

Building Better Business for Children

An Interim National Baseline
Assessment of Australian policy
and law shaping business activities
that impact on children

SUMMARY REPORT 2019





COVER

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On 25 July 2018 in Bangladesh, Mohsin, 12, works as a porter in Dhaka to contribute towards his family's earnings. His father is a rickshaw puller and his mother a housewife. ©UNICEF/UN0263804/Lister



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- eSafety Commissioner
- Fair Work Ombudsman
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Foreword

When people think of business, they don't necessarily think of children. But we hope this important report by UNICEF Australia will be a game-changer on that. Building Better Business for Children provides an extensive examination into Australian policy and law that establishes the rules of the game for business; from restrictions on marketing and advertising practices and protections against child labour, to family-friendly employment conditions and access to parental leave. This document identifies areas of good practice from the Australian Government, and key gaps that require better regulation to ensure that businesses adequately respect the rights of children in their operations in both Australia and overseas.

The business and human rights agenda has evolved significantly in recent years. Businesses everywhere are increasingly embracing activities which promote social purpose, and are endeavouring to help to make the world a better place.

In Australia, last year's passing of modern slavery acts by both the Commonwealth and NSW Parliaments demonstrated significant willingness in the community to address exploitation, slavery and trafficking in business supply chains. In addition, revelations of unacceptable business practices and cultures as articulated in the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* have served as a wake-up call that Australians demand, and deserve, more.

As globalisation intensifies, governments too are increasingly doing more to ensure that businesses take action to respect human rights. A child rights perspective, however, has not yet been explicitly addressed. This is, despite the fact, that almost all practices of the business world impacts on children, either directly or indirectly.

Take, for example, parental leave provisions. Currently in Australia, primary carers, usually new mothers, can access

18 weeks of paid leave. This is well below the average period of paid parental leave provided by OECD countries, and UNICEF Australia would like to see this increased to at least 26 weeks.

In my own professional career, I've worked hard to champion family friendly workplace practices, including at Westpac, and at the Office of the Status of Women. But good practice by some businesses is not sufficient to effect widespread change. Public policy to ensure workplaces support families, is transformative for parents and children. And so too, would be an Australia, where the recommendations of this report, are actioned.



PUBLIC POLICY TO ENSURE WORKPLACES SUPPORT FAMILIES IS TRANSFORMATIVE FOR PARENTS AND CHILDREN.

This report recommends that the Australian Government adopt a National Action Plan on Business and Human Rights, and has suggested 10 clear areas where children would benefit from reform. As we brace ourselves to soon enter a brave, new decade, we urge our politicians to sit up, take notice, and make a real difference for children. It's time for the Australian Government to consider children and families when setting the rules of the game for business, and doing so will undoubtedly help us make inroads to achieving the *Sustainable Development Goals 2030*. Children are not an expense. They are an investment.

Ann Sherry AO
Chair, UNICEF Australia



Executive Summary

Children are regularly and routinely affected by the operations and activities of businesses. They are consumers of goods, services, and advertising; they can be workers in shops, restaurants and offices; and they are community members affected by business decisions made both near and far. How parents and carers are treated as employees also affects family life and therefore children's experiences growing up.



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Our interconnected world means that the decisions made by Australian businesses can also affect the lives of children and communities internationally. The trend of sourcing goods and services through complex global supply chains shapes labour practices across many jurisdictions. Online technology has infinitely expanded the reach of both opportunities and risks. And the environmental impacts of business operations and activities can extend well beyond national boundaries.

The impact of businesses on children can be positive or negative; direct or indirect; intentional or unintentional.

