

Shift Project, Ltd.  
250 West 57th Street, Suite 2232  
New York, NY 10107  
United States

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

May 19, 2017

Dear Committee Members,

We are pleased to write to you in response to the opportunity to comment on a potential Modern Slavery Act in Australia to tackle a pervasive and severe human rights abuse, which can often be involved with business activity. With the International Labor Organisation estimating that 20.9 million people around the world are subjected to forced labor, with 90% of those exploited in the private economy, your leadership in initiating this inquiry is both welcome and timely.<sup>1</sup>

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights,<sup>2</sup> the authoritative global standard on business and human rights, unanimously endorsed by the UN Human Rights Council in 2011. As a non-profit organization chaired by the author of the Guiding Principles, former Special Representative of the UN Secretary-General, Prof. John Ruggie, we work with businesses, governments, investors, regulators, civil society and other key stakeholders around the world to put the Guiding Principles into practice.

Given our experience, our submission will focus on the effectiveness of The Transparency in Supply Chains provision in the United Kingdom's Modern Slavery Act (Section 54) and how the introduction of a similar measure in Australia could build on the strengths of that provision while also ensuring greater alignment with the Guiding Principles in the actions that businesses are expected to take. Specifically, a Modern Slavery Act in Australia should:

1. Replicate the requirement in the UK Act for board level approval of, and a director's signature on, a company's slavery and human trafficking statement;
2. Ensure that the senior level attention brought to the issue of modern slavery by this requirement supports the broader goal of businesses introducing and strengthening human rights due diligence processes that identify, prevent, mitigate and account for how they address all of their leading human rights risks, not only modern slavery. The Act should clarify that due diligence processes should focus on impacts in a company's operations and business relationships throughout its value chain, not just on impacts at the level of first-tier suppliers;
3. Ensure that businesses report on their broader human rights due diligence processes in their modern slavery and trafficking statements. The Act should highlight the UN Guiding Principles Reporting Framework<sup>3</sup> as practical guidance for companies on how to meet the reporting requirement and ensure they are providing meaningful information when doing so.

The UK Modern Slavery Act's transparency requirement is a critical step forwards in strengthening company disclosure on efforts to prevent and address some of the most serious abuses that exist in today's global supply chains. Perhaps the most effective component of the requirement is the condition that a company's slavery and human trafficking statement must be approved by the board of directors and signed by a director (or equivalent). According to research by the Ethical Trading Initiative and Hult International Business School, CEO engagement with the issue of modern slavery has doubled and the allocation of responsibility for ethical trade within companies has been escalated, with operational managers increasingly reporting to and advising CEOs and board members.<sup>4</sup> As

<sup>1</sup> <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>

<sup>2</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>3</sup> <http://www.ungpreporting.org>

<sup>4</sup> <https://www.ashridge.org.uk/getmedia/7692d06f-0166-45cf-affb-e1c9ee45ad1c/Corporate-Leadership-on-Modern-Slavery-Summary-Report-2016.pdf>

the UN Guiding Principles recognize, senior level buy-in is fundamental to embedding the corporate responsibility to respect human rights in a company's culture and the way it operates. **Any Modern Slavery Act introduced in Australia should therefore include the requirement for board level approval and director sign off for companies' modern slavery and trafficking statements.**

The areas that the UK Act suggests that companies may include in their slavery and trafficking statements<sup>5</sup> reflect the broader expectations set out in the UN Guiding Principles and applied to the risks of slavery and human trafficking in a company's own operations and in its supply chain. However, the Act has raised questions for many companies about the relationship between its transparency provision and their broader responsibility to respect human rights.

When responding to the transparency requirements in the UK Modern Slavery Act, or in any Australian equivalent, it is important that businesses understand their due diligence in relation to this specific human rights risk as just one part of their broader human rights due diligence process. Not doing so will mean that businesses are failing to meet their responsibility to respect human rights as set out in the UN Guiding Principles. There are a number of risks in encouraging a due diligence process that is focused exclusively on modern slavery, without recognizing the wider framing within which such efforts by business need to sit. For example:

1. Businesses may focus resources on discrete projects relating to modern slavery rather than assessing the involvement of their own activities and business relationships with the full spectrum of labour rights issues, some of which may be closely linked to or be indicators of modern slavery. For instance, the hotel industry has taken significant steps to address the risk of child sexual exploitation and trafficking taking place on hotel premises.<sup>6</sup> However, as the International Labor Organisation explains, less attention has been afforded to systemic challenges to decent work in a sector that can be 'characterized by low wages, long working hours, a high turnover rate, and limited social protection.'<sup>7</sup>
2. A focus on modern slavery may implicitly lower expectations to address human rights abuses that are not encompassed by the formal definitions of modern slavery and trafficking. For example, the UK Act only captures forced or slavery-like child labor rather than all of the worst forms of child labor. In response, a company is only expected to report on its processes to address forced child labor rather than child labor in the round. With 168 million children aged 5 to 17 engaged in child labor, this seems like a glaring omission and a missed opportunity to help tackle a problem that damages children's health and education and puts them at risk of violence.<sup>8</sup>
3. An exclusive focus on modern slavery may lead to a reduction in attention to or resources for important existing work by companies to address other salient human rights (those human rights at risk of the most severe negative impact through the company's activities and business relationships). The UN Guiding Principles make clear that companies should prioritize action based on the severity of the impact on people. For instance, companies in the extractives sector have prioritized their impacts on local communities for attention, including impacts in relation to land, free, prior and informed consent and the consequences of rapid in-migration.<sup>9</sup> While an Australian Modern Slavery Act would certainly encourage more welcome focus on supply chain risks relating to slavery and trafficking, it is important that progress on other areas, which are potentially more relevant to some businesses in terms of where they may have the most severe impacts on people, is not inadvertently stymied.

