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Working Group on the issue of human rights and transnational corporations and other business enterprises

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Dear Working Group,

## **Input regarding the Working Group's Report on the Gender Lens to the UN Guiding Principles on Business and Human Rights**

Australian Lawyers for Human Rights (**ALHR**) is grateful for the invitation to provide input on applying a gender lens to the Working Group's Report on the Gender Lens to the UN Guiding Principles on Business and Human Rights.

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## 1. Introduction

- 1.1 Women and girls<sup>1</sup>, by virtue of their gender and age, may be subjected to human rights violations in the business sector. Understanding the human rights protections which women and girls require within the business sector is vital to ensuring their rights are protected. Further, whilst the fundamental human rights principles of universality and inalienability are widely accepted, there are people in society who, because of their gender, age, race, sexual orientation or religion, require special protection in order for their human rights to be respected and upheld. The importance, therefore, of applying a gender lens to business and human rights, cannot be understated.
- 1.2 This input responds to the specific questions and issues identified by the Working Group's Report on the Gender Lens to the UNGPs, in the context of international human rights laws and the UNGPs.

### *International human rights laws*

- 1.3 The Preamble of the Charter of the United Nations stipulates that one of its goals is "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and **women**.."<sup>2</sup> (emphasis added)
- 1.4 The Universal Declaration of Human Rights (**UDHR**) provides that
- ... Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and **women**...(emphasis added)<sup>3</sup>
- 1.5 In addition, there are international human rights laws specific to the rights of women. It is beyond the scope of this input to provide a detailed analysis of all relevant laws, save to say that the International Covenant on Civil and Political Rights (**ICCPR**)<sup>4</sup>, the International Covenant on Economic, Social and Cultural Rights (**ICESCR**)<sup>5</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**)<sup>6</sup> each contain specific provisions relating to women and girls which are highly relevant when applying a gender lens

<sup>1</sup> Women and girls include transgender and intersex women and girls

<sup>2</sup> Preamble UN Charter, 1945

<sup>3</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) p1

<sup>4</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

<sup>5</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

<sup>6</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

to business and human rights. Of particular note are common Articles 2 and 3 of the ICCPR and ICESCR which prohibit discrimination based on, inter alia, sex<sup>7</sup> (Article 2) and ensure the equal right of men and women to the enjoyment of all rights contained in these conventions<sup>8</sup> (Article 3). Further, Article 26 of the ICCPR provides for equality before the law and equal protection of the law.<sup>9</sup>

- 1.6 CEDAW very clearly holds a fundamental place with regard to women and girls' human rights. In preparing guidance for the business sector with regard to women's human rights, this convention should provide the central framework for recommended actions and initiatives. There are, in addition, other relevant instruments such as the International Labour Organization Declaration on Fundamental Principles and Rights at Work<sup>10</sup>, as well as several UN thematic mandates which are specifically devoted to women's rights including the Special Rapporteur on violence, the Working Group on discrimination against women in law and practice and the Special Rapporteur on trafficking, especially women and children.

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

- 1.7 A general principle of the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>11</sup> states that the

Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.<sup>12</sup>

- 1.8 The commentary to Principle 3 of the first pillar of the UNGPs – The State's Duty to Protect Human Rights – provides that States should provide appropriate guidance to

business enterprises on respecting human rights [and] should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and

<sup>7</sup> Common Articles 2 ICCPR and ICESCR Op Cit

<sup>8</sup> Article 3 ICCPR and ICESCR Op Cit

<sup>9</sup> Article 26 ICCPR Op Cit

<sup>10</sup> Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

<sup>11</sup> United Nations Human Rights Office of the High Commissioner, New York and Geneva 2011

<sup>12</sup> [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), p1

linguistic minorities, children, persons with disabilities, and migrant workers and their families.<sup>13</sup>

- 1.9 The commentary to Principle 7 of the first pillar of the UNGPs – The State’s Duty to Protect Human Rights – provides that in supporting business to respect human rights in conflict-affected areas, State should provide

adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;...<sup>14</sup>

- 1.10 The commentary to Principle 12 of the second pillar of the UNGPs on Business and Human Rights – The Corporate Responsibility to Protect Human Rights – provides that

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families.<sup>15</sup>

## **2. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately? Please provide concrete examples in the context of both generic and sector- or region-specific experiences of women.**

- 2.1 Women experience, disproportionately, various forms of business-related human rights abuses. Such human rights violations are specifically related to their status as women, and can occur on a daily basis, impacting negatively on their personal, emotional and financial circumstances.

These include, but are not limited to:

- a. Employment and workplace discrimination and abuse, including unequal pay, underpayments, wage theft, sexual harassment, violence and other forms of abuse;
- b. Discrimination and abuse within the housing sector often resulting in eviction and/or homelessness for both the woman and her children;

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<sup>13</sup> Ibid, p5

<sup>14</sup> Ibid, p9

<sup>15</sup> Ibid, p14

- c. Discrimination and abuse in educational settings including universities and schools often impacting on a student's education and future career;
- d. Technology based harassment, including threats and abuse on social media; and
- e. Gender bias in recruitment through the use of Artificial Intelligence (**AI**) resulting in inequality in workplace recruitment.

#### *Employment and workplace discrimination and abuse*

- 2.2 Women continue to be subjected to discrimination and abused within their workplaces due to their gender, including being subjected to unequal pay, underpayments, wage theft, sexual harassment, violence and other forms of abuse including bullying, intimidation and harassment by both their employers and fellow employees.

#### Sexual harassment in the workplace

- 2.3 The 2018 Australian Human Rights Commission (**AHRC**) survey regarding sexual harassment in the workplace found that one in three workers (33%) in Australia have been sexually harassed at work over the last five years, compared with one in five from its 2012 survey.<sup>16</sup> It found that women were more likely to be sexually harassed in the workplace than men, and in the last 12 months, 23% of women in the Australian workforce have experienced some form of workplace sexual harassment compared with 16% of men in the workforce.<sup>17</sup>
- 2.4 When examining workplace sexual harassment in the last five years, the report found that:
- a. almost two in five women (39%) and just over one in four men (26%) have experienced sexual harassment in the workplace in the last five years;
  - b. people aged 18 to 29 were more likely than those in other age groups to have experienced workplace sexual harassment in the past five years (45%);
  - c. people who identify as gay, lesbian, bisexual, pansexual, queer, asexual, aromantic, undecided, not sure, questioning or other, were more likely than people who identify as straight or heterosexual to have experienced workplace sexual harassment in the past five years (52% and 31% respectively);
  - d. Aboriginal and Torres Strait Islander people were more likely to have experienced workplace sexual harassment than people who are not Aboriginal or Torres Strait Islander (53% and 32% respectively); and

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<sup>16</sup> Everyone's Business: Fourth national survey on sexual harassment in Australian workplaces, <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/everyone-s-business-fourth-national-survey-sexual>

<sup>17</sup> Ibid.

- e. people with disability were also more likely than those without disability to have been sexually harassed in the workplace (44% and 32% respectively).

2.5 For the first time, the survey results provide industry-specific data. For example, four out of five people working in information, media and telecommunications reported being sexually harassed.

2.6 Concerningly, the report shows low levels of reporting of sexual assault:

Disturbingly, the survey reveals that reporting of workplace sexual harassment continues to be low. Only 17% of people who experienced sexual harassment at work in the last five years made a formal report or complaint about the harassment. This finding highlights the importance of employers taking steps both to prevent workplace sexual harassment from occurring and to ensure that they respond appropriately when a report is made.<sup>18</sup>

2.7 Commissioner Kate Jenkins, the Sex Discrimination Commissioner for the AHRC, said:

We know from our research that many people are afraid to report their experiences of unwelcome sexual conduct out of fear that they won't be believed, that it's not worth it, that they'll be ostracised and that it could damage their career.<sup>19</sup>

2.8 The Western Australian Equal Opportunity Commission reported that sexual harassment complaints doubled in 2017-2018, rising to 48 for the year.<sup>20</sup> Sexual harassment accounted for 10% of complaints, behind impairment (27%) and race (18%).<sup>21</sup> However, a rise in reporting has not translated across regions within Australia. The Anti-Discrimination Commissioner in the Northern Territory, Sally Seivers, suggests that in remote and regional areas, the small-town nature of the Northern Territory and concerns about confidentiality can act to prevent women from reporting.<sup>22</sup> Live-in employment, more common in remote areas, also creates barriers to women reporting sexual harassment.

