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Melbourne, December 22, 2022

ModernSlaveryActReview@ag.gov.au

[Sent via email]

Subject: Response to Consultation 'Review of Australia's Modern Slavery Act 2018'

Dear Professor McMillan AO

The UN Global Compact Network Australia ('UNGCNA') welcomes the opportunity to make a submission on the review of the Commonwealth Modern Slavery Act 2018 ('the Act'). During the Act's first three years of operation, we have observed our participants to be supportive of the legislation, and we have witnessed the Act's demonstrable impact in raising awareness of modern slavery within Australian business' operations and supply chains.

However, we note that in our discussions with business and non-business stakeholders, many have highlighted that there remains a disconnect between the transparency-based framework provided by the Act and meaningful change for those living in conditions of slavery. While many businesses have established modern slavery risk management processes and filed Modern Slavery Statements that meet the existing criteria, this has resulted in comparatively few cases of modern slavery being disclosed, even though the estimated number of people living in conditions of modern slavery within the Asia-Pacific continues to rise.¹

We view the first statutory review of the Act as a significant opportunity to scale meaningful action towards the eradication of modern slavery. We support introducing amendments to the Act where they (a) have the potential to result in meaningful outcomes towards ending slavery; (b) increase the effectiveness of modern slavery reporting; and (c) encourage and empower businesses to implement meaningful modern slavery, and indeed broader human rights, risk management.

The UNGCNA is a member-led initiative for businesses. In making this submission, we note that the views and recommendations have been informed by engagement with United Nations ('UN') Global Compact participants and various stakeholders including academia and civil society, however it represents the UNGCNA's views and not the views of any particular UNGCNA participant(s).

Finally, we would like to recognise the strong work conducted by Professor McMillan AO, Todd Kliendienst, Chantelle Silva and the rest of the Modern Slavery Business Engagement Unit at the Attorney General's Department throughout the review process. Feedback from our participants also highlighted the effort, care and attention that went into the design of the consultation process and the consistent engagement by the team throughout. We were honoured to partner with the team in facilitating consultations in Melbourne, Sydney, Brisbane and Perth, and look forward to partnering on further initiatives in the future.

Yours sincerely,

¹ ILO, Walk Free, IMO (2022) *Global Estimates of Modern Slavery Forced Labour and Forced Marriage*. Available at: https://cdn.walkfree.org/content/uploads/2022/09/12142341/GEMS-2022_Report_EN_V8.pdf



Global Compact
Network Australia

LEAD.
ENABLE.
CONNECT.

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Kylie Porter
Executive Director
UN Global Compact Network Australia

A handwritten signature in black ink, appearing to be "Vanessa Zimmerman".

Vanessa Zimmerman
Director / Chair, Human Rights
UN Global Compact Network Australia

A handwritten signature in black ink, appearing to be "Chris Caskey".

Chris Caskey
Manager, Human Rights
UN Global Compact Network Australia

A. About the United Nations Global Compact

As a special initiative of the United Nations ('UN') Secretary-General, the United Nations Global Compact is a call to companies everywhere to align their operations and strategies with ten universal principles in the areas of human rights, labour, environment and anti-corruption (Ten Principles). Launched in 2000, the mandate of the UN Global Compact is to guide and support the global business community in advancing UN goals and values through responsible corporate practices. With more than 17,800 companies and 3,800 non-business signatories based in over 161 countries, and more than 64 Local Networks, it is the largest corporate sustainability initiative in the world.

In Australia, the UN Global Compact Network Australia ('UNGCNA') brings together over 250 participants of the UN Global Compact, including over 50 ASX-listed companies, a range of private companies, mid-tiers, small-to-medium (SME) enterprises and non-businesses including civil society organisations and universities. Our purpose is to connect, enable and lead business and stakeholders to create a sustainable future by acting responsibly and finding opportunity for positive impact. We guide businesses on how advancing integration of our Ten Principles and contributing to the UN Sustainable Development Goals (SDGs) drives long-term business success.

As a leading voice and platform for learning and action, we have built a strong reputation with business and civil society on supporting business to tackle modern slavery and broader human rights impacts. In 2018, the UNGCNA welcomed the opportunity to make a submission in support of the Modern Slavery Bill 2018, and later in relation to the Department of Home Affairs' Draft Guidance for Reporting Entities under Australia's Modern Slavery Act 2018 (Cth) ('Guidance'). In May 2020, the UNGCNA was also appointed as a permanent member of the Australian Government's Modern Slavery Expert Advisory Group.