Focused on the 'State Duty to Protect' and 'Access to Remedy' as outlined in the *United Nations Guiding Principles on Business and Human Rights*¹, ***Building Better Business for Children*** provides an

initial 'national baseline assessment' from a child rights perspective. Using the Children's Rights *National Baseline Assessment Template*², it provides a first examination of Australia's approach to regulating activities and operations known to pose a risk to children in Australia and abroad – either directly or indirectly. Areas examined include Australia's approach to **marketing and advertising, workplace protections, the regulation of child labour, and family-friendly employment conditions.**

Building Better Business for Children recognises strengths in Australia's approach – such as the world's first mandatory tobacco plain packaging law, legal protections against discrimination in the workplace, statutory mandate holders to help protect privacy and children in online environments, and a significant commitment to address online child exploitation. These measures indicate that, when actual and potential adverse human rights impacts are viewed as a priority in Australia, responses are often devised and implemented in a thoughtful and effective way.

Building Better Business for Children also highlights several significant gaps in Australian policy, law and practice that leave children and carers vulnerable to adverse impacts of business activity, and potentially without remedy when these occur. These include **weaknesses in the regulation of marketing and advertising of unhealthy foods and beverages, inadequate protections against child labour, Australia's relatively limited paid parental leave scheme, and limited financial security for employees and their children experiencing domestic and family violence.**

To address these gaps for children and their carers, ***Building Better Business for Children*** recommends that the Australian Government:

- 1 Adopt a National Action Plan on Business and Human Rights (**NAP**) to fully implement the *United Nations Guiding Principles on Business and Human Rights*.
- 2 Commit to specific, measurable and time-bound measures to better protect children and their carers as part of, or in addition to, the NAP, including the following measures to address the gaps identified in this report:
 - 2(i) Continue to improve systems and business practices to keep children safe – in person and online;
 - 2(ii) Help protect the economic security of workers experiencing domestic and family violence through introducing 10 days' paid domestic and family violence leave for employees;
 - 2(iii) Consider introducing mandatory human rights due diligence laws;
 - 2(iv) Fully leverage the Government's own business activities to promote and require respect for human rights, including children's rights, for example, through incorporating human rights considerations into public procurement rules, policies and processes;
 - 2(v) Commit to addressing child labour through signing and ratifying the *International Labour Organisation Convention No. 138 on the Minimum Age for Admission to Employment*;
 - 2(vi) Ensure Australians, particularly young people and carers of children, can maintain an adequate standard of living through better data and a parliamentary inquiry;
 - 2(vii) Support the healthy development of children in their first thousand days through expanding family-friendly policies, including a strategy to progressively increase the parental leave pay entitlement to at least 26 weeks;
 - 2(viii) Ensure access to affordable, quality and culturally appropriate childcare and early learning opportunities for all children, especially Aboriginal and Torres Strait Islander children through implementing the recommendations of *Family Matters*;
 - 2(ix) Curb rising childhood obesity through a national strategy that includes legislated measures to reduce children's exposure to marketing and advertising of unhealthy foods and beverages; and
 - 2(x) Ensure access to remedy for children harmed by business activities and operations – both domestically and extraterritorially.



BUSINESS CAN BE AN ESSENTIAL DRIVER FOR SOCIETIES AND ECONOMIES TO ADVANCE IN WAYS THAT STRENGTHEN THE REALIZATION OF CHILDREN'S RIGHTS THROUGH, FOR EXAMPLE, TECHNOLOGICAL ADVANCES, INVESTMENT AND THE GENERATION OF DECENT WORK. HOWEVER, THE REALIZATION OF CHILDREN'S RIGHTS IS NOT AN AUTOMATIC CONSEQUENCE OF ECONOMIC GROWTH AND BUSINESS ENTERPRISES CAN ALSO NEGATIVELY IMPACT CHILDREN'S RIGHTS.

UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD.³



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Australia committed to respect, protect and fulfil the rights of children in 1990 when it took the important step of ratifying the *Convention on the Rights of the Child (Children's Convention)*. In accordance with these obligations, governments are required to give special consideration to children across all areas of policy, law and regulation to ensure their best interests are protected, including those that shape business activities and operations.