### [Sexual harassment in education](#)

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<sup>18</sup> Ibid.

<sup>19</sup> Commissioner Kate Jenkins, the Sex Discrimination Commissioner for the Australian Human Rights Commission speaking at the National Press Club in Canberra, Australia, on 12 September 2018

<https://www.humanrights.gov.au/news/stories/everyone-s-business-2018-sexual-harassment-survey>

<sup>20</sup> Emery, K. *Lift In Sexual Harassment Complaints*. 3 October 2018. Equal Opportunity Commission, Western Australia, <http://www.eoc.wa.gov.au/mediacentre/eoc-in-the-news/2018/10/03/lift-in-sexual-harassment-complaints>

<https://thewest.com.au/news/wa/lift-in-sexual-harassment-complaints-in-wa-ng-b88977086z> and

<https://thewest.com.au/news/wa/lift-in-sexual-harassment-complaints-in-wa-ng-b88977086z>, accessed 23/10/18.

<sup>21</sup> Ibid.

<sup>22</sup> Equal Opportunity Commission, Western Australia, Human Rights News in Other Jurisdictions,

<http://www.eoc.wa.gov.au/mediacentre/news-detail/2018/07/17/small-town-culture-preventing-women-from-reporting-sexual-harassment-anti-discrimination-commissioner-says>, accessed 23/10/18.

- 2.9 A national survey of 30,000 students at thirty-nine Australian universities conducted by the AHRC<sup>23</sup> showed that in 2015-16 women were three times more likely to be sexually harassed in a university setting. In 2016 this was reduced to twice as likely. The survey found that 6.9% of students were sexually assaulted. It also found that victims knew the perpetrator in over half of all the sexual assaults, and in 45% of sexual harassments. Out of all the reported sexual assaults and sexual harassments, overwhelmingly, men were the perpetrators of both sexual assault and sexual harassment reported in the survey (71% for sexual harassment and 83% for sexual assault). In terms of reporting, 94% of the students who were sexually harassed and 87% of the students who were sexually assaulted, did not make an official report to their universities.<sup>24</sup>

#### [Gender bias in recruitment through the use of artificial intelligence and automated decision-making](#)

- 2.10 Discrimination in the recruitment of women into the workforce has been heightened, and reinforced, by artificial intelligence and automated decision-making. AI algorithms routinely used for online recruitment. Most employment recruitment in Australia, with its uniquely dispersed population, depends on these online services from mass recruitment providers. The development of Amazon's AI recruitment algorithm was recently shown to be based on discriminatory data.<sup>25</sup> The computer models were trained on resumes submitted over a 10-year period, most of which came from men. The computer learned that a successful resume was a man's resume. Algorithmic systems trained on past biased data which introduce correlations based on gender, race, religion, sexuality, or disability are inherently likely to recreate or even exacerbate discrimination seen in past decision-making.<sup>26</sup>

#### [Underemployment of women](#)

- 2.11 An increased rate of underemployment for women continues an upward trend, with women representing 60.1% of all underemployed people in Australia.<sup>27</sup> There is an increase in casual employment structures in Australia, whereby many women can be found often because of their parenting obligations, and this type of work is frequently unregulated and lacks workplace protections. The potential for women to be exploited in such workplaces is thereby increased.

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<sup>23</sup> 2017, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities* (2017), Australian Human Rights Commission, August, accessed 23/10/18 <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/change-course-national-report-sexual-assault-and-sexual>.

<sup>24</sup> Australian Human Rights Commission, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, 2017. [https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_2017\\_ChangeTheCourse\\_UniversityReport.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf), accessed 23/10/18.

<sup>25</sup> Cole, S., 2018, *Amazon Pulled the Plug on an AI Recruiting Tool that was Biased Against Women*, October 10, accessed 23/10/18 [https://motherboard.vice.com/en\\_us/article/evwkk4/amazon-ai-recruitment-hiring-tool-gender-bias](https://motherboard.vice.com/en_us/article/evwkk4/amazon-ai-recruitment-hiring-tool-gender-bias). Accessed 23 October 2018.

<sup>26</sup> L Edwards and M Veale (2017) 'Slave to the Algorithm? Why a right to an explanation is probably not the remedy you are looking for', *Duke Law and Technology Review*, Vol. 16, No. 1, p. 28, <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1315&context=dltr>>

<sup>27</sup> Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6202.0main+features10September%202018>, accessed 29 October 2018



- 2.12 The aforementioned challenges significantly aggravate longstanding human rights concerns for women in the business sector. These concerns are heightened further by biases, as a result of a woman's culture, race, disability, sexuality and age, and are exacerbated by financial and time commitments as a result of dependents with elder and childcare services often being inaccessible and expensive. In addition, social conditions for single mothers and their families in Australia have been made worse by the brutally streamlined social security measures. For example, in 2013, the sole parent pension was scrapped and replaced with unemployment benefits.

#### Workplace termination over pregnancy

- 2.13 Workplace termination over pregnancy remains an issue for women in the workforce. For instance, the Fair Work Ombudsman (**FWO**) is prosecuting a Perth restaurant owner because in 2017 he allegedly objected to a female casual employee's appearance of being pregnant. The woman's employment was unofficially terminated. The FWO alleges that her casual shifts were reduced and cancelled at short notice by the employer. The FWO also alleges the employer told staff to cancel her shifts because he considered the waitress "looks disgusting"<sup>28</sup> and, that the woman's pregnancy affected the standard of her work and her looks.

#### Underpayments and wage theft

- 2.14 Underpayments and wage theft are endemic among international students, backpackers and other temporary migrants in Australia.<sup>29</sup> As such it is a core business and human rights concern and directly affects women and girls. Ensuring access to secure employment and an adequate and reliable income is a prerequisite to the enjoyment of a number of fundamental human rights. It is also particularly important in protecting people from other vulnerabilities, such as safeguarding them from homelessness and ensuring access to adequate healthcare.
- 2.15 Underpayments and wage theft are forms of labour exploitation which are classified as modern slavery. A recent Federal Parliament inquiry into establishing a Modern Slavery Act in Australia recommended in its *Hidden in Plain Sight* report that the proposed Modern Slavery Act should, inter alia, include offences relating to labour exploitation.<sup>30</sup>
- 2.16 Wage theft includes conduct which denies employees receiving the wage they are legally entitled to and can include:

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<sup>28</sup> Laurie Berg and Bassina Farbenblum, Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey, University of NSW, November 2017, <http://apo.org.au/system/files/120406/aponid120406-483146.pdf> (accessed 22 November 2017). See also: 'Backpackers, international students suffer widespread wage theft, report finds', UNSW Newsroom, 21 November 2017, <https://newsroom.unsw.edu.au/news/businesslaw/backpackers-international-students-suffer-widespreadwage-theft-report-finds> (accessed 22 November 2017).

<sup>29</sup> Recommendation 1, *Hidden in Plain Sight*, Federal Parliament inquiry into establishing a Modern Slavery Act in Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017, <http://parlinfo.aph.gov.au/parlInfo/>

<sup>30</sup> Laurie Berg and Bassina Farbenblum, 'Wage Theft in Australia' (Findings of the National Temporary Migrant Work Survey, Migrant Worker Justice Initiative, 2017) 45.

- An employer not paying the minimum wage;
- An employer not paying an employee;
- An employer not paying penalty rates, for work overtime, or for all hours worked;
- An employer not paying superannuation entitlements;
- The misclassification of workers (for example, engaged as an independent contractor instead of an employee); and
- The use of sham contracting arrangements.

- 2.17 Wage theft can be understood as a breach of economic and social rights, in particular the right to remuneration that represents fair wages and allows for a decent standard of living (Article 7, ICESCR).
- 2.18 Women need to be protected from labour exploitation as the consequences of such exploitation can be dire and may result in further breaches of their human rights.

