41]

(2) Preventing and Mitigating Adverse Human Rights Impacts

Guiding Principle 19 requires businesses, in order to prevent and mitigate adverse human rights impacts, to integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate consequential action.[42] The principle states that effective integration requires:

- the assignment of responsibility for addressing human rights impacts to the appropriate level and function within the business enterprise; and
- internal decision-making, budget allocations and oversight processes to enable effective responses to such impacts.

The business enterprise should take the necessary steps to cease or prevent the impact,[43] or its contribution to the impact, and should use its leverage[44] to mitigate any remaining impact to the greatest extent possible.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. In determining the appropriate action required in such situations, the business should consider:[45]

- its leverage over the other entity concerned;
- how crucial the relationship is to the enterprise;
- the severity of the abuse; and
- whether terminating the relationship with the other entity would have adverse human rights consequences.

The more complex the situation and its implications for human rights, the stronger the case for the enterprise to draw on independent expert advice in deciding how to respond.

Where the enterprise lacks the leverage to prevent or mitigate adverse impacts by associates and is unable to increase its leverage, it should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

(3) Tracking the Effectiveness of the Response

Guiding Principle 20 requires business enterprises to track the effectiveness of their responses. The tracking should be based on appropriate qualitative and quantitative indicators, and draw on feedback from both internal and external sources, including affected shareholders.

The commentary to the UNGPS provides that tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other risk management issues. This could include performance standards in contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant. Operational-level grievance

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40 UNGPs, 19.

41 UNGPs, 20.

42 Ibid.

43 UNGPs, 21.

44 Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm (see, UNPGs, 21).

45 UNGPs, 21 and 22.

mechanisms can also provide important feedback from those directly affected on the effectiveness of the business enterprise's human rights due diligence.[46]

(4) Communicating Human Rights Impacts Externally

Guiding Principle 21 requires business enterprises to communicate externally how they address their human rights impacts, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address those risks. In all instances, the communication should:

- Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Such communication ensures a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.[47]

4.1.4 Remediation

Guiding Principle 22 requires as part of recommended best practice, that where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in the remediation of those impacts through legitimate processes.

Guiding Principle 29 recommends that business enterprises, in order to make it possible for grievances to be addressed early and remediated directly, establish or participate in effective operational-level grievance mechanisms for individuals and communities that may be adversely impacted.

Operational-level grievance mechanisms perform two key functions – they:[48]

- support the identification of adverse human rights impacts as part of an enterprise's ongoing human rights due diligence by providing a channel for those directly impacted by the enterprise's operations to raise concerns. By analysing trends and patterns in complaints, business enterprises can identify systemic problems and adapt their practices accordingly.
- also make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

4.1.5 Access to Remedy: States Requirements

Section III of the UNGPs focuses on the requirements for States to take appropriate actions to ensure, through judicial, administrative, legislative or other appropriate means, that when such business related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.[49] Without such action from States, the State duty to protect can be rendered weak or even meaningless.[50]

(1) State-Based Judicial Mechanisms

UNGPs Guiding Principle 26 recommends that States take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.[51]

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[46] UNGPs, 23.
[47] UNGPs, 24.
[48] UNGPs, 31.
[49] UNGPs, 27.
[50] Ibid.
[51] UNGPs Guiding Principle 26.

States must not erect barriers to prevent legitimate cases from being brought before the courts, in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable.[52]

Legal, practical and procedural barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:[53]

- the way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- claimants face denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population;
- the costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through government support, "market-based" mechanisms (such as litigation insurance and legal fee structures), or other means;
- claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- there are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights-related crimes.

(2) Non-Judicial Grievance Mechanisms

The UNGPs also recommend that States provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse such as modern slavery. [54] States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.[55]

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:[56]

a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognised human rights;

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52 UNGPs, 28.
53 UNGPs, 29.
54 UNGPs Guiding Principle 27.
55 UNGPs Guiding Principle 28.
56 UNGPs Guiding Principle 31.

g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational level mechanisms should also be based on engagement and dialogue; consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

4.2 Other International Guidance

4.2.1 Organisation for Economic Co-operation and Development ("OECD") Guidelines for Multinational Enterprises ("MNEs")

Whilst not specifically focused on modern slavery, the OECD Guidelines for MNEs provide principles and standards for responsible business conduct in related areas such as human rights and employment and industrial relations. The OECD Guidelines for MNEs are recommendations addressed by governments to MNEs operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards.

The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments, including the Australian government, have committed to promoting.[57]

The OECD Guidelines for MNEs set out as part of the OECD's general policies, the following responsibility of enterprises (as relevant to the issue of modern slavery):[58]

> *"1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.*
>
> *Respect the internationally recognised human rights of those affected by their activities…*
>
> *7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate…*
>
> *10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*
>
> *11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*
>
> *12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.*
>
> *13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*
>
> *14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities."*

Section IV of the OECD Guidelines for MNEs provides further specific requirements of MNEs with respect to human rights, including to:[59]

- Respect human rights (which means business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts with which the business enterprises are involved);
- Within the context of business enterprises' own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur;

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[57] OECD (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, 3.

[58] Ibid 18 and 19.

[59] Ibid 31.

- Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to the enterprises' business operations, products or services by a business relationship, even if they business enterprise does not contribute to those impacts;
- Have a policy commitment to respect human rights;
- Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts;
- Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where the business enterprise identifies that it has caused or contributed to these impacts.

Section V of the OECD Guidelines for MNEs outlines specific responsibilities with respect to employment and industrial relations. While all responsibilities outlined in Section V are relevant to some extent in preventing modern slavery, paragraph 1(d) in particular recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour (a principle derived from the 1998 *International Labour Organisation Declaration*).[60]

In many respects, the requirements outlined above with respect to human rights mirror the guidance provided in the UNGPs. The OECD's independent endorsement of guidance similar to that provided in the UNGPs is testament that the detailed guidance set out in the UNGPs and summarised above represents international best practice with respect to business related human rights issues.

Any legislation that ensures business enterprises uphold the above responsibilities outlined in the OECD Guidelines for MNEs is likely to be effective in restricting modern slavery in domestic and global supply chains.

4.2.2 OECD Risk Awareness Tool for MNEs in 'Weak Governance' zones ("OECD Risk Awareness Tool")

The OECD Risk Awareness Tool is designed to assist business enterprises that invest in countries where governments are unwilling or unable to assume their responsibilities in combatting human rights abuses. It addresses risks and ethical dilemmas that the business enterprises are likely to face in such weak governance zones, including problems in obeying the law and observing international instruments, the need for heightened care in managing investments, knowing business partners and clients, problems in dealing with public sector officials, and speaking out about wrongdoing. The OECD Risk Awareness Tool has benefited from input from business, trade unions and civil society representatives from both the OECD and non-OECD areas. [61]

The Tool provides a list of questions that business enterprises should consider when considering actual or prospective investments in weak governance zones including on the topics of:

- Obeying the law and observing international instruments;
- Heightened managerial care;
- Political activities;
- Knowing clients and business partners;
- Speaking out about wrongdoing; and
- Business roles in weak governance societies – a broadened view of self-interest.

Given that modern slavery is generally more prevalent in countries of weak governance zones,[62] the OECD Risk Awareness Tool is valuable in assisting business enterprises to assess relevant risks.