As of April 2019, 23 countries have adopted a National Action Plan on Business and Human Rights to help identify priority areas for government action, and at least a further 12 countries are in the process of developing such a plan.

Although Australia has progressively adopted a number of positive measures that seek to protect children, Australia is yet to take this important step of developing a National Action Plan on Business and Human Rights of its own. We urge the Government to adopt such a plan, in order to require and support a shift to sustainable and ethical business practices that respect the human rights of all members of the community – both domestically and internationally.

This is a summary report, prepared particularly for policy makers. The full report, including **Part 5 - Research and Analysis - An Interim National Baseline Assessment of Australia** can be accessed at <https://www.unicef.org.au/about-us/publications>.

01. About UNICEF and UNICEF Australia

Established in 1946, UNICEF is the United Nations children’s agency. With a mission to promote and protect the rights of children, UNICEF works in over 190 countries.

UNICEF has worked directly on children’s rights and business issues since 2010, having developed the *Children’s Rights and Business Principles*⁴ and other related guidance for governments and businesses.⁵ The goal of UNICEF’s children’s rights and business agenda is to promote the corporate responsibility to respect and support children’s rights in the workplace, marketplace and community, and support government action to protect, promote and realise children’s rights in the context of business activity.

UNICEF engages the business community regarding its impact on children across four major sub-themes; global supply chains and workplaces, marketing and advertising, the power of finance and the impact of digital technologies.⁶ Across these work streams and different industries (extractive sector, information communication and technology, travel and tourism, and sports), and with a focus on the links to programmatic result areas, UNICEF provides:⁷

- **Research and evidence generation** to build a knowledge base of the impacts on children across themes and industries, the unique risks and opportunities faced in a particular country, and the role of key influencers in addressing these impacts.
- **Policy guidance** to identify gaps and offer potential solutions to companies. UNICEF has developed a number of tools, including generic child rights and sustainability tools, ICT tools and the Children’s Rights and Business Atlas⁸ that companies can use to improve their policies and processes to better respect and support children’s rights in practice.
- **Advocacy and thought leadership** by engaging companies, governments, industry and multi-stakeholder platforms



in processes to generate evidence, draft policy guidance, develop standards for responsible business conduct in relation to child rights impacts, and amplify advocacy messages across the themes. This also involves engaging business champions to become advocates for children’s rights and to support any of the themes.

UNICEF Australia is a national committee of UNICEF that advocates for the rights of all children to be protected and promoted. UNICEF Australia works to improve public and government support for children’s rights and international development.

ABOVE

Rafeya Akhter Moni, 14, plays a game with friends at a UNICEF-supported Adolescent Club near her home in Dhaka’s Duaripara slum. Twice each week Moni and 35-40 other young people have the opportunity to get together and be ordinary teenagers in a safe space. ©UNICEF/UN06997/Lynch

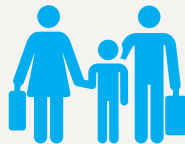
02. About Building Better Business for Children – An Interim National Baseline Assessment

2.1 Why is action needed?

Although not always obvious, the expectations and requirements that governments set for businesses can have flow on effects for children. *Building Better Business for Children*, specifically, *Part 5 - Research and Analysis - An Interim National Baseline Assessment of Australia*, outlines evidence that demonstrates the need for action by the Australian Government to ensure that businesses practices respect and support children's rights – in the workplace, marketplace and community. For example:



Children in Australia are exposed to an estimated **3 advertisements** for unhealthy foods every hour (2015).⁹



Over 1 million Australian families with children aged 0 – 4 years had one or both parents in employment at June 2017.¹⁰



In the 12 months to June 2016, **8% of children** and **19% of teenagers** were cyberbullied.¹¹



Women and primary carers in Australia are entitled to **37.2 weeks less paid parental leave** than their OECD counterparts.¹²



Fathers and partners in Australia are entitled to **6.2 weeks less paid parental leave** than their OECD counterparts.¹³



