

Foreign Affairs and Aid Sub-Committee  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
Parliament House  
Canberra

## Submission to the Inquiry into an Australian Modern Slavery Act

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### Background

The United Nations Global Compact is the world's largest corporate responsibility and sustainability initiative, with over 9,000 business signatories including a number of Australia's leading companies. The UN Global Compact is a strategic policy initiative for businesses that are committed to: (1) aligning their operations and strategies with ten universal sustainability principles in the areas of human rights, labour standards, the environment and anti-corruption; and (2) supporting broader societal goals.

In Australia, the multi-stakeholder, business-led Global Compact Network Australia (**GCNA**) brings UN Global Compact signatories together with other stakeholders to advance corporate responsibility and sustainability, and the private sector's contribution to sustainable development. The GCNA's members include a number of Australia's leading companies from across a range of sectors (including 8 of the top 10 ASX-listed companies), non-profits and universities.

Through its activities, delivered by its Human Rights, Anti-Corruption, Environment and Sustainable Development Leadership Groups, the GCNA builds the practical capacity of Australian businesses to understand and implement responsible business practices and contribute to sustainable development both within Australia and wherever they have footprints, including through their supply chains. Business and human rights, including human rights in supply chains, is a key area of the GCNA's work, and we established and have led Australia's national multi-stakeholder dialogue on business and human rights for a number of years. The GCNA also recently convened a multi-stakeholder Modern Slavery Forum aimed at supporting Australian businesses to proactively engage around the issue and the potential development of an Australian Modern Slavery Act.

The GCNA welcomes the Government's inquiry into the potential for an Australian Modern Slavery Act. This submission is primarily focused on potential transparency provisions for business. It has been informed by a survey of GCNA members as well as engagement with various stakeholders, but represents the GCNA's views and not the views of any particular GCNA member or members.

### An Australian Modern Slavery Act

We support the adoption of an Australian Modern Slavery Act incorporating a requirement for certain businesses to make an annual public statement as to the steps (if any) they are taking to address modern slavery in their operations and supply chains, similar to the UK Modern Slavery Act 2017 (**UK Act**), taking the further comments in in this submission into account.

In addition to the opportunity of lowering the risk of modern slavery appearing in businesses' operations and supply chains, we consider that a range of business benefits could flow from the adoption of a transparency provision in an Australian Modern Slavery Act, including the following:

- > Encouraging businesses to identify and mitigate their risks of involvement in modern slavery and minimise a range of associated negative consequences including around financing, reputational and legal issues;

- > Helping create a level playing field for businesses in Australia in relation to modern slavery (and potentially broader human rights), especially for those businesses already reporting in other jurisdictions;
- > Helping businesses benchmark themselves against peers, understand the challenges they have in common with other businesses, and identify pre-competitive opportunities for information sharing and other collaboration;
- > Supporting improved dialogue with stakeholders including investors and NGOs;
- > Supporting the competitiveness of Australian businesses in the global marketplace, by helping them meet the growing expectations of global buyers whose procurement expectations have shifted due to the UK Act and other emerging standards and regulations.

It will be important for the Government to clearly articulate these benefits in engaging business around any mandatory transparency provisions.

## UN Guiding Principles on Business and Human Rights

As a starting point, an Australian Modern Slavery Act should be consistent with – and be implementing of – the UN Guiding Principles on Business and Human Rights (*UNGPs*).

The UNGPs<sup>1</sup> are the authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and the best practice framework for governments and business to follow to implement business respect for human rights. The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011, with the Australian Government co-sponsoring the resolution.

For governments, the UNGPs include foundational principles that States protect against human rights abuses by third parties, including businesses, and that they clearly set out the expectation that all businesses respect human rights throughout their operations.

The UNGPs then include various operational principles which provide additional guidance to States on implementing these foundational principles including enforcing laws aimed at requiring businesses to respect human rights, providing effective guidance to businesses on how to respect human rights, and encouraging or requiring businesses to communicate how they address their human rights impacts. The UNGPs also provide that States should take additional steps to protect against human rights abuses by businesses that are owned or controlled by the State, or that receive substantial support and services from State agencies.