For example, the questions in relation to heightened managerial care are designed to ensure that management pays close attention to issues such as information gathering, internal procedures,

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[60] Ibid 35.

[61] OECD (2006), *OECD Risk Awareness Tool For Multinational Enterprises In Weak Governance Zones*, OECD Publishing, 3.

[62] According to the Global Slavery Index, the countries with the highest estimated prevalence of modern slavery by the proportion of their population are North Korea, Uzbekistan, Cambodia, India, and Qatar. Those countries with the highest absolute numbers of people in modern slavery are India, China, Pakistan, Bangladesh, and Uzbekistan <http://www.globalslaveryindex.org/findings/>.

relations with business partners (including agents, joint venture partners and subsidiaries) and use of external legal, auditing and consulting services in order to ensure compliance with legal obligations and observance of international standards. Similarly, the questions in relation to knowing clients and business partners emphasise the use of heightened care when entering into relationships with employees, clients or business partners that might damage business reputations or give rise to violations of law or to human rights abuses.

Legislation that requires the use of the OECD Risk Awareness Tool (or other similar risk assessment tools) in human rights due diligence undertaken by businesses is more likely to be effective in combatting modern slavery in domestic and global supply chains.

4.3 State-based Legislative Best Practice

4.3.1 United Kingdom

The United Kingdom has introduced benchmark supply chain transparency provisions in the form of reporting requirement for large businesses operating in the UK, under s54 of the MSA (UK). These provisions are explored more fully in Section 6 and in the recommendations in Section 9 below.

The legislation also establishes the important position of the independent Anti-Slavery Commissioner who has a major educative role. One of the four priorities of the Anti-Slavery Commissioner is "to engage with the private sector to promote policies to ensure that supply chains are free from slavery and to encourage effectual transparency reporting."[63] As the Anti-Slavery Commissioner's office has made clear:

> "Section 54 of the Modern Slavery Act, with its reporting requirement for large businesses operating in the UK, has forced the business community to discuss the topic of slavery openly. The Commissioner has worked with business leaders to ensure they understand this and act accordingly."[64]

The Anti-Slavery Commissioner has spoken at numerous industry conferences and events to promote best practice in supply chain transparency and has communicated with over 1,000 companies in the UK "detailing his expectations of companies in relation to their reporting requirements under Section 54 of the Modern Slavery Act."[65] In so doing, the Anti-Slavery Commissioner fulfils an important, and independent, role by simultaneously acting as an interpretive bridge between government policy and business reality while also promoting industry best practice in a non-threatening and open way (something that may not be possible if the Anti-Slavery Commissioner was also a regulator or prosecutor).

The UK's fight against modern slavery also benefits indirectly from a benchmark provision in the form of s7 of the *Bribery Act 2010* (UK). Briefly, s7 provides a strict liability criminal offence of failure by 'commercial organisations' to prevent bribery by associated persons (i.e., where the associated person bribes another with the intention of obtaining or retaining business, or an advantage in the conduct of business, for the commercial organisation). There is a defence of having 'adequate procedures' in place to prevent bribery by associated persons.

The fact that where there is slavery and human trafficking, there is a strong likelihood of some form of bribery having taken place, has not been lost on NGOs tackling modern slavery and businesses required to report under the MSA (UK), particularly in the context of the 'adequate procedures' defence.[66] Calls by some to introduce a similar offence to s7 in the context of modern slavery have, to date, been resisted by the UK Government, but given the strong nexus between bribery and modern slavery, s7 of the *Bribery Act 2010* (UK) does provide some potential bite otherwise missing in the MSA (UK) if modern slavery is discovered an organisation's business or supply chains and can be linked to bribery by an associated person.

The Freedom Fund, together with other NGOs such as Liberty Asia, have released a comprehensive analysis of the application and use of the *Bribery Act* and the US *Foreign Corrupt Practices Act* in the

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63 See: http://www.antislaverycommissioner.co.uk/priorities/priority-4-private-sector-engagement/

64 Ibid.

65 Ibid.

66 For example, see Hartley, B (2016), 'Opinion: Why you need to take notice of the Modern Slavery Act', Energy Voice, https://www.energyvoice.com/opinion/120104/opinion-need-take-notice-modern-slavery-act/

fight against modern slavery.[67] Publications such as this help send a clear message to industry that they need to take modern slavery seriously.

4.3.2 California

Although differing in a number of important ways, much of the MSA (UK) was based on the Californian *Transparency in Supply Chains Act 2010* ("CTSCA"). The CTSCA came into effect in January 2012 and was developed in response to the increasing awareness of 'the relationship between slavery, human trafficking and the production of goods' and awareness that:

> "consumers and businesses [were] inadvertently promoting and sanctioning these crimes through the purchase of goods and products that [had] been tainted in the supply chain, and that, absent publically available disclosures, consumers cannot distinguish between companies based on the merits of their efforts to supply products free from the taint of slavery and trafficking".[68]

It is this consumer choice dimension that is a key focal point of the legislation, with the US Labour Department stating that "the law's chief goal is to ensure companies provide consumers with information that enables them to understand which ones manage their supply chains responsibly".[69]

In brief, the CTSCA mandates that "every retail seller and manufacturer doing business in [California] and having annual worldwide gross receipts that exceed one hundred million dollars… shall disclose… its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale". Under the CTSCA, a covered organisation is required to identify to what extent it does each of the following (hereinafter referred to as VACIT):

- *Verification* - engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery;
- *Audits* - conducts audits of suppliers to evaluate supplier compliance with company standards for human trafficking and slavery in supply chains;
- *Certification* - requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding human trafficking and slavery in the countries in which they are doing business;
- *Internal Accountability* - maintains internal accountability standards and procedures for employees and contractors failing to meet company standards; and
- *Training* - provides employees and management with direct responsibility for supply chain management with training on human trafficking and slavery, including risk mitigation.

The MSA (UK) is wider in scope and improves on the CTSCA in a number of critical areas, including by covering both goods and service providers, requiring an annual statement to be published (rather than a one-off statement), and requiring board approval (or the equivalent) and director sign-off for statements.

However, as far as a best practice is concerned the CTSCA has one distinct advantage over the MSA (UK). That is, organisations must report against each of the VACIT requirements under the CTSCA, whereas the equivalent provisions under s54(5) of the MSA (UK) are only suggestive (something a statement "may" include). This provides the distinct advantage of ensuring a level of consistency in reporting under the CTSCA, allowing consumers and civil society to compare organisational responses across a uniform set of criteria - although this of course does not guarantee the quality of responses (see our comments in Section5 below for further consideration of this point).

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[67] See: http://freedomfund.org/press-release/bribery-corruption-and-slavery-remain-commonplace-in-global-supply-chains/

[68] Susan Aaronson and Ethan Wham, 'Can Transparency in Supply Chains Advance Labor Rights? Mapping Existing Efforts' (2016), Institute for International Economic development Policy Working Paper Series, Elliot School of International Affairs, The George Washington University, IIEP-WP-2016-6, p.10.

[69] US Department of Labour, 'California Transparency in Supply Chains Act', https://www.dol.gov/ilab/child-forced-labor/California-Transparency-in-Supply-Chains-Act.htm (accessed 11 August 2016).