We established our Modern Slavery Community of Practice ('MSCoP') in 2018 to educate businesses on modern slavery and to assist with advocating for the Act, which then transformed into a forum to assist businesses to respond to the Act. Today, our MSCoP has grown to over 100 businesses from across Australia and provides a platform for Reporting Entities to connect, share and learn across three different streams tailored to organisational maturity (Optimising, Implementing and SME).

Since 2021, the UNGCNA has been working to deliver the Modern Slavery Impact Initiative ('MSII') with the support of grant funding by the Attorney General's Department (previously Australian Border Force). The MSII establishes a collaborative and multi-stakeholder forum to support business in identifying and responding to modern slavery, enable greater alignment with the *UN Guiding Principles on Business and Human Rights* ('UNGPs'), the authoritative global standard for preventing and addressing business-related human rights harm, and build partnerships with key stakeholders within the modern slavery and broader human rights ecosystem.² We deliver the MSII through the release of business training material, publications, the convening of multi-stakeholder platforms and our ongoing MSCoP.

Our multi-stakeholder convening power is also showcased through events such as our annual Australian Dialogue on Business and Human Rights, which brings together business, civil society, academia, investors and government representatives to discuss contemporary business and human rights issues. In 2022, we also welcomed the opportunity to partner with Professor John McMillan AO and the Attorney General's Department in facilitating in-person consultations on the review of the Act with over 110 business representatives across Melbourne, Sydney, Brisbane and Perth.

² OHCHR (2011) *Guiding Principles on Business and Human Rights*. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingpaniesprinciplesbusinesshr_en.pdf.

B. Our response to key issues

We view the Act's statutory review as a significant opportunity to accelerate meaningful action towards eradicating modern slavery. We support introducing amendments to the Act where they (a) have the potential to result in meaningful outcomes towards ending slavery; (b) increase the effectiveness of modern slavery reporting; and (c) encourage and empower businesses to implement meaningful modern slavery, and indeed broader human rights, risk management.

We provide answers to selected issues raised in the consultation process below.

1. Has the Modern Slavery Act had a positive impact?

The UNGCNA submits that the Act has provided a platform for increased dialogue within the private sector about modern slavery. We have also observed that the Act has encouraged deeper and broader engagement between the business community and civil society, investors, union and worker organisations, academia, and in some good practice cases, workers themselves.

We have seen that efforts to identify, monitor and mitigate the risk of modern slavery within operations and supply chains has led to the creation, expansion and, within some UN Global Compact participants, maturation of practice areas including broader human rights and ethical sourcing programmes. We understand through our discussions that the introduction of the reporting regime and requirement for senior-level sign off within the organisation, particularly sign-off by the company board and a director, has raised the awareness of modern slavery, and broader human rights issues, with Executive Leadership teams and boards.

These impacts are positive. However, we note that much work remains to be done to integrate all elements of the business responsibility to respect human rights under the *UNGPs*, including all aspects of human rights due diligence and remediation processes, into business frameworks to identify and manage modern slavery risks, and to ensure there is real progress in safeguarding rights-holders and supporting survivors.

2. Are the Modern Slavery Act reporting requirements appropriate?

2.1 *Aligning mandatory Modern Slavery Statement reporting criteria with global norms*

The introduction of a transparency framework has been an important first step towards focusing the attention of the Australian private sector on modern slavery. While the Act introduced progressive reforms for its time, legislative regimes have since been introduced abroad that have mandated requirements beyond reporting on modern slavery to broader human rights due diligence. These include, for example, business and human rights-related laws introduced in France, Germany, Norway, and Switzerland, as well as those being contemplated in the European Union, Austria, Finland, Luxembourg, Denmark, the Netherlands, Italy, Spain, Sweden, Canada and New Zealand.³

The UNGCNA is of the view that the Australian modern slavery reporting regime should encourage Australian businesses to set up processes that not only meet global standards but enable them to readily compete in markets with emerging due diligence regulation. The regime should also be designed to encourage and enable companies that wish to establish robust human rights due diligence frameworks, as well as to promote the security of and remedy for rightsholders. As such, at this stage in the regime, we are of the view that these objectives are best achieved by extending the

³ The Business and Human Rights Resource Centre (BHRRC) tracks current developments of mandatory human rights and environmental due diligence laws in Europe. See BHRRC (2022) *National & regional movements for mandatory human rights & environmental due diligence in Europe*. Available at: <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/>.



transparency framework to require that entities report annually on more prescriptive reporting criteria.