For businesses, the UNGPs make it clear that they have a responsibility to respect human rights. This responsibility to respect human rights requires businesses to:

- > avoid causing or contributing to adverse human rights impacts through their own activities and address any such impacts when they occur; and
- > seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships (including through their supply chains), even if they have not contributed to those impacts. Businesses may play a role in remediating these impacts.

The UNGPs set out the policies and processes that businesses should have in place in order to ‘know and show’ they are meeting their responsibility to respect human rights. These are:

- > a policy commitment to respect human rights;

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<sup>1</sup> For consistency, this publication refers to ‘businesses’ although the UNGPs apply to ‘business enterprises’ regardless of size, ownership or structure.

- > an ongoing human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and
- > processes to enable the remediation of any adverse human rights impacts they have identified that they have caused or contributed to.

Australian businesses active in this area are increasingly using the UNGPs as their operating framework to identify and manage their involvement in adverse human rights impacts including those relating to modern slavery. Consistency between the UNGPs and any new policy or regulatory steps around modern slavery will help to avoid confusion and to situate progress around prevention and remediation within the broader human rights framework, ultimately driving better performance around all internationally recognised human rights.

Further, in 2016, the Australian Government committed to undertake consultations on implementation of the UNGPs in Australia. That process may lead to a National Action Plan on Business and Human Rights. This inquiry, and any outcomes of it, should be aligned with the Government's broader business and human rights activities.

## **Business and modern slavery**

Modern slavery is a risk for the majority of (if not all) businesses in Australia of all sizes across all sectors, in their own operations and activities, in their supply chains, and/or in other business relationships (e.g. joint ventures, other business partners, clients etc.) – although it is more material for some businesses than others, and poses a heightened risk in global supply chains.

A number of leading Australian businesses are already taking steps to ensure respect for human rights, including developing and publishing human rights policies, undertaking human rights due diligence (including human rights risk and impact assessments, and publicly communicating the steps they are taking), and developing grievance mechanisms. A number of Australian businesses are also taking steps specifically in relation to their supply chains, including developing supplier codes of conduct, undertaking supply chain risk assessments, supplier audits, and proactively engaging high risk suppliers (including through the provision of human rights training).

However, implementation of the UNGPs by businesses in Australia – generally, in relation to their supply chains, or in relation to specific issues such as modern slavery – is not universal and there are significant numbers of businesses that are not engaged on the issue of modern slavery or human rights more generally, including a number who face significant human rights-related risks. This is evident in, for example, not infrequent coverage in the Australian media of instances of modern slavery or other labour-related issues connected with Australian businesses, including through their supply chains.

## **Transparency in supply chains**

Addressing human rights issues, including modern slavery, does require an investment of resources by businesses, and the introduction of an Australian Modern Slavery Act with reporting or other requirements will create new compliance obligations. It is our belief that on balance these obligations will benefit business and other stakeholders by driving business to improve their risk management around an area with increasing exposure for those that fail to adequately prevent and address their adverse impacts. Importantly, the provision would also help Australian businesses to meet their internationally recognised responsibility to respect human rights in line with Australia's commitment to implement the UNGPs.

Further, we consider that any compliance burden could be minimised through legislation that applies only to businesses above a certain threshold and is specific as to what is required, and through the provision of clear and practical guidance and additional supporting initiatives (outlined below).

### ***A focus on modern slavery***

Modern slavery is one of the most egregious human rights abuses, and it is critical that it be addressed by all stakeholders. However, it is not necessarily the most material human rights risk for all businesses. Accordingly, a question that arises for the inquiry is whether the Australian Government should introduce legislation applying to businesses that is focused only on the issue of modern slavery, or whether a broader range of human rights should be addressed.

We think a focus on modern slavery for the legislation being considered by this inquiry makes sense. It is a targeted approach to an egregious human rights issue that we know significantly impacts our region. It is also likely to have flow on effects for awareness-raising around the other ways in which business can impact on human rights and the steps they should take to address broader human rights risks and impacts. It is important though that the focus of this legislation does not in any way constrain the Australian Government's current activities and consultations into implementation of the UNGPs, including the exploration of other policy and regulatory responses to broader business and human rights issues.