4.3.3 France

In February 2017 the French National Assembly adopted legislation establishing a corporate duty of "vigilance".[70] The law is not yet in force and is currently being examined for compatibility with the French Constitution. However, if it does come into effect, it will require an estimated 150 large French companies to establish a vigilance plan, requiring them to monitor their company and supply chains for human rights abuses and environmental protection violations. It will also require companies to publish an annual risk report, which must cover its subsidiaries as well its own and its subsidiaries' suppliers and subcontractors.

Unlike the position under the MSA (UK), companies that fail to comply under the French regime can face significant financial penalties. For example, if the company fails to prepare a vigilance plan, it can be fined up to €10 million, with the fine increasing up to €30 million if failure to implement a plan leads to injuries/damage that could otherwise have been prevented.[71] These penalties are great, even for very large corporations, with fines likely to be accompanied by a significant negative impact on reputation and share value. The French approach also draws analogies with the 'failure to prevent' provisions under s7 of the *Bribery Act 2010* (UK).

4.3.4 Switzerland

In 2015, the Swiss Coalition for Corporate Justice (SCCJ) launched the 'Responsible Business Initiative', which is designed to embed human rights and environmental due diligence in Swiss law. It is known as a 'popular initiative' which "allows Swiss citizens to request an amendment to the Federal Constitution."[72] The initiative provides, inter alia, that Swiss companies "must respect internationally recognized human rights and international environmental standards, also abroad; they must ensure that human rights and environmental standards are also respected by companies under their control" and requires companies:

> "to carry out appropriate due diligence. This means in particular that they must: identify real and potential impacts on internationally recognized human rights and the environment; take appropriate measures to prevent the violation of internationally recognized human rights and international environmental standards, cease existing violations, and account for the actions taken. These duties apply to controlled companies as well as to all business relationships. The scope of the due diligence to be carried out depends on the risks to the environment and human rights. In the process of regulating mandatory due diligence, the legislator is to take into account the needs of small and medium-sized companies that have limited risks of this kind."[73]

As far as best practice is concerned, the initiative would, if it became law, squarely focus attention on risk-based human rights due diligence in accordance with the UNGPs, both at home and abroad, and would also make Swiss companies responsible for the actions of their offshore subsidiaries. This contrasts to the position under the MSA (UK), where due diligence is less central, and offshore subsidiaries are not caught by s54 of the MSA (UK) unless they do business in the UK or are part of the disclosing organisation's supply chain (eg, in a vertically integrated Group structure).

4.4 Corporate Best Practice

Know the Chain is a not for profit organisation which focuses on providing resources for businesses and investors to assist them in understanding and addressing forced labour issues within their supply chains. Its recent food and drink industry benchmark report assessed companies in the industry in relation to:[74]

- Commitment to addressing human trafficking and forced labour, and governance;

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[70] http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf.

[71] See Foley Hoag LLP's analysis at http://www.csrandthelaw.com/2017/02/28/french-national-assembly-adopts-corporate-duty-of-vigilance-law/ and the European Coalition for Corporate Justice analysis at http://corporatejustice.org/news/393-france-adopts-corporate-duty-of-vigilance-law-a-first-historic-step-towards-better-human-rights-and-environmental-protection.

[72] http://konzern-initiative.ch/initiativtext/?lang=en

[73] See: http://konzern-initiative.ch/initiativtext/?lang=en

[74] < https://knowthechain.org/wp-content/uploads/2016/06/KTC_BenchmarkMethodology_FoodBeverage-ApparelFootwear_V2.pdf>

- Traceability and risk assessment;
- Purchasing practices;
- Recruitment practices;
- Worker voice;
- Monitoring; and
- Remedies.

Know the Chain identified three companies that it stated were ahead of their peers—Unilever (benchmark score of 65/100), Coca-Cola (benchmark score of 58/100), and Nestlé (benchmark score of 57/100). Know the Chain stated in its report that:

> "These companies have taken steps in each of the seven areas assessed, including on aspects such as recruitment practices and worker voice (i.e., empowering workers and ensuring their voices are heard), two areas which only few companies address."[75]

4.4.1 Nestle

Nestle is one of the world's largest food and beverage manufacturers, with 436 factories in 82 countries around the world, 335,000 employees from more than 120 countries and 161,000 direct suppliers in more than 100 countries around the world.[76] The magnitude of Nestle's operations poses numerous human rights risks which need to be managed appropriately.

According to Know the Chain:[77]

> "The food and beverage industry is an at-risk sector. Forced labour occurs both in the production of raw materials and during the food processing stages of food and beverage companies' supply chains. Food commodities are produced by agricultural workers who often come from vulnerable groups such as women, international migrants, and internal migrants with little education. Weak labor laws and law enforcement in the sector, together with isolated workplaces where housing tends to be provided by the employer, aggravate the typically poor working conditions and can leave workers vulnerable and dependent on their employer."

It is likely for the above reason that Nestle was one of the first companies globally to adopt the UNGPs,[78] with Nestle's modern slavery statement under section 54 of the MSA (UK) arguably being one of the most comprehensive statements published to date. The actions taken by Nestle in addressing its human rights concerns arguably also constitute leading corporate best practice.[79]

Nestle followed a structured approach to improving its human rights performance across its global business activities,[80] and in many respects, Nestle's approach reflected the guidance referred to above. The approach is summarised as follows.

Identify human rights issues and determine right holders at risk

Through a thorough internal and external consultation process, Nestle identified a list of 11 salient human rights at risk of the most severe negative impacts through its activities and business relationships, as well as identified 6 groups of right holders particularly at risk.[81]

Integrate human rights elements into corporate policies and commitments

Upon developing a human rights principle or policy, Nestle integrated human rights elements into various other business principles and policies and required all employees, Nestle suppliers and

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75 Know the Chain, above n34, 7.

76 Nestle, '*Modern Slavery and Human Trafficking Report 2016*' (*Nestle in the UK*) <http://www.nestle.co.uk/asset-library/documents/39506_nestle_mod-slave-act_ab_30sep.pdf>, 4.

77 Know the Chain, *'Food and Beverage Benchmark Findings Report: How are 20 of the largest companies addressing forced labour in their supply chains?'* (October 2016), 4.

78 Nestle, above n33, 3.

79 For example, in the UK, Nestlé is a member of the UN Global Compact network's Modern Slavery Working Group, in which member companies come together to share learning and best practice in the development of corporate human rights approaches, with particular focus on modern slavery (see Nestle, above n33, 19).

80 Nestle, above n33, 5.

81 Ibid 6 to 8.

contractors to comply with its policy commitments. Compliance with Nestle's standards are monitored regularly through compliance and engagement processes including third-party audits, independent assessments, and contractual and relationship reviews.[82]

Undertake a comprehensive human rights due diligence program

Nestle, in line with the recommendations of the UNGPs, implements a comprehensive human rights due diligence program, based on the following eight pillars:[83]

- Integrating human rights into new and existing policies;
- Engaging with stakeholders on a wide range of human rights issues;
- Training and building the capacity of employees to understand and uphold human rights;
- Evaluating risk assessments across its activities;
- Assessing human rights impacts in high-risk operations;
- Coordinating human rights activities through the Nestle Human Rights Working Group;
- Partnering with leading organisations to implement its human rights activities; and
- Monitoring and reporting on its performance.