### *Housing Insecurity*

- 2.19 Women experience housing insecurity primarily from having a low income.<sup>31</sup> Women are noted as having significant barriers to stable housing in capital cities in Australia, where the rental housing and purchasing properties is often prohibited for those on social welfare. Older Australian women are less likely to identify as homeless and seek related support, and their numbers have risen since 2011 to 31% since 2011.<sup>32</sup> Tenancies remain tenuous and discrimination that leads to terminated tenancy agreements, rejections and unfair breaches can be difficult to prove.<sup>33</sup> Discrimination by real estate agents and property owners seeking tenants, is increasingly a problem amongst the LGBTI community and sole-parent families, especially among those with a low income.<sup>34</sup>

## **3. Please share any good practices on how to deal with increased marginalisation or vulnerabilities faced by women due to intersectionality, feminisation of work, informal economy, and conflicts**

- 3.1 Most studies of class, gender, and racial inequalities in organisations have focused on one or another of such categories, rarely attempting to study them as a complex, mutually reinforcing or contradicting processes.<sup>35</sup>

<sup>31</sup> Mercy Foundation et al, 2018, *Retiring into Poverty: A National Plan for Change Increasing Housing for Older Women*, accessed 23/10/18 <https://www.mercyfoundation.com.au/wp-content/uploads/2018/08/Retiring-into-Poverty-National-Plan-for-Change-Increasing-Housing-Security-for-Older-Women-23-August-2018.pdf>

<sup>32</sup> Ibid.

<sup>33</sup> Carmody, J., 2018, *Racial discrimination widespread in the private rental market, advocates warn*, ABC Online, August 16, accessed 23/10/18 <https://www.abc.net.au/news/2018-08-17/racism-in-the-rental-sector-wa/10129418>

<sup>34</sup> Parkinson, S., James, A., & Liu, E., 2018, *Navigating A Changing Private Rental Sector: Opportunities and Challenges for Low-Income Renters*, Australian Housing and Urban Research Institute (AHURI), accessed 22/10/18

<sup>35</sup> Acker, J, *Inequality Regimes: Gender, Class, and Race in Organisations*, University of Oregon Sociologists for Women in Society Feminist Lecture (2006, August), p 442 (<https://journals.sagepub.com/doi/pdf/10.1177/0891243206289499> accessed on 28 October 2018).

- 3.2 Focusing on one category almost inevitably obscures and oversimplifies other interpenetrating realities and concludes that theory and research on inequality, dominance, and oppression must pay attention to the intersections of, at least, race, gender, and class.<sup>36</sup> The same can be said of the considering marginalisation and vulnerabilities faced by women without considering the interconnection of discrimination based on race, class, sexuality, disabilities or age. Attempting to compartmentalise the various forms of discrimination is unlikely to give rise to a collective and effective approach to dealing with discrimination.
- 3.3 Good practice would therefore be a consideration of all forms of discrimination and the interconnection between these and implementing strategies to combat the marginalisation and vulnerabilities faced as a result. This is a process that could be incorporated into a business' requirements pursuant to Principle 18 of the UNGPs.
- 3.4 In relation to discrimination and vulnerabilities faced by women in the workplace, it is important to implement "family-friendly" measures for women which but must be understood and promoted by men.<sup>37</sup> This is because family responsibilities continue to fall primarily on women in most societies and women's ability to participate in the paid economy is contingent on their care responsibilities within the home and community.<sup>38</sup> The business sector needs to be alert to these issues, and once alert they need to develop and implement policies to ensure women's rights are protected.
- 3.5 Research and commentary demonstrate that organisations, representation and dialogue are essential in ensuring informal workers have the ability to pursue their employment rights and interests, especially in the informal economy.<sup>39</sup> Relevantly, in the International Labour Conference 90th Session *Decent work and the informal economy*, the following is noted:
- a. attaining representational security, which "is based on the freedom of workers and employers to form and join organisations of their own choosing without fear of reprisal or intimidation", remains crucial for informal economy workers<sup>40</sup>;
  - b. women in the informal economy are identified as being "especially without a voice", given the greater barriers they generally face to participating in organisational processes due to their work place and home-based responsibilities;<sup>41</sup> and

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<sup>36</sup> Ibid, p 442.

<sup>37</sup> Chant, S & Pedwell, C, *Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward* (2008, January) London School of Economics, p 25 ([https://www.researchgate.net/publication/50862249\\_Women\\_Gender\\_and\\_the\\_Informal\\_Economy\\_An\\_Assessment\\_of\\_ILC\\_Research\\_and\\_Suggested\\_Ways\\_Forward](https://www.researchgate.net/publication/50862249_Women_Gender_and_the_Informal_Economy_An_Assessment_of_ILC_Research_and_Suggested_Ways_Forward) accessed on 28 October 2018).

<sup>38</sup> Ibid, p 30.

<sup>39</sup> Ibid, p 25.

<sup>40</sup> International Labour Conference 90th Session, *Decent work and the informal economy*, (2002) p 71, <https://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/rep-vi.pdf> accessed on 28 October 2018).

<sup>41</sup> Ibid, p 71

- c. within mixed-sex organisations, functions and positions tend to be influenced by gender so that women are under-represented in decision-making processes.<sup>42</sup>

- 3.6 Further, the role of governments, as well international bodies, in addressing the multiple challenges informal workers face in organising and communicating with appropriate institutions and groups, is essential.<sup>43</sup>
- 3.7 These observations should be considered when developing good practices on how to deal with increased marginalisation or vulnerabilities faced by women due to intersectionality, feminisation of work, informal economy and conflicts.

**4. How to address sexual harassment and sexual or physical violence suffered by women in the business-related context, including at the workplace, in supply chains and in surrounding communities? Please share any good practices which have proved to be effective in dealing with sexual harassment and violence against women.**

- 4.1 All businesses have a responsibility to respect human rights. This responsibility exists independently of a State's abilities and capabilities to enforce and implement its own human rights obligations. Addressing human rights issues in the workplace requires a thorough consideration and understanding of the impact of human rights violations, preventative measures, whether appropriate remedies are available and mitigating factors.
- 4.2 Businesses can begin to address sexual harassment, sexual and physical violence in the workplace by having clear policies which are implemented by ongoing education and seminars. Further, workplaces can have a designated support person who is trained in sexual harassment and sexual violence, and trained to deal with these complaints as they arise. Providing the employee with a confidential and safe place to report should be part of workplace policies to eliminate sexual harassment and assaults in the workplace.
- 4.3 Employees should be educated about what is acceptable and unacceptable behavior and the laws governing sexual harassment, sexual and physical violence.
- 4.4 Women trapped in violent situations need paid leave to help relocate themselves and their families to safety. To deny them such support only perpetuates the violence and brutality associated with domestic violence. Businesses should put in place policies providing for 10 days paid domestic violence leave.

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<sup>42</sup> Ibid.

<sup>43</sup> Chant, S & Pedwell, C, *Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward* (2008, January) London School of Economics, p 24, ([https://www.researchgate.net/publication/50862249\\_Women\\_Gender\\_and\\_the\\_Informal\\_Economy\\_An\\_Assessment\\_of\\_ILO\\_Research\\_and\\_Suggested\\_Ways\\_Forward](https://www.researchgate.net/publication/50862249_Women_Gender_and_the_Informal_Economy_An_Assessment_of_ILO_Research_and_Suggested_Ways_Forward) accessed on 28 October 2018).

- 4.5 Businesses should have internal expertise or access to expertise to address breaches of human rights in their workplace and in their supply chain.

## 5. Which state laws and policies or social, cultural and religious norms continue to impede women's integration, and economic activities, and public life generally?

### *Detention and Prison*

- 5.1 Australia's immigration detention policies and the high numbers of women incarcerated in prisons inhibit women's full participation in society and their capacity to care for their children. It is also difficult to know the extent of human rights violations against women in these environments as media access to detention facilities and prisons is often prohibited, or extremely limited.
- 5.2 The number of people being detained in Australian correctional facilities has never been higher. Over the past 5 years the Australian prison population has increased by 38%.<sup>44</sup> Since March 2016, the number of women in prison has increased by 13%, more than double the increase in male incarceration of 6%.<sup>45</sup> There has been a 400% increase in the imprisonment rate of Australian women over the last 35 years.<sup>46</sup>
- 5.3 The fundamental human rights of Aboriginal and Torres Strait Islander women and their children, and their capacity to participate in society, is drastically limited by their over-representation in Australia's prison system. In 2017, Aboriginal and Torres Strait Islander women were incarcerated at 20 times the rate of non-indigenous women, many for minor offences, such as unpaid traffic fines.<sup>47</sup> Of those detained in prison, 80% of Aboriginal and Torres Strait Islander women are mothers, exacerbating the intergenerational cycle of poverty and disadvantage. Whilst Aboriginal and Torres Strait Islander people make up 2% of the Australian population, they comprise 27% of the prison population, and Aboriginal and Torres Strait Islander women comprise 34% of all female prisoners in Australia.<sup>48</sup> These figures highlight the continuing issue with Australia's disproportionate incarceration of Aboriginal and Torres Strait Islander women and girls in prisons, which despite some initiatives the Australian government routinely fails to make any substantial in-roads to real improvement.
- 5.4. As women and girls are detained in offshore detention facilities, such as Manus and Nauru, this deprives them of social and economic integration. Despite the rejection of Australia's offshore

<sup>44</sup> Australian Bureau of Statistics 2018 Data <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0>

<sup>45</sup> Ibid.