### ***A focus on transparency***

Another key question for the inquiry is whether transparency provisions such as in the UK Act requiring businesses to publicly report on the steps (if any) they are taking to address the risk of modern slavery in their operations and supply chains should be introduced, or whether more prescriptive provisions requiring businesses to take specific actions should be considered (e.g. requiring human rights due diligence).

For many businesses, a transparency provision can trigger meaningful engagement and action, particularly where Board sign-off is required as it is under the UK Act. Various businesses have noted that the UK transparency provision has led to internal reviews of relevant existing policies and processes and the identification of opportunities to improve them. Several have noted that the UK Government's recognition that statements should show continuous year on year improvement has been a helpful way of motivating businesses to think about how their statements will develop in coming years, and in doing so to continue to evolve internal initiatives to address risks and impacts. The cross-functional and senior level feedback often used to finalise statements may also support better internal coordination as well as identification of resourcing needs to tackle these issues. Some companies have also noted improvements in engagement with stakeholders including investors and NGOs off the back of statements.

Transparency provisions do have limitations. Concerns may be raised around verification as well as the extent to which the information provided effectively enables stakeholders, including investors and civil society, to adequately understand what concrete steps the company is taking and the risks it is facing. The UK Act also makes it possible for businesses to choose to say they have taken no steps to address the issue, meaning they may also not have taken any such steps in practice. There are reputational risks for businesses taking this approach though such risks will be lower for privately owned companies or others without a significant public or investor profile. For such companies, a transparency provision that provides an 'out' may not necessarily be sufficient to drive meaningful action on the issue.

An alternative approach, such as that has recently been adopted in France<sup>2</sup>, could require businesses to implement human rights due diligence (a process involving assessing actual and potential impacts, integrating and acting on the findings, tracking responses and communicating how impacts are addressed). While this could drive more action by business, introducing a human rights due diligence requirement would be a more significant step than a transparency provision, and at this stage, as many

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<sup>2</sup> The French Corporate Duty of Vigilance Law requires certain large French companies to develop, publish and implement in an effective manner a due diligence plan ('plan de vigilance'), which includes 'reasonable measures' to identify risks and prevent violations of (among other things) human rights and environmental impacts that might result from the activities of the company and its subsidiaries and controlled entities, as well as suppliers and subcontractors. If companies do not publish plans, victims and other concerned parties can bring actions, with increased scope for damages if this results in damage that would otherwise be preventable.

Australian businesses do not currently have any such systems or procedures in place a greater burden on businesses to enable compliance. We also consider there are benefits in taking a consistent approach on this question as has been taken in the UK Act (and which applies to a larger number of businesses than the French legislation).

On balance, we consider that a mandatory transparency provision is an appropriate approach in an Australian Modern Slavery Act (subject to further comments below). We would suggest that the issue of encouraging the adoption of human rights due diligence be considered in the Australian Government's broader consultations and activities in relation to implementation of the UNGPs (and any Australian National Action Plan on Business and Human Rights which may develop from that).

### ***Application of transparency provisions***

While modern slavery risks can arise in businesses regardless of size, on balance we consider that mandatory transparency provisions should only apply to businesses above a particular threshold. A threshold based on global revenue would follow the UK and California<sup>3</sup> approaches, and would likely be a fairly straightforward way to determine application of the legislation. A threshold based only on employee numbers is not recommended, as it could exclude certain businesses, e.g. those that use significant amounts of contract labour.

Any transparency provisions should apply to Australian businesses (including those incorporated and/or headquartered in Australia) as well as foreign businesses carrying on business in Australia, as well as to government agencies and non-business organisations, over the relevant threshold.

It is also recommended that businesses below the relevant threshold be able to voluntarily 'opt in' and produce a modern slavery statement.

### ***Content requirements for modern slavery statements***

Subsection 54(5) of the UK Act states that a modern slavery statement *may* include certain types of information. We understand that this has led to uncertainty for businesses in preparing statements under the UK Act and, for many, additional work (and the need for external advice) to determine what information statements should contain.

While prescriptive requirements can create a risk that businesses may take a 'check box' approach (rather than deeply engaging on the issue), on balance, we recommend that any transparency provisions set out specific information that *must* be included in a modern slavery statement. We would also recommend that the required information be set out in a way that is consistent with the UNGPs, e.g. that it requires information as to the business':

- > policy commitment in relation to modern slavery;
- > human rights due diligence processes to identify, prevent, mitigate and account for how they address modern slavery risks and impacts; and
- > processes to enable the remediation of any modern slavery identified that they have caused or contributed to and any other remediation processes they may have initiated or participated in relating to impacts to which they are directly linked.