Monitor whether human rights activities have been effectively integrated across the different levels of the company

In order to ensure the effectiveness of Nestle's human rights activities (such as integrating human rights into Nestle's polices, providing human rights training to staff and action plans), Nestle undertakes systematic and continual monitoring of its human rights activities, using relevant indicators framed by Nestle's global commitments set in relation to both human rights and responsible sourcing.[84]

In addition to Nestle's global commitments, Nestle has implemented commodity-specific projects with corresponding key performance indicators to specifically address issues which have been identified for particular commodities, such as the identification of forced labour in Nestle's Thai fish and seafood supply chain.[85]

Nestle has also integrated human rights indicators into its management systems to monitor progress and report on progress annually.[86]

In order to verify performance and make sure that things are on the right track, Nestle also undertakes regular external stakeholder engagement and consultation with independent experts that helps inform Nestle's understanding and approaches to managing human rights.[87]

4.4.2 Unilever

Unilever, similar to Nestle, has enormous global reach, with 76,000 suppliers around the world, sales in more than 190 countries and 172,000 employees.[88] As with Nestle, this global scale and reach, as well as the nature of its industry, raises risks associated with human rights including modern slavery. Unilever used the UNGPs Reporting Framework to release its inaugural report on human rights in 2015.[89] Unilever's approach to addressing its human rights issues reflected the guidance provided in the UNGPs, and included the following elements.

Making a Human Rights Policy Commitment

Unilever, in compliance with the guidance under the UNGPs, made a policy commitment to respect human rights. The policy statement articulated Unilever's approach in its responsibility to respect

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82 Ibid 9 to 10.
83 Ibid 11.
84 Ibid 19.
85 Ibid.
86 Ibid.
87 Ibid.
88 Unilever, *'Enhancing Livelihood, Advancing Human Rights: Unilever Human Rights Report 2015'*, <https://www.unilever.com/Images/unilever-human-rights-report-2015_tcm244-437226_en.pdf>, 5.
89 Ibid *9.*

human rights across its value chain and help guide how Unilever address impacts, including remediation and governance. The policy statement was finalised after consultations with key external stakeholders, colleagues in Unilever's legal, human resources, advocacy and communications teams; and approved by members of the Unilever Leadership Executive.[90]

Embedding Respect for Human Rights across All Levels of Business

Unilever's work in human rights has been embedded from the top down within the business, with oversight from the Unilever CEO and support from the Unilever Leadership Executive.

Unilever further claims to have tried to ensure that respect for human rights is embedded throughout its organisation. Unilever's regional organisations, human resources and supply chain teams are accountable for ensuring human rights are respected within its operations. Unilever's efforts in its extended supply chain is led by its Procurement team, and the Business Integrity team in Legal is responsible for Unilever's Prevent – Detect – Respond framework to implement the Code of Business Principles and related Code Policies across all Unilever operations.[91]

Ensure Stakeholder Engagement

Unilever has in place several layers of external stakeholder consultation with respect to human rights throughout its operations and across its functions and regions, including the use of external advisory boards, maintaining dialogue with suppliers, and maintaining ongoing engagement with intergovernmental organisations, governments, civil society and various business groups.[92]

Assess Impacts, Integrate Findings and Take Action

Unilever, following the guidance of the UNGPs, identified its most salient human rights issues which required addressing.[93]

Forced labour was one such issue. With respect to forced labour in the sub context of migrant labour, Unilever collaborated with an external expert organisation to develop best practice guidelines. This includes paying particular attention to the recruitment process, including preventing recruitment fees in excess of legally permitted amounts being paid to agencies to avoid corrupt payments, that any contract terms are clear and legal; that wages or benefits are not falsely promised; and that repatriation terms are clear, migrants free to return home and passports not withheld.[94]

With respect to forced labour in the context of human trafficking, Unilever strengthened its policy framework, by incorporating human trafficking explicitly into its new Human Rights Policy Statement, its Code of Business Principles and its Respect, Dignity and Fair Treatment Code Policy. Awareness and training in Unilever's codes and complaints mechanisms were provided to employees globally. Unilever also incorporated human trafficking guidelines into its Responsible Sourcing Policy and Responsible Business Partner Policy. [95]

Track Performance and Remediation

The Unilever Board is responsible for tracking performance, and day-to-day responsibility lies with senior management around the world. Checks are made on this process by Unilever Corporate Audit and by Unilever's external auditors. Unilever has clear controls in place to mitigate against potential breaches of its Code of Business Principles and Code Policies, and regularly communicates internally on related standards of behaviour required from directors, employees, contractors and other individuals who act on behalf of Unilever. Unilever has in place mechanisms for employees to bring any breach in any area of Unilever's Code to its attention, including any found in relation to Unilever's suppliers. Unilever has set out clear consequences for misconduct.[96]

As an example, Unilever undertakes an Understanding Responsible Sourcing Audit of suppliers' processes, in order to evaluate suppliers' process alignment with the requirements of Unilever's Responsible Sourcing Policy good practice.

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90 Ibid *15.*
91 Ibid *20.*
92 Ibid *23.*
93 Ibid 26 – 27.
94 Ibid 32.
95 Ibid.
96 Ibid 47.

Unilever's Responsible Sourcing Policy includes, for example, mandatory requirements relating to implementing "clear policies and procedures defining regular and overtime work, at least 24 consecutive hours of rest in every seven-day period and all overtime work is paid at least to the rate defined by law". Advancing to good practice requires that suppliers pay "all overtime work at the appropriate premium rate according either to law or to the prevailing industry standards, whichever is the higher, and that there is an effective mechanism to monitor hours of work". Suppliers must also plan peak periods to avoid excessive overtime and "meet the goals and requirements set out in the International Labour Organization Conventions on hours of work and overtime so that the regular working week does not exceed 48 hours, and overtime does not exceed 12 hours".[97]

Suppliers are primarily audited at site level to give a true picture of the supplier's ability to put policies into practice. Once an audit is finished, the supplier completes the process through risk mitigation and the development and implementation of its corrective action plan.

A supplier must close resolve all of its non-conformances in full before it can be considered compliant and able to supply Unilever. Unilever's Procurement team manages the relationships and works to ensure suppliers take the necessary steps to meet requirements and are willing to make the changes to continuously improve.[98]

Unilever further also details the remediation process for individuals within and outside the company, to raise and resolve negative human rights impacts.

Outcomes of Human Rights Policies

Unilever acknowledges that the risk of systemic human rights abuses continues to exist across its value chain.[99] However, its efforts have resulted - for example - in a 60% decrease in the number of non-conformances by its suppliers with Unilever's Responsible Sourcing Policy between 2013 and 2014 for suppliers who had an initial audit and then a full re-audit 12 months later.[100]

Unilever was identified by Know the Chain as having the best industry benchmark in the food and beverage industry in terms of addressing forced labour in its supply chain.[101] The efforts of Unilever in addressing its business related human rights issues through implementation of the UNGPs has been commended by Mark Goldring, the Oxfam GB CEO:

> "We greatly welcome the leadership Unilever has shown in being the first company to report on its implementation of the UN Guiding Principles on Business and Human Rights using the recommended Reporting Framework. We commend the company's position that business is here to serve, not take from, society. It's clear that Unilever has made a great start in building understanding of human rights issues across the business, and in strengthening the policies and capacity needed to address them…"[102]

4.5 Conclusion

An Australian statute should be informed by the *UN Guiding Principles for Business and Human Rights*, *OECD Guidelines for Multinational Enterprises*, State-based legislative best practice and corporate best practice. There is extensive guidance available.