<sup>46</sup> Current Issues in Criminal Justice, Weatherburn, Don --- "Rack 'em, Pack 'em and Stack 'em': Decarceration in an Age of Zero Tolerance" [2016] *CrimJust* 21; (2016) 28(2) *Current Issues in Criminal Justice* 137

<sup>47</sup> Lewis-Jones, M., 2018, *Re-voicing the stories of Aboriginal women who've died in custody*, South Sydney Herald, July 5, accessed 23/10/18 <http://www.southsydneyherald.com.au/revoicing-the-stories-of-aboriginal-women-whove-died-in-custody/#.W9GgLsuYXIU>

<sup>48</sup> ALRC, 2017, *Pathways to Justice: An Inquiry Into the Incarceration Rate of Aboriginal and Torres Strait Islander People*, Final Report December 2017, Report No. 133, pp. 21-22, accessed 23/10/18 [https://www.alrc.gov.au/sites/default/files/pdfs/publications/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf)

detention regime by Papua New Guinea, the circumstances for Manus Island's female detainees, and refugees forced out of the detention centre and into the community, remain extremely poor. Conditions fail to observe fundamental human rights such as human dignity, safety, access to adequate healthcare and the care of their children.

- 5.4 There are considerable profits made by the business sector as a result of ever growing prison populations and Australia's refugee detention regimes. The private sector profits from the construction and management of detention facilities both in Australia and offshore. For example, in the state of New South Wales, the new Grafton Correctional Facility will, when built, be the nation's largest prison with the capacity to detain 1,700 inmates. It is being built by a consortium of businesses. Businesses involved in the construction and management of prisons or immigration detention facilities which house women and girls must ensure their operations are conducted pursuant to a human rights framework. Further, the idea that businesses profit from a high prison population raises its own human rights concerns.

#### *Surveillance legislation, objectification and harassment*

- 5.5 Australia's raft of national security-related legislation has been rushed through parliament with minimal oversight in regard to its implications for the right to privacy, the rule of law and the democratic freedoms of Australians, specifically threatening to chill freedom of speech and political communication for female journalists, politicians and women and girl activists.
- 5.7 The two case studies below that highlight some of the problems facing female activists and writers in raising human rights concerns in Australia.

#### Case study 1

- 5.8 Writer and economist, *Andi Fox*, was doxed twice in 2017<sup>49</sup> by the Department of Human Services employees to sympathetic media workers.<sup>50</sup> In its defence the department said the leaking of Fox's private welfare records was authorised and served the interests of departmental PR. A government inquiry into the leaks, found no defences existed to protect individuals.<sup>51</sup> These leaks occurred after she had publicly raised issues about the failed debt-detecting algorithm that was subsequently labelled *#Robodebt* by the public. The leaked material primarily pertained to her former partner. The activist writer uses the twitter name @bluemilk. Using this account and some citizen-journalist opinion columns, she effectively raised public awareness of some of the problems underpinning the automated debt-recovery scheme. This role was vital because thousands of vulnerable Australians had been affected by the programme.

<sup>49</sup> Knaus, C., 2017, 'Reasonably clear' Alan Tudge's office broke law in Centrelink case, says Labor legal advice, April 2, accessed 23/10/18 <https://www.theguardian.com/australia-news/2017/apr/03/reasonably-clear-alan-tudges-office-broke-law-in-centrelink-case-says-labor-legal-advice>

<sup>50</sup> Keane, B., 2018, *The surveillance-hungry Australian government is happy to devour human rights*, Crikey.com.au accessed 27/10/18 <https://www.crikey.com.au/2018/05/30/the-government-already-has-far-too-much-power-over-us-and-wants-more/>

<sup>51</sup> Knaus, C., 2018, *Government cleared of privacy breach in robodebt row*, May 29, The Guardian Australia, accessed 28/10/18 <https://www.theguardian.com/australia-news/2018/may/29/government-cleared-of-privacy-breach-in-robodebt-row>

- 5.9 It is now known that #Robodebt had wrongly and arbitrarily targeted thousands of welfare recipients.<sup>52</sup> In some instances, #Robodebt had immediately removed savings from known bank accounts and, some automatically-generated debts were tens of thousands of dollars – far more than annual welfare amounts. Public and activist pressure from online accounts such as Andi Fox’s brought the issue to the attention, not only of the public, but also to parliament. In keeping with the aims of democratic discourse these revelations prompted a government inquiry that found errors in the function of the algorithm. These errors effected cruel and dehumanising conditions for thousands of Australia’s most disadvantaged. One senator posed questions regarding suicides over perceived insurmountable and sudden debts, after the suicide of a 28 year old florist.<sup>53</sup> The effect on Fox is today apparent, with public access to her activist twitter account now restricted.

### Case study 2

- 5.10 A Queensland activist and former model, *Renee Eaves*, was also fortunate enough to be able to prove that harassment<sup>54</sup> by police was enabled by the government’s heightened surveillance capabilities. This was partially due to Queensland’s freedom of information laws offering greater disclosure than other Australian states. Eaves, herself, had her personal information accessed 1400 times by 300 police.<sup>55</sup> Her work as a justice advocate made her privy to a case of a former victim of domestic violence whose home address was supplied by a police officer to her ex-partner.<sup>56</sup> Eaves’ 2016 matter and her work since then demonstrates that in 2018 this growing surveillance capacity exacerbates the established police practice of the provision or sale of personal data.<sup>57</sup> Women’s advocates have filed a petition in parliament calling for tighter monitoring of Queensland police conduct regarding female victims which they say is indicative of pervasive low standards and gender bias.<sup>58</sup>
- 5.11 The cumulative information about threats and leaks suggests that women were victimised because they sought justice or exposure regarding breaches of human rights.

<sup>52</sup> SBS News, NITV Staff Writer, Concerns as ‘vulnerable’ welfare recipients targeted by Centrelink robodebt <https://www.sbs.com.au/nitv/article/2018/08/15/concerns-vulnerable-welfare-recipients-targeted-centrelink-robodebt>

<sup>53</sup> McKenzie-Murray, M., 2017, *Centrelink’s debt collection ‘pushed him over the edge’*, The Saturday Paper, Feb 18-24, accessed 28/10/18 <https://www.thesaturdaypaper.com.au/2017/02/18/centrelinks-debt-collection-pushed-him-over-the-edge/14873364004249>

<sup>54</sup> Agius, K., 2016, *Queensland police access social justice advocate’s personal file 1,400 times*, ABC Online, Sept 1, <https://www.abc.net.au/news/2016-09-02/renee-eaves-police-file-accessed-14000-in-claimed-privacy-abuse/7807868>

<sup>55</sup> 2017, *Former bikini model to sue Queensland Police for \$400,000*, Jan 19, Yahoo News, <https://au.news.yahoo.com/former-bikini-model-to-sue-queensland-police-for-400-000-34232838.html>

<sup>56</sup> Eaves, R., 2018, *Almost 30 years later, all the signs of the pre-Fitzgerald era are back*, Aug 30, The Guardian Australia, <https://www.theguardian.com/commentisfree/2018/aug/31/almost-30-years-later-all-the-signs-of-the-pre-fitzgerald-era-are-back>

<sup>57</sup> Smee, B., 2018, *Queensland police misses defence deadline after domestic violence victim’s details leaked*, The Guardian Australia, October 23, accessed 25/10/18 <https://www.theguardian.com/australia-news/2018/oct/23/queensland-police-misses-defence-deadline-after-domestic-violence-victims-details-leaked>