As noted, we consider that mandated information requirements can help minimise the burden for businesses in understanding and meeting their obligations. We also consider that more prescriptive reporting requirements, aligned with UNGPs, would help strengthen the impact of a transparency requirement. It could also lead to more consistent statements, which in turn could assist stakeholders in comparing statements, and businesses in benchmarking themselves against peers.

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<sup>3</sup> The California Supply Chain Transparency Act requires retailers and manufacturers with annual worldwide gross receipts exceeding US\$100 million and doing business in California to disclose efforts to eradicate human trafficking and slavery from direct supply chains for tangible goods offered for sale. The provision is a reporting requirement only, and does not prescribe actions companies should take to prevent and address human trafficking and slavery.

While we recommend greater specification as to the contents of modern slavery statements, any legislation should be drafted so that it is possible for a business to prepare a single statement that meets both the UK and Australian requirements to avoid a patchwork of inconsistent international obligations and unnecessary regulatory burden.

### ***Approval of modern slavery statements***

The UK Act requires modern slavery statements to be approved by the Board of Directors (or equivalent management body) and be signed by a Director (or equivalent). It is recommended that, if transparency provisions are introduced in Australia, this requirement also be adopted.

This requirement ensures that the issue of modern slavery is being considered by the Board of Directors and encouraging high level buy-in to the issue and its management, and can also drive Board discussion as to broader human rights risks. It also helps ensure that information in statements is credible.

### ***Registry***

The UK Act requires businesses to publish their modern slavery statements on their own website with a prominent link on their website homepage. The UK Government does not, though, maintain or require the submission of statements to a central portal. While other non-government organisations have established registries for UK statements, they are incomplete given the difficulties in knowing when and where companies are posting their statements, and this undermines the ability of stakeholders to access and assess statements.

If a transparency provision is adopted in Australia, it is recommended that a central Government-managed registry be established along with a requirement that statements be submitted to that registry. The statements of businesses below the threshold but who voluntarily 'opt in' should also be included in the registry.

## **Guidance and support for business**

It will be important for clear and practical guidance – prepared by the Government, ideally in consultation with and/or input from business, civil society, and other stakeholders – to be developed to ensure businesses (including smaller businesses) have clarity as to what is expected of them, and what best practice looks like, and to support businesses to build their internal capacity to report on and more broadly address these issues.

We also recommend that the Government works with and supports other existing platforms and organisations, including for example the Global Compact Network Australia and others already working with business on modern slavery and broader human rights issues, through which businesses can build their capacity to understand and address modern slavery risks and impacts and any new legislative obligations, learn from peers and engage with other stakeholders to build best practice.

## **Anti-Slavery Commissioner**

If an Australian Modern Slavery Act is adopted, we also support an independent Anti-Slavery Commissioner being established, whose functions could include (for example, and among other things):

- > monitoring implementation of the legislation, including business reporting;
- > monitoring remediation for victims of modern slavery;
- > engaging with and providing information to stakeholders and the broader public around issues of modern slavery; and
- > providing guidance and support to businesses in meeting their obligations under the legislation.

## Recommendations

In summary, the Global Compact Network Australia recommends that:

1. an Australian Modern Slavery Act be adopted which includes a transparency provision applicable to businesses (and government and other organisations) over a certain threshold requiring the publication of an annual modern slavery statement;
2. the transparency provisions mandate the specific information that a modern slavery statement must include (and that the information requirements be consistent with the UN Guiding Principles on Business and Human Rights);
3. clear and practical guidance be developed to ensure businesses have clarity as to what is expected of them and what best practice looks like;
4. a central Government-managed registry for statements produced for the purposes of the legislation be established;
5. an independent Anti-Slavery Commissioner be established;
6. that the Government work with and support existing platforms and organisations, including for example the Global Compact Network Australia and others already working with business on modern slavery and broader human rights issues, through which businesses can build their capacity to understand and address modern slavery risks and impacts and any new legislative obligations, learn from peers and engage with other stakeholders.

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