5. The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery

5.1 Background

Australia ratified the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* ('Trafficking Protocol') on 14 September 2005. The purposes of the Protocol are:

- To prevent and combat trafficking in persons, paying particular attention to women and children;
- To protect and assist the victims of such trafficking, with full respect for their human rights; and

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97 Ibid 45.
98 Ibid 52.
99 Ibid 1.
100 Ibid 56.
101 Know the Chain, above n34, 7.
102 Unilever, above n47, 21.

- To promote cooperation among state parties, in order to meet those objectives.

On 13 August 2012, then Minister for Foreign Affairs Senator Bob Carr asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to inquire into and report on Slavery, Slavery-like conditions and People Trafficking, with a particular focus on:

a) "Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims;

b) ways to encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking; and

c) international best practice to address all forms of slavery, slavery-like conditions and people trafficking."

The report was tabled on 24 June 2013 (the 'Trading Lives' report).

5.2 Other jurisdictions

In 2015, the UK passed the MSA (UK), which "substantively implements" the UK's various anti-trafficking obligations under both the Palermo Protocol and certain European conventions/directives.[103] The UK already had the National Referral Mechanism framework in place, which was introduced to meet the UK's obligations under the Council of Europe *Convention on Action against Trafficking in Human Beings*.

In Canada, the Protocol was ratified in May 2002. The *Immigration and Refugee Protection Act*, which was passed in 2001 and came into force in June 2002, included a specific offence against human trafficking.[104] In 2005, the Canadian government enacted legislation to amend the Canadian Criminal Code to criminalise 'trafficking in persons' as an offence.[105] This established a consistent definition of trafficking nationally, criminalised trafficking and associated activities with a maximum penalty of 10 years imprisonment, and provided a five year maximum penalty for activities such as withholding or "destroying identity, immigration or travel documents to facilitate trafficking."[106]

The government has passed further amendments, including a minimum sentence for offences involving trafficking of children,[107] and an amendment adding trafficking in persons to the list of offences committed outside Canada for which Canadian citizens or permanent residents may be prosecuted in Canada.[108]

In 2006, the Canadian Department of Citizenship and Immigration also put into place a policy to provide temporary residency permits specifically for trafficked persons, which allow individuals to be exempt from the usual processing fee, eligible for certain health service benefits, and allow them to apply for a fee-exempt work permit.[109] An Interdepartmental Working Group for Trafficking in Persons was also set up in 2004 to "coordinate the work of 14 government agencies and to develop a national strategy against human trafficking."[110] This was replaced with the Human Trafficking Taskforce in June 2012. A National Action Plan to Combat Human Trafficking, a four-year action plan, was also launched on June 6, 2012.[111]

The Canadian approach differs from the UK's implementation of the MSA (UK) in that it is a more piecemeal approach.

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[103] Jason Haynes, The Modern Slavery Act (2015): A Legislative Commentary (2016) 37 Statute Law Review 33.

[104] *Immigration and Refugee Protection Act*, SC 2001, c 27.

[105] *Bill C-49, An Act to Amend the Criminal Code (Trafficking in Persons)*, SC 2005, c 43.

[106] Christie Holden, *Canada and the Palermo Protocol of 2000 on Human Trafficking: A Qualitative Case Study* (MA Thesis, University of Ottawa, 2013) 33.

[107] *Bill C-268, An Act to Amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years)*, SC 2010, c 3.

[108] *Bill C-310, An Act to Amend the Criminal Code (Trafficking in Persons)*, SC 2012, c 15.

[109] Ibid 35.

[110] Donna E Stewart and Olga Gajic-Veljanoski, 'Trafficking in Women: The Canadian Perspective' (2005) 173 *Medical Association Journal* 26.

[111] Public Safety Agency, *National Action Plan to Combat Human Trafficking: 2014-2015 Annual Report on Progress* (2016).

5.3 The gender dimension of modern slavery

The International Labour Office estimates (from a study reference period of 2002-2011) that there are 20.9 million persons globally in 'modern-day slavery', with women or girls making up 11.4 million, or 55%, of the total.[112] The gender percentages differ depending on the type of forced labour, however, female victims are disproportionally represented in sexual exploitation in the private economy, making up 98% of victims. In comparison, they make up only 40% of labour exploitation in the private economy. Women also make up 58% of state-imposed force labour. [113] Generally, more adults than children are victims of forced labour, with an estimated 74% of the total being adults and 26% children (inclusive of males and females).

Similarly, a UNODC global report on trafficking in persons suggested that in 2014, 71% of the victims of trafficking are women and girls (51% and 20% respectively).[114]

Females were said to be "chiefly trafficked for sexual exploitation, but also for sham or forced marriages, for begging, for domestic servitude, for forced labour in agriculture or catering, in garment factories, and in the cleaning industry and for organ removal."[115] The UNODC report found similar figures to the ILO estimates in terms of form of exploitation. 96% of those trafficked for sexual exploitation were female, 37% of those trafficked for forced labour, 18% of those for organ removal, and 76% of those for other forms of exploitation. [116]

The UN report provided a breakdown by region. Australia is included within the East Asia and Pacific region. According to the UNODC report, in Australia, 79% of victims were women and 7% were girls.[117]

For the region (though this clearly may not be an entirely comparable picture for Australia specifically), 61% of trafficking was for sexual exploitation, 32% for forced labour, and 7% for other purposes.[118] It was also noted that sham marriages are an issue in the region, with the illustrative case being one from Australia, where the offenders convinced a Filipino woman to marry their friend to obtain a residence permit, but once she arrived, she was forced to work in their shop and take care of their children.[119] It should also be noted that the report found that the wealthiest countries in the Asia-Pacific region, Australia and Japan, were destination countries for trafficking.

6. Provisions in the United Kingdom's legislation that have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia

Section 54 (Transparency in Supply Chains) of the MSA (UK) came into effect on 29 October 2015. Briefly, s54 of the MSA (UK) requires 'commercial organisations' (body corporates and partnerships) that:

- supply goods or services;
- carry on business in whole or in part in the UK; and
- have a global turnover of £36 million or more

to produce an annual 'slavery and human trafficking statement' of the steps taken (if any) during each financial year to ensure slavery and human trafficking is not taking place in any part of its business or global supply chains (the Disclosure Obligation).

If the organisation has a website, the statement must be published on it (including by providing a link to the statement from a prominent place on the homepage), otherwise it must be provided to anyone who requests a copy in writing within 30 days of receiving the request. The statement must be signed by a director (or the equivalent) and approved by the board (or the equivalent).

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[112] International Labour Office, *ILO Global Estimate of Forced Labour: Results and Methodology* (2012)
[113] Ibid 14.
[114] United Nations Office on Drugs and Crime, '2016 Global Report on Trafficking in Persons' (2016) 23.
[115] Ibid 26.
[116] Ibid 27.
[117] Ibid 103.
[118] Ibid 104.
[119] Ibid 104

The first organisations required to report under s54 of the MSA (UK) had a financial year end of 31 March 2016. The UK Government's official guidance on s54 - "*Transparency in Supply Chains: A Practical Guide*" (the "**Statutory Guidance**") – provides that "organisations should seek to publish their statement as soon as reasonably practicable after the end of their financial year [but] in practice, we would encourage organisations to report within six months of the organisation's financial year end" (p.15).