<sup>58</sup> Smee, B., 2018, *Queensland providing ‘green light’ to perpetrators of sexual violence, experts say*, The Guardian Australia, August 2, accessed 25/10/18 <https://www.theguardian.com/australia-news/2018/aug/02/queensland-green-light-sexual-violence-experts-say>

## 6. Are there any good practices of integrating a gender perspective into States' economic sphere (e.g., state-owned enterprises, public procurement agencies, trade missions, export credit agencies, privatisation of public services, public-private partnerships, and trade and investment agreements)

- 6.1 There have been different approaches taken to integrate a gender perspective into Australia's economic sphere and some of the best practices are discussed below.
- 6.2 Setting targets and making commitments to increase the representation of women on boards of state-owned enterprises and government businesses have been considered widely. In Tasmania, the state government has published a strategy for identifying women for board appointment which focuses on increasing transparency of the recruitment process, supporting women through training and networking, and promoting the use of a women's register among government agencies.<sup>59</sup> In Fiji the South Pacific Stock Exchange has partnered with the Asian Development Bank to provide training for women on boards of all listed companies and hosts a register of women who have completed the training.<sup>60</sup>
- 6.3 Incorporating a gender equality objective into policy has been successfully incorporated by the Australian government into its development policy. The Aid for Trade policy issued in 2015 requires that 80% of all aid investment, regardless of their objectives, effectively address gender equality.<sup>61</sup> This policy specifically targets the development of economic infrastructure and private sector in the countries where aid funding is directed.
- 6.4 Adopting the gender lens to public procurement has resulted in many organisations setting targets to increase the contracts awarded to women. One example comes from UN Women which announced that it will aim to increase the total procurement contracts awarded to women-owned businesses/vendors by 178 % from its current state in 2016 and has issued a gender responsive procurement guide.<sup>62</sup> Another example comes from Kenya which introduced procurement rules in 2013 to allow 30% of government tenders to be given to youth, women and people with disabilities.<sup>63</sup>

<sup>59</sup> Tasmanian Government Department of Premier and Cabinet, 'Women on Boards Strategy 2015-20: A Five Year Plan for Improving Gender Equity on Tasmanian Government Boards and Committees, July 2015.

<<https://www.aph.gov.au/DocumentStore.ashx?id=1b764953-8b6e-4c2e-acd1-9cf5b15af97b&subId=402957>>

<sup>60</sup> South Pacific Stock Exchange, Women in Leadership Database, see <http://www.spse.com.fj/About-SPSE/Women-in-Leadership-Database.aspx> (accessed on 28 October 2018).

<sup>61</sup> Australian Government, Strategy for Australia's Aid for Trade Investments: Supporting developing countries to trade and prosper, July 2015, Canberra <https://dfat.gov.au/about-us/publications/Pages/strategy-for-australias-aid-for-trade-investments.aspx>(accessed on 28 October 2018)

<sup>62</sup> UN Women, The power of procurement: how to source from women owned businesses, 2017, UN Women <http://www.unwomen.org/en/digital-library/publications/2017/3/the-power-of-procurement>>

<sup>63</sup> The Asia Foundation and Asian Development Bank, Emerging Lessons on Women's Entrepreneurship in Asia and the Pacific: Case Studies from the Asian Development Bank and The Asia Foundation, October 2018, p 39 (<https://www.adb.org/sites/default/files/publication/459551/women-entrepreneurship-lessons-asia-pacific.pdf>)



## 7. How could policy coherence be improved between different government ministries or departments dealing with women issues and business-related matters?

- 7.1 In light of the scarcity of available evaluations and reports on policy coherence between government ministries and departments on matters of women's issues in business-related matters, this section focuses on guidance on best practice in enhancing policy coherence between government agencies.
- 7.2 National Action Plans on Business and Human Rights (**NAPs**) are a vehicle for creating high level Government policy around gender issues relating to business and human rights in a way that can encourage policy coherence. Introducing a gender aspect to NAPs is also a way to provide high level guidance to businesses around the importance of adopting a gender lens in multi-stakeholder initiatives and their individual human rights due diligence processes. Unfortunately to date most NAPs do not incorporate a substantive gender aspect.<sup>64</sup>
- 7.3 Last year the Australian Government announced it would not proceed with the creation of an Australian NAP. The Working Group should consider providing guidance around ways gender considerations can be incorporated into NAPs.

### *Assessing Policy Coherence on Women's Issues in Business-Related Matters*

- 7.4 Assessing the existing state of policy coherence between departments and ministries will require information from the best available data, evidence and analysis to identify realistic options moving forward, isolate present inconsistencies in processes and policies, and develop approaches to resolve them.
- 7.5 Such assessment will necessitate identifying interconnected challenges between agencies which affect policy coherence on women's issues in business-related matters, identifying priority areas, and analysing how the policies of individual agencies can influence common objectives and impact upon present and future generations.
- 7.6 A comprehensive approach will also require analysis on whether each ministry and department has strong, committed and qualified leadership and adequate resources to fund the systems and processes required to support policy coherence on women's issues in business-related matters.

### *Developing a Policy Framework to Enhance Existing Mechanisms for Policy Coherence*

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<sup>64</sup> Gender and Development Network, Women Economic Justice Group, Why National Action Plans on Business and Human Rights must integrate and prioritize gender equality and women's human rights, (November 2015) [https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/5665b7ef69492ed58501622f/1449506799634/GADN+BHR+paper+for+UN+Global+Forum+Nov+15\\_FINAL.pdf](https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/5665b7ef69492ed58501622f/1449506799634/GADN+BHR+paper+for+UN+Global+Forum+Nov+15_FINAL.pdf)

- 7.7 Policy coherence between agencies will require a policy framework to strengthen existing mechanisms. The development of the framework should involve an assessment of areas to be developed in order to enhance present mechanisms for policy coherence, such as amending policies with differing objectives to better align with the common agenda and improving the effectiveness of coordination mechanisms between ministries and departments. The assessment process must be inclusive and transparent, with multi-stakeholder engagement between government agencies, the private sector, civil society organisations, and academia from the outset. The process should also involve the review of existing domestic and international guidelines and best practices to establish guidelines which are to be used consistently throughout the system. Existing rules of each relevant department and ministry should be interpreted and exercised in accordance with these guidelines.
- 7.8 The policy framework should ensure that policies are consistent with the departments and ministries' overarching common agenda. Objectives and principles for promoting women's issues in business-related matters must be made clear and widely accepted, with clear commitment from the highest level to support these objectives. Assigning a central agency with the task of proactively promoting policy coherence and coordinating priority issues to enhance consistency of approach is encouraged. Systems for monitoring, analysing and reporting on the development process must be in place.

#### *Tracking Progress on Policy Coherence*

- 7.9 Current policies, practices, and processes related to women's issues in business-related contexts may be assessed through self-assessment mechanisms by the relevant government agencies as well as through external assessment and peer review. Heads of departments and ministries should partake in publicly available annual reports. Within agencies, there should be clear processes in place to report issues to managers, human resources, and other key areas.

## **8. What is the extent to which businesses currently apply a gender lens in conducting human rights due diligence, including social or environmental impact assessment?**

- 8.1 The extent to which businesses currently apply a gender lens in conducting its human rights due diligence, or social and environmental impact assessments vary significantly. It is difficult to assess the extent to which a gender lens is applied on such a wide scale because the practices of businesses (both small and large) vary depending on the industry, the size and type of operations of the business and how closely that particular enterprise engages with other actors in its supply chain, if any.
- 8.2 Also, given the difficulty in assessing and obtaining information on those businesses that rely on internal mechanisms to improve human rights practices, it is perhaps helpful, and seemingly only possible at this time, to consider the larger business enterprises who provide publicly available reports on their sustainability and human rights practices.