The UNGCNA is supportive of amending Section 16 of the Act to require businesses to report against more prescriptive criteria aligned to the *UNGPs*, in particular those relating to due diligence and remediation steps.⁴ We assert that at this point in the regime, this strikes the right balance by requiring businesses to provide more comprehensive and comparable details of their due diligence efforts while continuing to build capacity within the private sector to move towards a positive duty to conduct human rights due diligence.

We recommend these changes for several reasons:

- **Enabling action:** We note that the Act currently requires that Reporting Entities disclose their actions taken to address modern slavery, including due diligence and remediation processes. However, it does not require that entities report on adopting policies or procedures, engagement undertaken with their suppliers, establishment of grievance mechanisms or whether they will provide or have provided potentially affected persons with an effective remedy. In introducing the requirement for businesses to provide more specific details on due diligence and remediation steps taken and noting the correlation between a reporting requirement and driving action to be able to report, this would provide human rights and modern slavery practitioners within business with greater agency to drive the implementation of meaningful risk identification, management and remediation processes.
- **Providing certainty to the market:** While some organisations have begun to integrate the framework in the *UNGPs* (as recommended by the Guidance), aligning the reporting requirements in Act with the *UNGPs* also allows businesses to invest in the framework with greater certainty.⁵ It also sends an important signal to the market on the direction of travel for human rights due diligence standards within Australia, and provides international companies looking to partner with or invest in Australian businesses with increased compatibility with their own assessment frameworks.
- **Enabling more meaningful comparison:** Introducing reporting criteria with increased alignment with the *UNGPs* also enables more meaningful comparison between the actions taken by Reporting Entities, including importantly, the provision of remedy. For example, requiring Reporting Entities to report annually on engagement with affected stakeholders or their representatives undertaken within a reporting period as part of a criterion relating to the identification and assessment of risks (as expected under the first element of human rights due diligence under the *UNGPs*) would allow readers to more meaningfully compare approaches taken by respective businesses.

The UNGCNA is of the view that mandatory human rights and environmental due diligence will ultimately become a globally expected norm. Being able to demonstrate that goods are sourced and manufactured ethically will also become more important as import bans become more prevalent, consumer sentiment on ethical sourcing becomes more critical and mainstream investor expectations for strong environmental, social and governance practices ('ESG') both upstream and downstream continues to grow.

As integration of human rights due diligence matures, we encourage the Australian Government to consider developing a regulatory framework that incentivises, encourages and ultimately mandates

⁴ OHCHR (2011) Op Cit. 17, 18, 19, 20, 21. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingpanies_principlesbusinesshr_en.pdf.

⁵ Australian Border Force (ABF) (2019) *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities*. Available at: https://modernslaveryregister.gov.au/resources/modern-slavery-reporting-entities_guidance.pdf.



human rights and environmental due diligence and accountability where this is not meaningfully carried out. We also encourage the Australian Government to continue to convene, support and evolve its multi-stakeholder forums, including the Modern Slavery Expert Advisory Group, in establishing an approach to introducing human rights due diligence that is effective, progressive, and fit-for-purpose for Australian businesses.

2.2 *Suggested amendments to reporting criteria*

In line with the reasoning above, we suggest the Australian Government considers reframing the criteria as follows:

- **Describe the operations and supply chains:** While these details are important for a reader, the Australian Government should introduce flexibility as to how Reporting Entities address static details in subsequent Statements. For example, many businesses have indicated that the requirement to report details related to the business itself (i.e., operations and supply chain) is potentially superfluous in the absence of any material changes. To maximise time spent on identifying, managing and remediating issues within the operations and supply chain, we suggest that businesses have the flexibility to refer the reader to static descriptions in an external source, such as a company website.
- **Description of the modern slavery risks associated with operations and supply chains:** With the flexibility of how to describe risks included in the current Act, many businesses fail to explain how they may be involved in modern slavery risks in line with the “continuum of involvement” outlined in the *UNGPs*.⁶ This can in turn impact on stakeholders’ ability to determine what appropriate action the entity should be taking in response. We recommend that this criterion be reframed to require the Reporting Entity to report on the risk of causing modern slavery within its operations, contributing to and/or being directly linked to modern slavery within their operations and supply chain.
- **Description of actions taken:** This criterion should be expanded to require Reporting Entities to report information that provides a more robust view of how they are implementing the following key elements of the responsibility to respect human rights under the *UNGPs* relating to modern slavery:
 - Policy commitment
 - Due diligence
 - Identifying and assessing impacts
 - Integration and appropriate action
 - Tracking responses (which could be covered with the existing assessing effectiveness related criteria below)
 - Communicating with stakeholders
 - Remediation, including quantitative data on complaints received and investigated
- **Description of how effectiveness of actions is assessed:** While arguably one of the most important criteria, during our discussions with businesses the ‘effectiveness’ criterion was frequently highlighted as the most ambiguous. We would encourage the Australian Government to commission a separate piece of research to design, develop, and recommend a framework for Australian businesses to report against to more robustly demonstrate how they have assessed the effectiveness of their actions. We note that it is difficult to use quantitative and qualitative metrics to determine and compare the effectiveness of human

⁶ Note: The UNGPs contain a ‘continuum of involvement’ which outlines the relationship between a business and a potential adverse human rights impact, and the level of action expected in response. See Office of the High Commissioner for Human Rights (2011) *Guiding Principles on Business and Human Rights*. Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf



rights due diligence and remediation processes and further consultation, with the assistance of an expert advisory group, should be utilised.

- **Consultation with related entities:** Many businesses have highlighted to us that they struggle to operationalise the current consultation requirement with related entities. Others have indicated that without further supplementary guidance, the requirement to 'consult' can become superficial in practice. We suggest that the Australian Government introduce further guidance on the level of engagement required for entities within the same corporate group.

2.3 Clarification on the scope of operations and supply chain

The review of the Act presents an important opportunity to consider the scope of the reporting requirement. During our consultations with businesses, several highlighted that the responsibilities of holders of financial instruments (i.e. financial institutions or investors) requires further clarification. We note that further clarification on responsibilities to report on downstream risks, such as those associated with customers, and actions to manage them would be beneficial for all sectors. This could be done through updating the Guidance or through a clarification of the definition of 'operations' in the Act.

2.4 Reporting cadence and threshold

The UNGNCA submits that the filing of a Statement on an annual basis at a date determined by the Reporting Entity is appropriate. During our consultations with businesses, many highlighted that the flexibility associated with setting a reporting date in alignment with their own processes (at times, meeting the requirements of international group structures) was extremely helpful.

The UNGCNA also submits that the current requirement for businesses with over \$100m in annual consolidated revenue to produce a Modern Slavery Statement strikes the right balance at this time between ability to influence (i.e., for businesses are deemed to have large enough operations and supplier bases to make the transparency approach meaningful) and available resource to produce an annual public disclosure.

3. Are additional measures required to improve compliance with Modern Slavery Act reporting obligations?

3.1 Enforcement mechanism

UNGCNA is supportive of the introduction of an enforcement framework designed to improve compliance with the statutory requirement to file a Modern Slavery Statement. We believe that while the Australian Government should continue its role in assessing reporting against the mandatory criteria, the reporting regime is not yet mature enough for civil penalties relating to non-conformances with the mandatory criteria.

3.2 Actions to support businesses reduce the risk of modern slavery

During the Act's first three years of operation, the Australian Government has committed to taking action to eradicate modern slavery and protect victims through its *National Action Plan to Combat Modern Slavery 2020-2025*. While there has been a lot of progress and many organisations (including the UNGCNA) have worked towards educating businesses on identifying and mitigating modern slavery risks, more support needs to be provided to increase the effectiveness of the regime.

We encourage the Australian Government to continue to focus on promoting multi-stakeholder collaborations, particularly between business and civil society and on enabling survivor support. We also note that further work on increasing consumer awareness would be helpful. For example, the Australian Government may want to explore the possibility for a consumer education campaign to



highlight the risks of modern slavery to influence consumer spend. This might involve consulting the UK Government on the impact that their mass marketing campaign on the causes and indicators of modern slavery had on increased consumer awareness and compliance with the UK Modern Slavery Act.