The UK Government estimates indicate that somewhere in the vicinity of 9,000 organisations are subject to the Disclosure Obligation as at 2015.[120] Given that there is no 'hard deadline' by which organisations are required to report, and no expectation that those with financial year ends late in 2016 will have yet reported, it is unclear as at the date of this submission whether most, or at least a large majority, of those organisations caught by the Disclosure Obligation have or will report as required. This uncertainty is compounded by the fact that there is **no government sponsored central repository of statements or official list of those organisations required to report**.

Nevertheless, there can be little doubt that s54 of the MSA (UK) has had a positive effect on drawing the issue of modern slavery to the attention of senior management, procurement and compliance teams across a large number of industry sectors in the UK. These include sectors such as insurance, consulting, legal and professional services, which may have given little thought historically to how modern slavery could impact their business or supply chains.

As of April 2017, the Business and Human Rights Resource Centre (BHRRC) has collected over 1,700 modern slavery statements across a range of industry sectors, including transport, manufacturing, apparel and textile, finance, utilities, construction and building materials, real estate, consumer products/retail, shipping and handling, agriculture, charities/non-profits, among many others.[121] While the quality of these statements varies, as do the steps actually taken to tackle modern slavery that underpin them, there can be little doubt that many of these organisations would have given less thought to the issue of modern slavery but for the obligations under s54 of the MSA (UK) **(including the mandatory requirement for board level approval and director sign-off on statements, which ALHR sees as an essential component of any equivalent legislation in Australia to help ensure top-level management takes the issue seriously).**

Apart from the organisations now reporting on the steps they have taken to tackle modern slavery, NGOs and industry/professional representative bodies have also taken positive steps to assist organisations to address the issues. For example, the Chartered Institute of Procurement and Supply ("**CIPS**") has run training programmes for its members on modern slavery,[122] conducted surveys on awareness of the issue among its membership,[123] and developed guidance on tackling modern slavery in supply chains in cooperation with the Walk Free Foundation.[124] Similarly, a coalition of NGOs led by the CORE Coalition has developed a comprehensive guide to effective reporting under the MSA (UK),[125] which is just one of many quality publications and resources now available to organisations and civil society on this issue. **Absent the supply chain transparency provisions in s54 of the MSA (UK), it is difficult to image that this sort of positive activity and focus on the issue by industry and civil society would have materialised.**

It is too early to assess precisely what long-term impact s54 of the MSA (UK) will have on tackling modern slavery in supply chains, including any cascade effects down multiple tiers of global supply chains, but what is clear is that the quality of reporting to date has been variable.[126]

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[120] 'Modern Slavery Act – Transparency in Supply Chains' Impact Assessment (IA No: HO0192), Home Office, dated 15 July 2015.

[121] See https://business-humanrights.org/en/uk-modern-slavery-act-registry

[122] For example, see: https://cips.org/en-gb/training-courses/ethical-procurement-and-supply-/#tabs-2

[123] For example, see: https://www.cips.org/en/news/news/uk-businesses-are-woefully-unprepared-for-the-modern-slavery-acts-reporting-requirement-ahead-of-key-date/

[124] For example, see: 'Modern Slavery in Supply Chains: An Introduction for Procurement Professionals' available at: https://www.cips.org/Documents/About%20CIPS/Ethics/CIPS_ModernSlavery_Broch_WEB.pdf

[125] See 'Beyond Compliance: Effective Reporting under the Modern Slavery Act' available at: http://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf

[126] See, for example, the BHRRC report, 'FTSE 100 At the Starting Line: An Analysis of Company Statements under the UK Modern Slavery Act' available at: https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf

Ryan Turner has identified the *Illegal Logging Prohibition Act 2012* (Cth) as a useful model for regulating slavery.[127] The *ILP* focuses on illegal logging overseas, and visits that activity with broad obligations under Australian law. Turner criticises various weaknesses in the MSA (UK) which should not be adopted by Australia, as addressed further in the Recommendations Section 9 at the end of this Submission. In particular the Act limits the amount of information to be disclosed, an obligation to report slavery or forced labour in the offended jurisdiction is lacking, and weaknesses in the enforcement structure are apparent, such as the absence of pecuniary penalties for inadequate compliance. Stronger regulation can assist by changing internal corporate practices and supply chain relationships.

Turner concludes that a comprehensive strategy would legislate due diligence obligations and prohibit the importation of goods tainted by unlawful labour practices such as slavery.[128] It is submitted that his recognition of overseas subsidiaries offers a more accurate measure of the prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia.

The UNGPs are operational principles for businesses to ensure best practice. It is important that any Australian legislation which attempts to prevent forms of modern slavery encompass most if not all of these operational guiding principles of the UNGPs.

While ALHR is of the firm view that similar measures to s54 should be introduced in Australia, these measures can and should be improved on. To this end, ALHR makes the recommendations set out in the Recommendations Section 9 at the end of this submission.

7. Whether a Modern Slavery Act should be introduced in Australia

The ALHR submits that a Modern Slavery Act should be introduced in Australia as outlined within this submission and particularly in our recommendations.

8. Any other related matters

Company reporting is an important tool in addressing modern slavery. Requirements for businesses over a certain size to examine and report on their operations and supply chains in relation to human rights (including modern slavery), is both international best practice[129] and features in the MSA (UK).[130] The Australian Government supports this approach, in its endorsement and encouragement of the *UN Guiding Principles on Business and Human Rights*.[131] Accordingly, Australia's legislative response to modern slavery should include effective reporting.

To make reporting effective, and guard against 'free-loaders', any legislated scheme should **use existing Australian legal principles about misleading and deceptive conduct** to ensure business reporting works equitably and efficiently. Such provisions create no additional 'red tape' for companies which accurately examine and report, while providing an important guard against operators making statements for commercial benefit but which cannot be justified.

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[127] Ryan J Turner, "Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law's New Frontier" (2016) *Melbourne Journal of International Law* 188.

[128] Ibid, p 209. Also see Ryan J Turner, "Revisiting the direct liability of parent entities following Chandler v Cape plc" (2015) 33 *Companies & Securities Law Journal* 45.

[129] Eg. UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (Annex to UN doc A/HRC/17/31, 21 Mar 2011); *Transparency in Supply Chains Act 2010* (California); see also Section 1714.43 of the Civil Code ('Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars ($100,000,000) shall disclose... its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.'; see also 15 U.S. Code § 78r (Liability for misleading statements).

[130] Section 54(1) 'A commercial organisation within subsection (2) must prepare a slavery and human trafficking statement for each financial year of the organisation.'

[131] 'The Australian Government believes that business and respect for human rights go hand in hand. Businesses must comply with all Australian laws. In addition, under international law, the government is obliged to ensure that non-state actors, including businesses, respect human rights. The Australian Government encourages businesses to apply the United Nations Guiding Principles on Business and Human Rights': www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Business-and-Human-Rights.aspx (26 March 2017).