- 8.3 A number of businesses appear to have engaged and adopted the UNGPs by identifying human rights issues in their supply chains, together with identifying mechanisms for approaching and solving these issues. Whilst this is commendable, the extent to which gender-based issues have been considered vary significantly as is highlighted in the examples below.
- 8.4 The H&M Group's 2017 Sustainability Report expressly references the global group's efforts to regularly undertake human rights due diligence to identify key salient issues in its supply chains. The current 'core sustainability' work of the H&M Group is focused on promoting industrial relations protections, supporting a fair living wage and respecting human rights generally.<sup>65</sup> While gender equality is referenced as a key human rights issue in terms of supporting industrial relations and the attainment of fair wages, there is little detail provided in the report on how such efforts may impact or improve gender relations more broadly.
- 8.5 Since 2017, the H&M Group has identified discrimination and harassment as one of its salient human rights issues.<sup>66</sup> However, this issue appears to be managed through internal policies and supply chain management, with no public statements available for review. The H&M Group's environmental and social impact statements also focus on the broader social and environmental impacts of production, however not necessarily through a gender lens.
- 8.6 Contrastingly, Nike, Inc. is addressing the issue of discrimination and gender inequality in its supply chain.<sup>67</sup> In particular, Nike recognises that "[t]he majority of workers involved in the global production of apparel and footwear are women. Many of those women have unique vulnerabilities relative to their male peers and can therefore be at risk for exploitation and abuse". This demonstrates a positive step by a global company to apply a gender lens to its operation as a business. Nike has also highlighted the link between its environmental impact and the potentially harmful impacts on its workers through the company's environmental practices, with its Code of Conduct addressing issues such as safety around the environment, women's rights and chemical management.<sup>68</sup>
- 8.7 Gap Inc. also has a global sustainability campaign called "*Creating Solutions For Women + Water*".<sup>69</sup> Gap Inc. appears to have applied a gender lens to its environmental and social impact assessment in relation to the use of water in its production and manufacturing processes. Gap Inc. has also committed to attainable short-term goals for achieving progress in this area, which appears to be considered from the perspective of the women and girls who engage with this company and its supply chain.
- 8.8 Again, whilst all this is commendable, without clear evidence that these policies are being effectively implemented, it is difficult to know the reach of such policies, and what outcomes for women are being achieved through such policies. For instance, in June 2018 the Guardian

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<sup>65</sup> [http://sustainability.hm.com/content/dam/hm/about/documents/masterlanguage/CSR/2017%20Sustainability%20report/HM\\_group\\_SustainabilityReport\\_2017\\_FullReport.pdf](http://sustainability.hm.com/content/dam/hm/about/documents/masterlanguage/CSR/2017%20Sustainability%20report/HM_group_SustainabilityReport_2017_FullReport.pdf), p. 59.

<sup>66</sup> *Ibid*, p. 9.

<sup>67</sup> <https://sustainability.nike.com/human-rights>

<sup>68</sup> [https://sbi-prd-s3-media-bucket.s3.amazonaws.com/wp-content/uploads/2018/05/18175102/NIKE-FY1617-Sustainable-Business-Report\\_FINAL.pdf](https://sbi-prd-s3-media-bucket.s3.amazonaws.com/wp-content/uploads/2018/05/18175102/NIKE-FY1617-Sustainable-Business-Report_FINAL.pdf), p. 43.

<sup>69</sup> <http://www.gapinc sustainability.com/environment/creating-solutions-women-water>

reported that “Abuse is [a] daily reality for female garment workers for Gap and H&M”.<sup>70</sup> This is largely because the structure and business model of fast-fashion creates environments which enable, and even exacerbate, gender and sexual-based discrimination and violence against workers. This is an example of how women are impacted in business enterprises when business do not adopt a gender lens to their policies and importantly, to their supply chain due diligence.

- 8.9 Businesses must be transparent, engage in open dialogue and provide solutions that are practical and effective. Further education is required on these issues and further guidance on how to practically and responsibly address the disproportionate impact on women and girls, especially in contexts where gender and sexual based violence continues to thrive.

## 9. Are there any good practices of business enterprises adopting a gender perspective in making human rights policy commitments, addressing the gender wage gap and underrepresentation of women in boards and senior positions, or involving affected women in meaningful consultations and remediation processes?

### *Adopting a gender perspective in making human rights policy commitments*

- 9.1 It has been widely recognised that business enterprises can play an active role in advancing human rights (including gender equality) within their organisation and the wider community. An initiative launched in 2010 in Australia by the then Sex Discrimination Commissioner, Elizabeth Broderick, the *Male Champions of Change*,<sup>71</sup> aimed to identify and share good practices that leaders can adapt to increase the representation of women in leadership. It produces annual Progress Reports and offers regular business forums to support businesses in adapting the Strategy to the different contexts.

### *Addressing the gender gap*

- 9.2 Business enterprises that offer more flexible working arrangements, or non-traditional working practices, for both female and male employees to better balance work and life commitments, in particular caring responsibilities, tend to score better on closing the gender gap.<sup>72</sup>
- 9.3 In 2017, the UK Government introduced legislation that made it compulsory for companies with over 250 employees to report on their gender pay gap.<sup>73</sup> The first year’s reporting ended in April 2018, and in March for the public sector employers. The figures relating to these employers’ gender pay gap (of both the mean and the median of the gap) need to be published on the employer’s website as well as the UK Government-sponsored website. This is

<sup>70</sup> <https://www.theguardian.com/global-development/2018/jun/05/female-garment-workers-gap-hm-south-asia>

<sup>71</sup> <http://malechampionsofchange.com/>

<sup>72</sup> See, e.g., *Timewise and Deloitte*, ‘A Manifesto for Change: A Modern Workplace for a Flexible Workforce’ Report, <https://timewise.co.uk/wp-content/uploads/2018/05/Manifesto-for-change.pdf>

<sup>73</sup> <http://www.acas.org.uk/index.aspx?articleid=5768>

a good example of how to progress the issue of the persisting gender pay gap beyond legislating against unequal pay to women and men for 'like work' or 'work of equal value'.

- 9.4 Even though as a new initiative its full impact will not be known for years to come, it has increased transparency of the UK companies as to their pay gap and it has revealed some of the underlying, and often not fully acknowledged, internal processes and practices that might lead to or contribute to a gender pay gap. This initiative has also evidenced that the gender pay gap (in the UK) differs across different sectors, which can also be used as an indicator of where the larger gender pay gap is more likely, and hence enticing companies within that sector to become more vigilant and proactive in addressing the underlying issues.
- 9.5 Despite any perceived or reported burden on the companies to collect such information, the benefits of improving our understanding of where the challenges lie in addressing the gender pay gap (by the different industry sectors) remain high and thus more of such reporting initiatives should be encouraged globally.

#### *Underrepresentation of women in boards and senior positions*

- 9.6 Increasing representation of women on boards and in senior positions is not only about achieving 'equality' but it also brings more diverse skills to a board, and thus has further positive (often financial) benefits for such business.<sup>74</sup>
- 9.7 Addressing unconscious gender bias, where leadership is largely seen as a male-dominated domain, requires multifaceted approaches. The 'Women on Boards Strategy 2015-20' by the Tasmanian Government, which aims to achieve 50 per cent representation of women across Tasmanian Government boards and committees by July 2020, has been based on proposing gender equality targets, strengthening the Tasmanian Women's Register (a database of Tasmanian women indicating interest in being appointed to Government boards and committees),<sup>75</sup> using women's websites to promote board vacancies, promoting the Government's policy on gender equality on boards, and promoting women in leadership more widely.<sup>76</sup> The underlying rationale for the Strategy is not only to change attitudes and brake down the barriers resulting in gender inequality but also to action findings of numerous research showing correlation between a higher proportion of women in the management committees and the better performance and financial outcomes.

#### *Involving affected women in meaningful consultations and remediation processes*

- 9.8 Access to remedies for victims of human rights abuses caused by business operations is one of the key pillars of the UNGPs. In that respect, States have the obligation to provide effective judicial and non-judicial mechanisms for investigating and redressing human rights violations. Businesses, for their part, must ensure that at the operational level they provide grievance

<sup>74</sup> See, e.g., the report by The 30% Club, based on data compiled by PwC and AICD, 'ASX 200 Director Snapshot', [https://30percentclub.org/assets/uploads/05925-COMS-30\\_\\_ASX200-Skills\\_and\\_Experience\\_A4\\_WEB.PDF](https://30percentclub.org/assets/uploads/05925-COMS-30__ASX200-Skills_and_Experience_A4_WEB.PDF)

<sup>75</sup> [http://www.dpac.tas.gov.au/divisions/csr/programs\\_and\\_services/women\\_on\\_boards\\_and\\_committees/about\\_the\\_register](http://www.dpac.tas.gov.au/divisions/csr/programs_and_services/women_on_boards_and_committees/about_the_register)

<sup>76</sup> [http://www.dpac.tas.gov.au/divisions/csr/programs-and-services/women\\_on\\_boards\\_and\\_committees](http://www.dpac.tas.gov.au/divisions/csr/programs-and-services/women_on_boards_and_committees)

mechanisms and participate in the remedial mechanisms offered by States in good faith. In practice, however, business enterprises rarely engage in meaningful consultation processes (one that would go beyond surveying the stakeholders) and offer effective remediation processes (beyond having grievance processes in place where there is a suspected breach of the company's code of conduct or the law).