The Australian Government could also consider introducing a range of domestic and foreign policy measures that could amplify the effectiveness of human rights due diligence undertaken by Australian companies, in particular with overseas suppliers. These could include:

- Provision of support from Australian Missions in overseas jurisdictions (i.e. from the Department of Foreign Affairs and Trade (DFAT) and AusTrade) for Australian companies in identifying and managing their modern slavery and broader human rights risks abroad, in particular in high-risk settings.
- Clarification of policy settings relating to immigration and raising awareness of the potential for the issuance of bridging visas for persons in positions of exploitation or vulnerability.⁷
- Sector specific engagement and support for potentially affected persons in high-risk settings, for instance, seafarers and those engaged in maritime shipping supply chains.⁸

4. Does the online Modern Slavery Statements Register adequately support scheme objectives?

4.1 Suggested improvements to the Register

UNGCNA submits that the Modern Slavery Statement Register is an important feature of the transparency framework and should remain. However, during our discussions with businesses, many highlighted that there are significant opportunities for improvement, including allowing for greater accessibility for persons with disabilities and allowing for searches to be conducted by sector and industry.

Ultimately, for the transparency model to be effective, the Register needs to be able to provide businesses, investors, civil society organisations, workers associations, consumers and other relevant stakeholders with sufficient information to influence or enable them to make a purchase or investment decision. As such, the Register must function as a resource that provides all stakeholders with an overview of the modern slavery risk environment and performance of Australia's private sector.

In our discussions with business and non-business stakeholders, many have highlighted there may be benefits in Reporting Entities filing free-form text versions of their Statements to assist in the searchability of data, in addition to filing a PDF design copy.

5. The role of an Anti-Slavery Commissioner

5.1 Proposed role of an Anti-slavery Commissioner

The UNGCNA is supportive of the appointment of an independent Anti-slavery Commissioner. We assert that the Government should appoint an Anti-slavery Commissioner whose role would include identifying modern slavery risk areas, supporting businesses in developing and implementing their

⁷ Dinshaw, F and Kneebone, S (2022) *Labour in Limbo: Bridging Visa E Holders and Modern Slavery Risk in Australia*. Available at: https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/63699ff8f357294cefb84f88/1667866637322/HRLC_MSEI_LabourInLimbo_Report.pdf

⁸ UN Global Compact Network Australia (2022) *Modern Slavery within Maritime Shipping Supply Chains: Guidance for Australian Businesses in Identifying, Managing and Mitigating Modern Slavery Risks within Maritime Shipping*. Available at: <https://unglobalcompact.org.au/publications/>



human rights due diligence and remediation processes through education and capacity building, and supporting survivors including by providing forums for business and civil society to work together on survivor-led initiatives. While an Anti-slavery Commissioner could certainly play a role in highlighting good and poor practice, in order to encourage a collaborative and open business and human rights environment, an Anti-slavery Commissioner should not play both an educational and civil enforcement role.

In our discussions with business, many have indicated that they would be supportive of an Anti-slavery Commissioner outlining areas of highest risk within the market in order to support their internal due diligence initiatives. This was particularly clear for smaller businesses and those still implementing their due diligence frameworks. Outlining areas of risk could take the form of regular reporting on the modern slavery risk environment domestically and internationally, including with a sectoral focus, and educating businesses on how modern slavery can manifest.

The UNGCNA also submits that an Anti-slavery Commissioner could play an important role in raising awareness of modern slavery with consumers and the media.

C. Conclusion

We see the review of the Act as an important step toward further tackling modern slavery in Australia and the operations and supply chains of Australian companies at home and abroad. The Australian Government has the opportunity to expand the transparency framework to better align to global movement on business accountability for involvement in adverse human rights impacts, enable businesses to invest in frameworks that provide certainty and better comparison, and more meaningfully address the risk of Australian businesses' involvement in modern slavery.

We would like to congratulate Professor McMillan AO and the rest of the Modern Slavery Business Engagement Unit at the Attorney General's Department for their work on the review of the Act. We look forward to connecting our UN Global Compact participants with the Attorney General's Department team in the future and remain ready to answer any questions that may arise.

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