Australia has existing controls over misleading and deceptive reporting by companies in a range of national laws, including the *Australian Consumer Law* (Cth),[132] *Australian Securities and Investments Commission Act 2001* (Cth),[133] and *Corporations Act 2001* (Cth);[134] as well as many laws specific to a state/territory or particular subject.[135]

The Australian Competition and Consumer Commission ("**ACCC**") summarises the *Australian Consumer Law* as requiring that "[a]ny statement representing your products or services should be true, accurate and able to be substantiated".[136] That should apply as much to any company reporting about modern slavery as it does to existing company statements and disclosures. One of the rationales explained by the ACCC is that "[c]onsumers may be influenced by a number of factors when buying goods, including claims about [e.g.] where a product was grown, produced or made. If you choose to make a country of origin claim, or are legally required to do so, it must be clear, accurate and truthful".[137]

Australia's misleading and deceptive conduct laws have penalised errant company reporting in relation to a number of environmental claims, resulting in court findings or company undertakings to the relevant authorities regarding unsubstantiated or false claims about subjects including:

- 'carbon-neutral' cars;[138]
- carbon-offset products;[139]
- environmental benefits from plastic bags;[140] and
- advertising a greenhouse gas as 'environmentally friendly'.[141]

The laws are not onerous. Courts have also rejected many legal proceedings (by authorities or private parties) where it was not shown that a company's actions or statements were misleading.[142] Such decisions reinforce the principle that the laws relating to misleading and deceptive conduct are not laws of strict liability, provided that the defendant has adequately examined and described the matter, just because the complainant understands the relevant conduct or statement differently.

There is a great deal of guidance available in Australia as to what is required to guard against misleading and deceptive statements in reporting, disclosure and advertising.[143] This guidance assists

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132 eg s18 'A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive'.

133 eg. s12DA (conduct in relation to financial services).

134 eg. s728 (securities under a disclosure document).

135 eg. *Food Act 2003* (NSW), s23B (advertising, packaging or labelling of beef); *Legal Profession Act* (NT), s79 (Australian-registered foreign lawyer advertising); *Motor Dealers and Chattel Auctioneers Act 2014* (Qld), s221 & sch 3 (False or misleading statements); *Classification (Publications, Films And Computer Games) (Enforcement) Act 1995* (Vic), s53 (misleading or deceptive advertisements).

136 www.accc.gov.au/business/advertising-promoting-your-business/false-or-misleading-statements (25 March 2017).

137 www.accc.gov.au/business/advertising-promoting-your-business/country-of-origin-claims (25 March 2017).

138 *ACCC -v- GM Holden* [2008] FCA 1428, order 1.

139 *ACCC -v- Prime Carbon* court orders see ACCC, 'Company admits misleading consumers about marketing carbon credits', Release number: NR 043/10, 11 March 2010.

140 *ACCC -v- Lloyd Brooks Pty Ltd* court orders, see ACCC, 'Environmental bag claims "Misleading" ', Release no MR 087/04, 25 May 2004.

141 *ACCC -v- Sanyo* court orders, see ACCC, 'Federal Court finds "Green" claims to be misleading', Release no MR 235/03, 11 November 2003.

142 Eg. *Forrest v Australian Securities and Investments Commission* [2012] HCA 39, [50] per French CJ, Gummow, Hayne & Kiefel JJ (not misleading where the impugned statements accurately conveyed the issues they described and 'extreme or fanciful understanding should not be attributed to the ordinary or reasonable member of the audience receiving the impugned statements'); *Miller & Associates Insurance Broking v BMW Australia Finance* [2010] HCA 31, [22]-[23] per French CJ & Kiefel J (the probation of misleading & deceptive conduct 'does not require a party to commercial negotiations to volunteer information which will be of assistance to the decision-making of the other party. A fortiori it does not impose on a party an obligation to volunteer information in order to avoid the consequences of the careless disregard, for its own interests, of another party of equal bargaining power and competence. ... [But] When a document contains a statement that is true, non-disclosure of an important qualifying fact will be misleading or deceptive if the recipient would be misled, absent such disclosure, into believing that the statement was complete.').

143 Eg. ACCC, *Green marketing and the Australian Consumer Law*, ACCC 03/11_30681_292, 11 March 2011. See also *James Hardie Industries v ASIC* [2010] NSWCA 332, [91] per Spigelman CJ, Beazley & Giles JJA ('When the question is whether conduct has been likely to mislead or deceive it is unnecessary to prove anyone was actually misled or deceived;

companies who do diligently report, and also acts as a caution against other businesses from making unsubstantiated claims simply for commercial or publicity advantage.

ALHR submits that a similar structure should apply to company reporting in relation to modern slavery. That is: any legislated requirement about reporting should require that the reports are not misleading and deceptive. That result would likely apply in any event, through the *Australian Consumer Law*, but should be explicitly stated in an Australian *Modern Slavery Act* in order to highlight the importance given to the reporting requirements regarding modern slavery.

9. ALHR Recommendations

Recommendation 1: That the Federal Government should introduce a Modern Slavery Act which is consistent with and complements current Australian laws and the National Action Plan to Combat Human Trafficking and Slavery 2015–19[144].

An Australian *Modern Slavery Act* should build on current Australian law and policy provisions that have been implemented to combat modern slavery, including by implementing provisions that are in line with the UNGPs and have already been endorsed by the Australian government.

Recommendation 2: An Australian government sponsored Central Repository of Statements should be established, with disclosing organisations having a legal obligation to deposit annual statements

The MSA (UK) does not require that the UK Government operate a central repository in which annual slavery and human trafficking statements must be deposited and made public. As the Walk Free Foundation recently noted, "there is no official central repository of statements, making it difficult to hold organisations to account".[145] This has forced NGOs such as BHRRC to establish their own central repository/register in attempt to fill the gap.[146] While this effort is commendable, *ad hoc* repositories/registers rely on organisations voluntarily supplying their statements and dedicated NGO staff sweeping the internet in search of statements, meaning that any decentralised attempt to develop a central repository will inevitably be incomplete.

The establishment of a central depository is essential for transparency, comparison and verification purposes, and must also be accompanied by a legal obligation compelling organisations to deposit their statements within a specified timeframe to close the accountability gap.

This course would help address concerns raised under the UK statute that statements prepared by organisations that do not have a website are effectively invisible to government, the public and civil society, undermining the fundamental premise of transparency that underpins the statute.

Recommendation 3: An inclusive list of organisations required to produce a statement should be published annually

Section 54 of the MSA (UK) does not oblige the UK Government to publish a list of those organisations required to prepare a slavery and human trafficking statement. This undermines the accountability of organisations and also potentially leaves some genuinely unaware that they need to report. Through a private member's bill, the House of Lords is attempting to remedy this by obliging the Secretary of State to "publish a list of all commercial organisations that are required to publish a

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Evidence of actual misleading or deception is admissible, and may be persuasive, but is not essential; The test is objective and the Court must determine the question for itself; [and] Conduct is likely to mislead or deceive if that is a real or not remote possibility, regardless of whether it is less or more than 50%'); *Hobbs Anderson Investments v Oz Minerals* [2011] FCA 801 (settlement of proceedings concerning misleading and deceptive in failure on its part to comply with the continuing disclosure obligations).

144 The Attorney Generals Department, *The National Action Plan to Combat Human Trafficking and Slavery 2015–19*, https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf

145 The Walk Free Foundation (2016), 'Harness the Power of Business To End Modern Slavery', p.19, available at: 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

146 See https://business-humanrights.org/en/uk-modern-slavery-act-registry.

statement" with the list "published in a format that is easily accessible" and with the commercial organisations categorised "according to sector"[147] for ease of comparison.

Any list the Australian Government publishes will depend on the triggers for the reporting requirement and the ability of government to accurately identify (eg through tax records) all of those organisations caught. However, this should not be a reason not to publish an inclusive and comprehensive list of organisations which are clearly and identifiably subject to a reporting obligation.