Almost **one quarter (24.9%) of Australian children aged 5-17 years were overweight or obese** in 2017-2018.¹⁴



In 2016, around **415,100 children and young people were on junior wages**, with average weekly earnings below the minimum wage (\$679.60/week on average for full-time employees on junior wages and \$188.70/week for part-time employees on junior wages).¹⁵



Approximately 800,000 women, or around **one in six female workers have experienced, or are experiencing, family violence**.¹⁶



Tens of thousands of children have been sexually abused in many Australian institutions.¹⁷



There is a **gap of 15,000 early learning places** for Aboriginal and Torres Strait Islander children.¹⁸



Obesity cost the Australian economy **\$8.6 billion** in 2011-12 alone.¹⁹



2.2 What does Building Better Business for Children – An Interim National Baseline Assessment seek to do?

Australia's commitments under the *Convention on the Rights of the Child*²⁰ requires governments to respect, protect and fulfill the rights of children in all circumstances, including in the context of business activity. ***Building Better Business for Children: An Interim National Baseline Assessment of Australia*** examines Australia's approach to policy, law and practice shaping a range of business activities and operations with the potential to impact children. It seeks to:

- Provide a **high-level overview** of Australia's approach to the regulatory issues relevant to the protection of children's rights in the context of business activity – including product safety, marketing and advertising and workplace practices;
- **Identify 10 key gaps and limitations** in the implementation of the State 'Duty to Protect' and obligation to ensure 'Access

to Remedy' under the *United Nations Guiding Principles on Business and Human Rights* with respect to children and their carers; and

- **Recognise 10 key strengths** in Australia's approach to protecting children and their carers from potentially adverse impacts of business where notable practices exist.

This research was undertaken in order to assist the Australian Government, Australian businesses and the community to identify and better understand potential gaps in current policy, law and practice that have the potential to leave children and families vulnerable to adverse impacts of business activity, and to provide recommendations on how these could be addressed. Undoubtedly though, this Interim National Baseline Assessment just a first step. Further research, analysis and consultation – including with children and families themselves, and the community more broadly – is necessary to provide the Australian Government with a comprehensive understanding of these gaps – both domestically and extraterritorially.

ABOVE

On 25 July 2018 in Bangladesh, Tarek, 10, works in an aluminium factory in Kamrangirchar, Dhaka. ©UNICEF/UN0263807/Lister

03. Australia's Commitments To Children

Australia is required to act in order to fulfil its commitments to children made when it ratified the *Convention on the Rights of the Child*, as well as to help achieve the *2030 Agenda for Sustainable Development – The Sustainable Development Goals (SDGs)*.

The Convention on the Rights of the Child

Australia committed to respect, protect and fulfil the rights of children in 1990 when it took the important step of ratifying the *Convention on the Rights of the Child (Children's Convention)*. Outlining rights to survival and development, participation, non-discrimination and the right to have their best interests taken as a primary consideration, the Children's Convention sets the basic requirements for children to survive, thrive and to reach their full potential.

This obligation requires States to protect children against infringements of rights by third parties, including businesses. The United Nations Committee on the Rights of the Child has explained this 'obligation to protect' as follows:²¹

This duty is of primary importance when considering States' obligations with regards to the business sector. It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights. States must investigate, adjudicate and redress violations of children's rights caused or contributed to by a business enterprise. A State is therefore responsible for infringements of children's rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements.

The Committee on the Rights of the Child adopted *General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights*²² to help governments take such action in practice.





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The 'Protect, Respect and Remedy' framework and the UN Guiding Principles on Business and Human Rights

The United Nations 'Protect, Respect and Remedy' framework²³ was developed in the wake of numerous and mounting examples of communities and individuals harmed by the activities and operations of businesses, and the recognised need for greater clarity and guidance about the duties and responsibilities of different stakeholders. Developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, it provides a conceptual and policy framework for all stakeholders in society to 'provide more effective protection to individuals and communities against corporate-related human rights harm.'²⁴ It articulates:



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1. the **State duty to protect against human rights abuses** by third parties, including business;
2. the **corporate responsibility to respect human rights**; and
3. the need for victims of business-related human rights abuses to have **access to effective remedies**.