In recognition of these risks, **the Committee should consider the ways in the proposed Act could incentivize companies to undertake human rights due diligence across all human rights risks, in line with the UN Guiding Principles.** In addition, it is

<sup>5</sup> Section 54, paragraph 5 of the UK Modern Slavery Act: (a) the organisation's structure, its business and its supply chains; (b) its policies in relation to slavery and human trafficking; (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains; (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; (f) the training about slavery and human trafficking available to its staff.

<sup>6</sup> <http://www.greenhotelier.org/know-how-guides/addressing-human-trafficking-in-the-hospitality-industry/>

<sup>7</sup> [http://ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/normativeinstrument/wcms\\_546337.pdf](http://ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_546337.pdf)

<sup>8</sup> [https://www.unicef.org/protection/57929\\_child\\_labour.html](https://www.unicef.org/protection/57929_child_labour.html)

<sup>9</sup> [http://www.total.com/sites/default/files/atoms/files/total\\_human\\_rigths\\_briefing\\_paper\\_july\\_2016\\_0.pdf](http://www.total.com/sites/default/files/atoms/files/total_human_rigths_briefing_paper_july_2016_0.pdf)

vitality important that the Act generates a strategy and resources for robust capacity building of Australian companies on practical approaches to human rights due diligence. Without a significant scaling up of expertise on the implementation of the UN Guiding Principles, businesses are more likely to respond to the new requirements in ways that realize the risks highlighted above.

A further clarification that the proposed Act should make to ensure its efficacy is in its definition of supply chains. The UK Government's statutory guidance on the Transparency in Supply Chains requirement states that supply chains should be interpreted in its 'everyday meaning.'<sup>10</sup> While the spirit of the law is that businesses should report on the steps they are taking throughout all tiers of their supply chain, this definition allows for reporting only on action within the top tiers of a company's supply chain. One of the innovations of the UN Guiding Principles was to move businesses from a due diligence process that centered on risks to the business and towards one that looked at risks to people of the company's activities and its business relationships right throughout the business' value chain. A company does not need to have a direct commercial relationship with an entity to be linked to negative impacts caused by that entity.

One way to ensure that the proposed Act engenders appropriately comprehensive human rights due diligence processes within companies is to require that businesses report on these processes in their modern slavery and trafficking statements. Research into reporting under the UK Act has indicated that very similar wording is being used in the statements of entirely unrelated companies, clearly suggesting that templates or model statements are being used with the risk of insufficient attention to the hard work of tailoring systems to address a company's specific business model, countries of operation, and the ways in which modern slavery and trafficking risks may be connected to its operations, products or services.<sup>11</sup> An Australian Act should **require disclosure on the areas of suggested reporting in the UK's statutory guidance (including due diligence processes)** to address this risk, while still providing sufficient flexibility to businesses to report in a way appropriate to the nature of their involvement with modern slavery and trafficking risks (since due diligence is a process that differs based on the company's operations and salient issues).

In addition, the proposed Act could make greater use of existing best practice on human rights reporting. Shift, in collaboration with Mazars, led the development of the UN Guiding Principles Reporting Framework (available at [www.UNGPReporting.org](http://www.UNGPReporting.org)), the first comprehensive guidance for companies to report on how they respect human rights in line with the UN Guiding Principles. Annex D of the UK Government's guidance on the Modern Slavery Act explicitly acknowledges the role of UNGP Reporting Framework in helping companies fulfil their responsibility to respect human rights under the UN Guiding Principles.

We have already seen significant uptake of the UNGP Reporting Framework since its launch in February 2015. Dozens of companies report that they are using it to improve their external reporting and/or as an internal management tool, ranging from Unilever and M&S to H&M, Ericsson, Newmont, Total, NovoNordisk, Microsoft, ABN Amro, John Lewis and Waitrose and Electrolux, among others. We are currently working with business organizations, supported by the UK Government, to help their members improve their human rights reporting. The UNGP Reporting Framework has the support of 87 institutional investors representing over USD \$5.3 trillion assets under management worldwide, including key Australian investors.<sup>12</sup>

Companies that use the UNGP Reporting Framework for their human rights reporting more generally, and for which slavery, human trafficking or related impacts are a salient human rights issue, will already have addressed the proposed Act's disclosure requirements by addressing the provisions of the Reporting Framework.<sup>13</sup> In this way, companies' disclosure on their efforts to prevent and address these severe impacts can become part of a broader, more coherent approach to human rights reporting.

**We strongly recommend that the UN Guiding Principles Reporting Framework is highlighted as practical guidance to companies on the reporting requirements elaborated in the proposed Act.**

<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471996/Transparency\\_in\\_Supply\\_Chains\\_etc\\_A\\_practical\\_guide\\_final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc_A_practical_guide_final_.pdf)

<sup>11</sup> <http://www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf>

<sup>12</sup> Australian Ethical Investment acts as one of the lead signatories coordinating the investor group.

<sup>13</sup> <https://www.shiftproject.org/resources/publications/mapping-modern-slavery-act-un-guiding-principles/>

We welcome the opportunity to contribute to this inquiry and believe that the Australian Government is well-placed to build on the successes of, and learning from, implementation of section 54 of the UK Modern Slavery Act to help ensure that companies undertaking business in Australia are respecting human rights.

Yours sincerely,



Rachel Davis

Managing Director and Co-Founder, Shift



Francis West

Business Learning Program Director, Shift