- 9.9 The case of Rio Tinto, an Anglo-Australian mining multinational, is a good example of where even though a company pledges to engage in consultations with the affected by resettlement communities (in particular women and Indigenous populations), some of these practices do not remain without controversy as to their transparency and the scope of such consultations.<sup>77</sup>

## 10. What is the role of businesses in dealing with domestic laws, policies and societal practices which are discriminatory to women?

- 10.1 The UNGPs clearly set out the requirements on businesses to respect human rights, and the importance of access to effective remedies to combat human rights abuses in the business sector.
- 10.2 It is clear from the UNGPs that, notwithstanding a State's obligations to protect human rights, businesses must also understand and comply with their international human rights obligations, and must take steps to remedy situations with respect to breaches, or potential breaches, of human rights, in particular where societal practices are discriminatory to women.<sup>78</sup>
- 10.3 The UNGPs, however, do not provide businesses with guidance as to what is required when the State in which the business is based, or doing business, does not provide adequate domestic human rights laws or policies, either by failing to enact or effectively amending laws or policies, to protect women from societal practices which are discriminatory to women.
- 10.4 Nonetheless, businesses need to act as role models and have an awareness and understanding of their international obligations with respect to human rights, and with respect to their compliance with supply chain due diligence obligations. In doing so, businesses can identify any gaps which may exist between domestic and international human rights laws. Where such gaps exist, businesses must continue to operate their businesses in accordance with international human rights laws, whilst acknowledging that local practices may differ to international human rights standards.
- 10.5 Businesses will need to delicately balance upholding international human rights laws whilst acknowledging long-standing and entrenched discriminatory and societal practices at the local level.

<sup>77</sup> See, for example the report by the Southern Africa Resource Watch (SARW) raising a number of concerns in relation to relocation programmes affecting communities in Tete province in Central Mozambique, Authors: Claude Kabemba & Camilo Nhancale, 2012, "Coal versus Communities in Mozambique: Exposing poor practices by VALE and Rio Tinto", SARW. Available at: <http://sarwatch.org/publications/research-reports/36-research-reports/1627-coal-versus-communities-in-mozambique-exposing-poor-practices-by-vale-and-rio-tinto.html>

<sup>78</sup> Principles 11 and 23 of the UNGPs

10.6.1 Businesses play an important role in calling for change to domestic laws and societal practices which are discriminatory to women. In preparing guidance for the business sector with regard to achieving this delicate balance, the guidance should emphasise:

- the benefits of achieving equality and non-discriminatory practices for businesses, including the positive economic impact of achieving equality;
- the Women’s Empowerment Principles<sup>79</sup> and exemplifying the positive steps a business can take to address discrimination against women;
- the steps a business can take to engage with government representatives about discriminatory laws and policies at a local level; and
- how businesses can effectively educate their customers, without alienating them, about the importance of having laws and policies which protect women’s human rights.

## 11. Media and advertising industries and the fight against gender stereotyping and disempowerment of women

11.1 The media and advertising industries play an important role in how women are viewed and represented by society. The portrayal of women by these industries can often reinforce negative stereotypes of women and perpetuate their disempowerment. The media and advertising and industries have historically largely been, and continue to be, dominated by men, it is only recently that the voices of women are beginning to be heard in the media.

11.2 The UNGPs clearly state that business enterprises (including media and advertising industries), “as specialized organs of society performing specialized functions, [are] required to comply with all applicable laws and to respect human rights”.<sup>80</sup>

11.3 For the purpose of this input, media and advertising practices are understood to mean “communicat[ion] [of] messages to a wide range of audiences about products, services, companies, consumer behaviour or government priorities” with an aim to bring “news, education, information and enjoyment”.<sup>81</sup>

11.4 It has become widely accepted that multinational companies establish their own professional codes of conduct or ethics (to support ethical practices, including respecting human rights norms and standards) and/or subscribe to statements of ethics of professional marketing organisation, such as the American Marketing Association (**AMA**)<sup>82</sup> or the Market Research

<sup>79</sup> [http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2011/10/women-s-empowerment-principles\\_en%20pdf.pdf?la=en&vs=1504](http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2011/10/women-s-empowerment-principles_en%20pdf.pdf?la=en&vs=1504)

<sup>80</sup> United Nations Human Rights Office of the High Commissioner (OHCHR), 2011, HR/PUB/11/04 , p. 1.

<sup>81</sup> World Federation of Advertisers and European Association of Communications Agencies, 2002, ‘Industry as a Partner for Sustainable Development: Advertising’, p. 5.

<sup>82</sup> <https://www.ama.org/AboutAMA/Pages/Statement-of-Ethics.aspx>

Society (**MRS**),<sup>83</sup> advertising, such as the European Advertising Standards Alliance (**EASA**)<sup>84</sup> or the Advertising Standards Authority (**ASA**) in the UK,<sup>85</sup> or those of the wider industry self-regulatory bodies, such as the International Chamber of Commerce (**ICC**).<sup>86</sup>

- 11.5 It is widely expected that such codes of conduct should be embraced by every industry sector (including but not limited to marketing research, advertising, e-commerce and direct marketing). In that respect, for example, AMA's Statement of Ethics prescribes its members (practitioners, academics and students) to '[v]alue individual differences and avoid stereotyping customers or depicting demographic groups (e.g., gender, race, sexual orientation) in a negative or dehumanizing way'.<sup>87</sup> Such practise is intended to support one of the key guiding ethical norms for marketers, that is to 'do no harm', namely 'consciously avoiding harmful actions or omissions by embodying high ethical standards and adhering to all applicable laws and regulations...'.<sup>88</sup>
- 11.6 There is substantial evidence indicating that ethical business practices and companies' ethical behaviours influence consumer choices, which in turn drives sales and profitability of such companies. Thus, responsible practises have concrete and measurable positive outcomes for the shareholders, as well as the stakeholders.
- 11.7 Despite the good practices and a range of corporate and professional codes of conduct, media and advertising industries often communicate and reinforce harmful social norms and gender-based stereotypes by the way they portray certain groups, in particular women, in advertising and marketing activities.<sup>89</sup>
- 11.8 There are potential negative ramifications (stemming from the existing international and national laws and regulations, as well as consumer dissatisfaction causing reputational consequences) for the industry that does not engage in good practices and causes adverse impacts on certain groups, including women, such as when contributing to or exacerbating stereotyping and/or disempowerment.
- 11.9 Some positive steps have been taken by media and advertising industry to address and respond to stereotyping in advertising, such as the 'Unstereotype Alliance' launched in 2018 by the World Federation of Advertisers (**WFA**),<sup>90</sup> or when in 2017 the Australian Association of National Advertisers (**AANA**) updated its Code of Ethics (Section 2.2) to prohibit the use of

<sup>83</sup> [https://www.mrs.org.uk/standards/code\\_of\\_conduct](https://www.mrs.org.uk/standards/code_of_conduct)

<sup>84</sup> <http://www.easa-alliance.org/ad-standards/what-are-ad-standards/codes>

<sup>85</sup> <https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>

<sup>86</sup> <https://cdn.iccwbo.org/content/uploads/sites/3/2011/08/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-English.pdf>

<sup>87</sup> <https://www.ama.org/AboutAMA/Pages/Statement-of-Ethics.aspx>

<sup>88</sup> *Ibid.*

<sup>89</sup> See, for example, European Commission, Special Eurobarometer 456 Report: 'Gender Equality 2017', Chapter 4: Perceived representation of women in media and advertising; Advertising Standards Authority (ADA) (UK), 2017, 'Depictions, Perceptions and Harm: A report on gender stereotypes in advertising', <https://www.asa.org.uk/resource/depictions-perceptions-and-harm.html>; The Museum of Brands study of the evolution of women's portrayal in advertising, 2017, 'Women in Advertising', <http://www.museumofbrands.com>; The Geena Davis Institute on Gender in Media, 2017, 'Gender Bias in Advertising', <https://seejane.org/research-informs-empowers/gender-bias-advertising/>