SUSTAINABLE DEVELOPMENT GOALS



To guide the practical implementation of the Protect, Respect and Remedy Framework, Professor Ruggie developed the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*.²⁵ Unanimously endorsed by member states of the United Nations Human Rights Council in 2011, the UNGPs have become an authoritative international standard to guide government and business action to best protect the rights of communities in a world increasingly affected by business activity.

The 2030 Agenda for Sustainable Development – The Sustainable Development Goals

In 2015, the 193 member states of the United Nations General Assembly – including Australia – established the *2030 Agenda for Sustainable Development – The Sustainable Development Goals (SDGs)*. The SDGs set out a plan of ‘bold and transformative’ action that aims to wipe out poverty by placing the world on a more sustainable path; economically, socially and environmentally.

The SDGs acknowledge that many current practices connected to production

and consumption are unsustainable, and that these have often led to negative impacts on both people and planet. They are an appeal to everyone in society - governments, international organizations, the business sector, civil society and individuals alike - to contribute to changing these unsustainable and harmful practices. Governments including the Australian Government proclaimed:²⁶

We will foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements and other ongoing initiatives in this regard, such as the Guiding Principles on Business and Human Rights and the labour standards of the International Labour Organization, the Convention on the Rights of the Child and key multilateral environmental agreements, for parties to those agreements.

The Australian Government has taken a number of steps to help progress the Sustainable Development Goals, including through participation in the voluntary national review in 2018.²⁷

National Action Plans on Business and Human Rights as a way to implement the UNGPs and pursue sustainable development

Increasingly, states are developing *National Action Plans on Business and Human Rights* to implement the UNGPs in a national setting.²⁸ Such plans are also increasingly used as a means to help achieve the business-related targets of the SDGs.²⁹ The UN Working Group on Business and Human Rights defines a National Action Plan on Business and Human Rights as an “evolving policy

strategy developed by a state to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights...”³⁰

National Action Plans on Business and Human Rights can demonstrate a government’s commitment to specific improvements in policy or regulation, and help formulate a plan of action on priority issues to achieve positive change over time.

As of April 2019, 23 countries have adopted a National Action Plan on Business and Human Rights (the United Kingdom, the United States, Belgium, Germany, France, Ireland, Netherlands, Norway, Sweden, Switzerland, Denmark, Finland, South Korea, Luxembourg, the Czech Republic, Spain, Poland, Italy, Lithuania, Slovenia, Georgia, Chile and Colombia).³¹ At least a further 12 countries were in the process of developing one (Argentina, Honduras, India, Indonesia, Japan, Kenya, Malaysia, Mexico, Morocco, Peru, Scotland, and Thailand).³²

Australia has not yet committed to develop a National Action Plan on Business and Human Rights or otherwise articulated a plan to realise the UNGPs for children and communities in Australia and abroad where Australian businesses source and operate.



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04. What are Australia's current gaps and limitations in protecting children and their carers from actual or potential adverse impacts of business, and recommendations to address these?

Based on the research and issues identified in *Building Better Business for Children* (specifically, **Part 5 - Research and Analysis - An Interim National Baseline Assessment of Australia**) UNICEF Australia has identified the following gaps in protections from actual and potential impacts on children's rights, and recommends that the Australian Government:

Recommendation 1

Adopt a National Action Plan on Business and Human Rights

That the Australian Government adopt a *National Action Plan on Business and Human Rights (NAP)* by 2020 to implement the UN Guiding Principles on Business and Human Rights. The NAP should be developed in line with relevant guidance including that issued by the UN Working Group on Business and Human Rights³³ and the recommendations of the Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights³⁴.