Recommendation 4: Organisations should be required to include in their statements the steps they have taken to tackle modern slavery against specified criteria set out in the legislation

By requiring organisations to report on the steps taken to tackle modern slavery against specified criteria, such as the due diligence undertaken on supply chains, organisations are forced to consider the target issues specified in the legislation. Such a requirement also provides a basis on which organisations can be more readily compared against peers and across industries and sectors, as all organisations will need to report against each of the specified criteria (including where no steps have been taken).

Under the MSA (UK), section 54(5) provides non-mandatory examples of what a statement *may* contain. This includes disclosing information on:

- the organisation's structure, business and supply chains;
- the organisation's policies in relation to slavery and human trafficking;
- the due diligence undertaken across its business and supply chains in relation to slavery and human trafficking;
- the parts of the organisation's business and supply chains where there is risk of modern slavery taking place and what steps have been taken to assess and manage that risk;
- the effectiveness of the steps the organisation has taken, measured against performance indicators it considers appropriate; and
- the training on modern slavery available to staff.

The non-mandatory nature of this obligation has resulted in few organisations reporting across all of the above dimensions and some reporting against none of these dimensions. For example, an early analysis of statements by the CORE Coalition and the BHRRC showed that of the 75 slavery and human trafficking statements analysed, only nine statements reported against the six non-mandatory criteria (such as due diligence undertaken) set out in section 54(5) of the MSA (UK).[148]

In contrast to the MSA (UK), the California Transparency in Supply Chains Act (the CTSCA) requires an organisation to (at a minimum) identify to what extent it does each of the following:

- engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery;
- conducts audits of suppliers to evaluate supplier compliance with company standards for human trafficking and slavery in supply chains;
- requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding human trafficking and slavery in the countries in which they are doing business;
- maintains internal accountability standards and procedures for employees and contractors failing to meet company standards; and
- provides employees and management with direct responsibility for supply chain management with training on human trafficking and slavery, including risk mitigation.

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[147] Modern Slavery (Transparency in Supply Chains) Bill [HL], available at: http://services.parliament.uk/bills/2016-17/modernslaverytransparencyinsupplychains.html

[148] Core Coalition and BHRRC (March 2016), 'UK Modern Slavery Act: Analysis of Early Company Statements, available at: https://business-humanrights.org/en/uk-modern-slavery-act-analysis-of-early-company-statements-new-guidance-available.

By mandating minimum criteria against which organisations must report, the Californian approach increases transparency and accountability, and also levels the playing field by ensuring a relatively consistent approach to reporting on the issue.

For the avoidance of doubt, ALHR supports the adoption of the criteria used in s54(5) of the MSA (UK) as these are more universally applicable to organisations providing services and/or goods, which contrasts with the position under the CTSCA which does not cover service providers.

Recommendation 5: Require board approval of the contents of each annual statement to be specifically referenced in the statement

To ensure responsibility for tackling modern slavery is taken seriously at the most senior levels in an organisation, s54(6) of the MSA (UK) requires slavery and human trafficking statements to be approved by the board (or the equivalent) and signed by a director. **This requirement is essential for ensuring accountability, including by ensuring directors take their responsibilities and duties seriously when signing-off on the contents of a statement.** However, s54(6) does not require that the statements include reference to board approval. As a consequence, board approval has not been referenced in a number of statements published so far in the UK. This undermines transparency and accountability, making it difficult for others to assess whether this mandatory obligation has been fulfilled without, for example, writing to the organisation to seek confirmation that board approval has in fact been given.

ALHR therefore recommends that any equivalent provision in Australian legislation requires board approval (or the equivalent) to be specifically referenced in annual statements.

Recommendation 6: Include financial penalties and prohibitions on participating in public procurement for failing to publish statements or to satisfy mandatory reporting requirements

Under s54(11) of the MSA (UK), legal sanctions for failing to comply with the obligation to publish a slavery and human trafficking statement are limited to injunctive relief compelling the organisation to report. Subsequent failure to comply would amount to a contempt of court, punishable by an unlimited fine, but it is difficult to imagine any organisation failing to respond to an injunction compelling it to report. The lack of a penalty for failing to produce a statement, or failing to produce a statement satisfying minimum formality requirements (such as board approval or the signature of a director), has been subject to a great deal of criticism in the UK by civil society. For example, in its report, '*Closing the Loopholes – How Legislators can Build on the UK Modern Slavery Act*, the International Trade Union Confederation (ITUC) notes that:

"There is a lack of penalties for business which fail to comply with the MSA supply chain provisions. Companies that ignore the requirement will technically be breaking the law, but they do so without risk of any consequence. Further, those that fail to report are most likely the ones most likely to have forced labour in their supply chains."[149]

The absence of any real penalty weakens the gravity of the legislation, compliance with which is not deemed sufficient to warrant any sort of effective sanction or penalty. **ALHR therefore recommends that Australian transparency provisions include a proportionate financial penalty for those organisations that either (1) fail to issue their statement in compliance with the mandatory terms of the legislation, or** (as recommended by the ITUC),[150] for those which **(2) issue a misleading or fraudulent statement.**

Furthermore, and consistent with the House of Lords Bill amending the MSA (UK) noted in Recommendation 2 above, **those organisations that fail to produce a statement should be debarred from participating in public procurement/tenders for a specified period of time**.

Recommendation 7: That Australian subsidiaries operating overseas are included under the Modern Slavery Act purview, similar to the ILP

There is a need to specifically prevent Australian companies disavowing their overseas liabilities. A comprehensive strategy would prescribe due diligence obligations and prohibit the importation of

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[149] See page 7 of the report, available at: http://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

[150] Ibid.

goods tainted by unlawful labour practices such as slavery.[151] Recognition of overseas subsidiaries offers a more accurate measure of the prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia.

Recommendation 8: Recognising bribery is often associated with modern slavery by making bribery a strict liability criminal offence when there is failure by 'commercial organisations' to prevent bribery by associated persons

Where there is slavery and human trafficking, there is a strong likelihood of some form of bribery having taken place. This fact has not been lost on NGOs tackling modern slavery and businesses required to report under the MSA (UK), particularly in the context of the adequate procedures defence.[152] ALHR recommends the adoption in a *Modern Slavery Act* of an equivalent to s7 of the *Bribery Act 2010* (UK), as previously discussed.

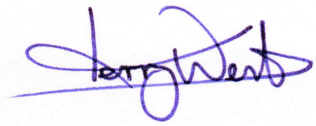
Recommendation 9: Any legislated requirement for reporting regarding modern slavery should include a provision that such reporting not be misleading/deceptive

As mentioned above, such a provision would acts as a caution and would highlight the importance given to the reporting requirements regarding modern slavery.

If you would like to discuss any aspect of this submission, please email me at: vicepresident@alhr.org.au.

Yours faithfully

Kerry Weste



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[151] Ibid, p 209. Also see Ryan J Turner, "Revisiting the direct liability of parent entities following Chandler v Cape plc" (2015) 33 *Companies & Securities Law Journal* 45.

[152] For example, see Hartley, B (2016), 'Opinion: Why you need to take notice of the Modern Slavery Act', Energy Voice, https://www.energyvoice.com/opinion/120104/opinion-need-take-notice-modern-slavery-act/