<sup>90</sup> <http://www.unstereotypealliance.org/en>



sexual appeal that would be either ‘exploitative or degrading of any individual or a group of people’.<sup>91</sup>

*(Re)imagining advertising and marketing through a gender lens*

- 11.10 Taking into account the size of the relevant industry enterprises (in relation to their capabilities), but notwithstanding that ‘the responsibility to respect human rights applies fully and equally to all business enterprises’ (UNGPs, Principle 14),<sup>92</sup> media and advertising companies must ensure that they have relevant policies and processes in place to address and remediate when appropriate any actual or potential adverse human rights impacts caused by their practices;
- 11.11 To that end, media and advertising industries (irrespective of their size) should adhere to the existing professional codes of conduct (whether national, regional or international and whether mandatory or voluntary), which offer practical guidelines on responsible practices in the relevant sectors;
- 11.12 Addressing gender stereotyping (whether of women or men) in advertising and the wider marketing activities must be acknowledged by the entire industry as critical for meeting the three pillars of ‘protecting, respecting and remedying’ women’s rights in a business context in line with the UNGPs.
- 11.13 This requires not only that the industry engages with the existing initiatives on ensuring gender equality in advertising (such as the ‘Unstereotype Alliance’),<sup>93</sup> but also practical steps are undertaken to ensure women’s equal participation in the creative departments of advertising industry, as well as at the executive and decision-making levels. Supporting gender equality is as much about the need to combat gender stereotyping in advertising as it is about addressing unconscious (or otherwise) biases internally, including in the recruitment practices, addressing a pay gap and creating supportive professional development opportunities. The advertising industry needs to be encouraged to normalise gender and diversity in their communications as well as throughout the workplace as one feeds into the other.
- 11.14 When addressing gender stereotyping, not only must a diversity of gender identities be acknowledged, how gender intersects with other social identifiers (be it race/ethnicity, age, sexuality, (dis)ability or socio-economic status), and how this can lead to a varied and multiple forms of discrimination or biases, must be considered. This requires that, especially when engaging in multinational advertising campaigns, evaluations of the specific impact within the specific (including cultural) context be undertaken.
- 11.15 Whether in the context of commercial or social advertising, sexualisation/erotisation, objectification and denigration must be avoided.<sup>94</sup> Such practices lead to adverse impacts,

<sup>91</sup> [http://aana.com.au/content/uploads/2018/07/AANA\\_Code-of-Ethics\\_July2018.pdf](http://aana.com.au/content/uploads/2018/07/AANA_Code-of-Ethics_July2018.pdf)

<sup>92</sup> OHCHR, 2011, p. 15.

<sup>93</sup> <http://www.unstereotypealliance.org/en>

<sup>94</sup> See, for example, the study by Szablewska and Kubacki in relation to anti-trafficking social campaigns; Szablewska N and Kubacki K. 2018. Anti-Human Trafficking Campaigns: A Systematic Review. *Social Marketing Quarterly* 24(2): 104-112. DOI:

including compounding stigmatisation and marginalisation, exacerbating hegemonic masculinities and influencing negative body images, in particular when targeting young audiences. Avoiding sexist advertising and moving beyond the 'sex sells' culture is not only mandated by the existing laws and regulations, but also necessary for brands to remain relevant in the changing and highly competitive environment.

- 11.16 Advertising can be a powerful tool for challenging and transforming existing stereotypes and harmful social norms. In line with the UNGPs, using images, messages and presenting positive examples of diversity in society that champion gender equality will contribute to empowering women and girls, and will support women and girls' rights.
- 11.17 Principle 11 of the UNGPs clearly requires that business enterprises should respect human rights. Media and advertising, therefore, have a responsibility to take all necessary steps to avoid gender stereotyping and the disempowerment of women which so often can result in the infringement of women and girls' human rights due to discrimination and abuse. Any guidance document produced by the Working Group should ensure that the business sector refrain from gender stereotyping to ensure gender biases and discrimination against women is eliminated.
- 11.18 Ways in which media and advertising industries and media can work towards empowering women and eliminating gender stereotypes is by being aware of gender biases and by portraying women and girls in non-stereotyped ways.
- 11.19 Further, business enterprises within the media and advertising industries should have human rights policies and procedures, specifically there should be policies on how women are to be portrayed in the media, ensuring that women are depicted in gender-neutral and empowering ways, refraining from gender biases and stereotyping.
- 11.20 Any policies and procedures adopted by the media and advertising industries should be developed using both a human rights framework and an empowerment and equality framework. Empowerment has been defined as a "multi-dimensional social process that helps people gain control over their own lives."<sup>95</sup> Gender equality has been defined as "rights, responsibilities and opportunities of individuals will not depend on whether they are born male or female".<sup>96</sup> These definitions can be a source of guidance for media and advertising industries when drafting their policies and procedures to enable a positive portrayal of women and avoid the exploitation of women in the media.
- 11.21 As was so eloquently stated by Phumzile Mlambo-Ngcuka, UN Women Executive Director, "breaking the barriers that prevent women and girls from having better access to media, communication and technologies, including illiteracy and language barriers"<sup>97</sup> is absolutely

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<http://journals.sagepub.com/doi/full/10.1177/1524500418771611>

<sup>95</sup> Bayeh, E., *The role of empowering women and achieving gender equality to the sustainable development of Ethiopia*, Pacific Science Review B: Humanities and Social Sciences, Vol 2, 2016.

<sup>96</sup> Ibid.

<sup>97</sup> UNWomen, *Analysis and compilation of General Recommendations and Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women*, CSW 62 (2018), 2017.

necessary. It is imperative to closely collaborate “with media, communication and information actors and make use of technologies, including social media, to promote social and cultural changes in favour of gender equality.”<sup>6</sup> As social media can be used as a tool for stigmatisation, government and state institutions, public and private educational institutions, advertisement agencies, civil society organizations, academia, and other key actors, are key allies to promote a proper use of communication, information and technology, to help unlearn stereotypes, dismantle social prejudices, and eradicate discriminatory and harmful practices against women.<sup>6</sup>

- 11.22 Thus, media and advertising industries can positively help promote female empowerment and gender equality by changing the way women are depicted.

**12. What additional or specific barriers do women (women human rights defenders) face in accessing effective remedies for business-related human rights abuses? How could all types of remedial mechanisms, processes and outcomes be made more gender-sensitive? How to overcome power imbalances and discriminatory practices that might undermine the effectiveness of remedies obtained by women?**

- 11.1 Remedial mechanisms, processes and outcomes need to be designed in a way which reflects an understanding of how and why women require special protection in terms of their human rights. This includes embedding within them an understanding how and why women experience discrimination and human rights abuses in the business sector, which has been discussed above. This includes a deep understanding of social structures and women’s role in society, and how this has been shaped by gender norms and stereotypes. Addressing and being mindful of the power imbalances which exist between women and men is vital in terms of remedial mechanisms, processes and outcomes for business-related human rights abuses.

**13. Please provide any additional comments, suggestions or information which you think may be relevant for the Working Group’s forthcoming report on the gender lens to the UNGPs.**

- 13.1 It is essential that businesses address workplace culture, including power imbalances between men and women, as this often underpins and perpetuates unacceptable and unlawful workplace behaviours towards women.
- 13.2 This cultural shift can only occur through good leadership and a commitment to preventing discrimination and abuse against women in the business sector.
- 13.3 Media campaigns by businesses which promote equality and diversity are essential to ensuring businesses adopt a gender lens. Effective media campaigning can be achieved through the use of key figures in the community being seen to promote positive messages about women, equality and diversity.

13.4 Finally, businesses must be more transparent about how they conduct their business with a focus on how they protect and promote women's human rights in their workplaces.

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If you would like to discuss any aspect of this submission, please email me at: [president@alhr.org.au](mailto:president@alhr.org.au)

Yours faithfully,



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## ALHR

ALHR was established in 1993 and is a national association 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 specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

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