Recommendation 2

Commit to specific, measurable and time-bound measures to better protect children and their carers as part of, or in addition to, the NAP

That the NAP include specific, measurable and time-bound commitments to better protect children and their carers from actual or potential adverse impacts of business activities and operations – whether they are in Australia or abroad. On this basis, the Australian Government should action the following recommendations, ensuring that measures adopted are informed by consultation with relevant stakeholders (including children and families) and guidance such as *General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights* and *Children's Rights in National Action Plans on Business and Human Rights*³⁶:



2 (i)

Recommendation

Continue to improve systems and business practices to keep children safe – in person and online

How this can be achieved

- a) Ensure the next iteration of a national plan to keep children safe (proceeding the conclusion of the *National Framework for Protecting Australia's Children* in 2020) includes measures that require the private sector to keep children safe and support them to do so. Specific measures should include:
 - strengthening the *Working With Children Check* system as recommended by the *Royal Commission into Institutional Responses to Child Sexual Abuse*; and
 - supporting, expanding and building capacity in relation to the *National Principles for Child Safe Organisations* project including through ensuring oversight from an appropriate, independent institution resourced and equipped to help capacity build different sectors and business types.
- b) Implement the recommendations contained in the *Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme)* including a more proactive regulatory regime and a National Online Safety Plan.
- c) Implement the recommendations contained in the Senate Standing Committee on Legal and Constitutional Affairs' inquiry into the *Adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying*, including specifically to:
 - improve preventative and early intervention initiatives, including education;
 - ensure that law enforcement authorities appropriately investigate and prosecute serious cyberbullying complaints; and
 - take regulatory measures to require social media platforms to prevent and respond to cyberbullying, including to introduce a duty of care of platforms to ensure the safety of users, and through financial penalties where insufficient progress is achieved.

Current gap/limitation

In Australia, recent inquiries have revealed serious shortcomings in our approach to keeping children safe – both in person and online. For example, the *Royal Commission into Institutional Responses to Child Sexual Abuse* revealed serious and widespread failures to prevent and respond to child sexual abuse in institutions across Australia, with the Commission concluding that tens of thousands of children have been sexually abused in many Australian institutions.³⁷ The Royal Commission observed widespread shortcomings in organisational approaches to protecting children from sexual abuse, along with serious deficiencies in the system of *Working With Children Checks* which is often used by businesses as part of pre-employment screening. The findings of the Royal Commission, and the Australian Government's response to them, have significant and on-going lessons for all Australian society, including businesses, particularly whose volunteers or employees have direct contact with children. Continued action to implement the recommendations of the Royal Commission and the *National Principles for Child Safe Organisations* is needed to ensure a robust approach to child safeguarding into the future.

Children's exposure to cyberbullying online has also been raised as a national priority domestically. This is an issue of particular relevance to technology companies, whose services and devices provide the infrastructure that can enable cyberbullying to occur. The Senate Standing Committee on Legal and Constitutional Affairs³⁸ and the *Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme)*³⁹ have both recently made a series of recommendations to address weaknesses in Australia's current approach to online safety (see further **2.2 National Priorities** in the Interim National Baseline Assessment).

2 (ii)

Recommendation

Help protect the economic security of workers experiencing domestic and family violence

How this can be achieved

Legislate a minimum statutory entitlement to 10 days' paid domestic and family violence leave for employees, and promote guidance and support to workplaces on appropriate responses to domestic and family violence.

Current gap/limitation

Domestic and family violence has been recognised as a widespread, prevalent, and serious national concern in Australia. Reducing the prevalence of family violence, and responding appropriately to support people experiencing family violence, requires efforts on behalf of members of society, including businesses in their critical role as employers. Research indicates that it takes on average 141 hours and costs \$18,000 to leave a violent relationship.⁴⁰ As such, the ability of people experiencing family violence to leave a violent relationship whilst maintaining their income is crucial. Some Australian employers have voluntarily introduced access to paid domestic and family violence leave for their employees. The Australian Government also recently introduced five days of unpaid domestic violence leave per year as part of the National Employment Standards, and committed to develop a "one-stop shop" for resources on effective workplace responses to violence against women and their children. However, unpaid leave falls short of the reforms recommended by many including the Australian Law Reform Commission to introduce paid family and domestic violence leave as a statutory entitlement (see further **2.2 National Priorities** in the Interim National Baseline Assessment).

2 (iii)

Recommendation

Consider introducing mandatory human rights due diligence laws

How this can be achieved

Consider introducing legislation that mandates human rights due diligence as recommended by the Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights.

Current gap/limitation

A human rights due diligence broadly is a process of identifying and assessing actual or potential risks of adverse human rights impacts in company operations and supply chains (including, but not limited to, the first tier of relationships).⁴¹ It further requires prioritising responsive action to prevent or mitigate harm by reference to the scale and severity of harm; and acting on the findings so that responses are integrated management systems and practices. A child rights due diligence is such a process, focusing specifically on children.

Establishing legal requirements such as a mandatory human rights due diligence is a necessary part of realising the *United Nations Guiding Principles on Business and Human Rights*. Several jurisdictions such as France and Germany already have or are looking to adopt such requirements. Currently however there is no Australian law that requires businesses to undertake this important process (see further **3.2.1 Due Diligence** in the Interim National Baseline Assessment).

2 (iv)

Recommendation

Fully leverage the Government's own business activities to promote and require respect for human rights, including children's rights

How this can be achieved

Incorporate explicit and specific human rights considerations (including human rights due diligence, where appropriate) into the following:

- public procurement (i.e. the Commonwealth Procurement Rules);
- privatisation processes;
- export credit provision;
- private sector delivery of aid programs;
- trade and investment agreements; and
- decision making by departments, agencies and state-owned or controlled entities (including Government Business Enterprises).

Current gap/limitation

To ensure policy coherence towards the goal of protecting and promoting human rights – including children's rights – and to fully leverage the influencing ability of government policy, it is necessary that human rights considerations are incorporated across government functions, particularly those that shape the commercial activities of government. Across a range of businesses-related activities of the Australian Government, and state-owned enterprises, human rights are very rarely, if ever, a factor requiring consideration by relevant public officials in discharging their duties. For example, human rights considerations are not expressly incorporated into the following:

- public procurement (noting however that the requirements of the *Modern Slavery Act 2018* (Cth) will apply to the Commonwealth – a notable exception);
- privatisation processes;
- export credit provision;
- private sector delivery of aid programs;
- trade and investment agreements; and
- decision making by departments, agencies and state-owned or controlled entities.

This risks conflicting policy objectives with other government departments and agencies, that seek to promote and protect human rights of children and adults in the community. Australia should be seeking to ensure policy coherence across all activities of government so that human rights concerns are not siloed in particular departments and that other policies such as those relating to export credit assistance and corporate and securities law are not formed in isolation from, and in disregard of, the state duty to protect human rights (see further **3.1.5 Public Finance / Procurement / Privatisation** in the Interim National Baseline Assessment).

2 (v)

Recommendation

Commit to preventing and addressing child labour

How this can be achieved

Support efforts to reduce the numbers of children involved in child labour through:

- a) signing and ratifying the *International Labour Organisation Convention No. 138 on the Minimum Age for Admission to Employment*; and
- b) working with State and Territory Governments to strengthen and coordinate legal protections against child labour across states and territories in Australia (particularly in South Australia and Tasmania), as well as ensure appropriate monitoring and enforcement.

Current gap/limitation

On any given day in 2016, 152 million children were engaged in child labour. Of these, 73 million children were engaged in hazardous work and 62 million were in Asia Pacific.⁴² Child labour is work that deprives children of their childhood and is harmful to their physical and mental development.⁴³ It can also hamper the human and economic development of whole nations. Despite the need for concerted efforts to reduce the alarming numbers of children engaged in child labour globally, Australia has not ratified *ILO Convention No. 138 on the Minimum Age for Admission to Employment*. This is so despite recognition by the Australian Parliament that doing so would provide important leadership at the international level.

Domestically as well, commentators have observed Australia's approach to regulating child labour to be 'fragmented and haphazard'⁴⁴. Although legislation provides restrictions to ensure that children cannot generally work during school hours, Australia has a highly variable and ad hoc approach to regulating child labour across States and Territories (see further **3.2.1 Prohibition of Child Labour** in the Interim National Baseline Assessment).



On 24 July 2018 in Bangladesh, (left-right) Raihan, 12, Shuvo, 11, and Tarek, 12, in the factory where they work in Kamrangirchar, Dhaka. The boys need to work to earn an income to survive. The balloon factories are hazardous as the children work with rubber acids and chemicals as part of the balloon making process. ©UNICEF/UN0264616/Lister

2 (vi)

Recommendation

Ensure Australians, particularly young people and carers of children, can maintain an adequate standard of living

How this can be achieved

Adopt a comprehensive strategy to help ensure young people and carers of children can maintain an adequate standard of living. Specifically, the Australian Government should:

- a) resource and support government agencies (such as the Australian Institute of Health and Welfare and/or Australian Bureau of Statistics) to collect and analyse data on the experiences of young people so that their incomes (both through wages and social security payments), expenses and living arrangements can be benchmarked and tracked over time.
- b) establish a parliamentary inquiry to examine the ability of all people, including young people and carers of children, to maintain an adequate standard of living. The inquiry should examine, amongst other things;
 - i. the impact of junior wages on the incomes of young people, and its consistency with the human rights of young people;
 - ii. non-discriminatory options to help young people transition into employment;
 - iii. the feasibility and appropriateness of adopting a living wage in Australia; and
 - iv. the structure, conditions and level of welfare income, particularly for young people and carers of children who unemployed or underemployed.

Current gap/limitation

The safety net of a minimum wage has existed in Australia for many years. However concerns have been raised around the extent to which young people in Australia have access to a living wage, have equal treatment in employment, and can access adequate welfare income to help ensure they do not experience poverty. Due to Australia's system of 'junior wages', the reality for many young employees under 21 years of age is that they frequently receive only a percentage of the relevant minimum wage in their occupation or industry, purely on the basis of their age. Despite calls for reviews and reform of this system to ensure it is not discriminatory, no federal Government has committed to examine further this issue in recent years.

At the same time, many groups have raised concerns about the nature, level and conditions connected to social security payments and welfare supports for young people and carers of children who are under-employed or who are looking for work (including in particular, the disproportionate impact of the Community Development Program and the ParentsNext program on Aboriginal and Torres Strait Islander families).

Recent economic and labour force trends that have seen stagnated wage growth and greater numbers of young people in long-term unemployment. In light of this, as well as the concerns raised about junior wages and welfare income, there is a significant need for the Australian Government to understand the barriers to young people and their carers maintaining an adequate standard of living (whether through income through employment and/or welfare income), and respond to these through non-discriminatory measures (see further **3.3.1 Living wage** in the Interim National Baseline Assessment).

2 (vii)

Recommendation

Support the healthy development of children in their first thousand days through expanding family-friendly policies

How this can be achieved

Enhance access to parental leave pay to better support children and their carers in the early years of a child's life. Specifically, the Australian Government should adopt a strategy to progressively:

- a) increase the parental leave pay entitlement to at least 26 weeks (to allow for exclusive breastfeeding, amongst other things);
- b) increase the uptake of paid parental leave by fathers and partners through extending entitlement of paid parental leave to them (for example, through 'use it or lose it' leave entitlements);
- c) review the qualifying period for parental leave pay (i.e. 12 month service requirement); and
- d) provide superannuation entitlements as part of paid parental leave.

Current gap/limitation

The first thousand days of a child's life is recognised as a period of unparalleled brain development, and the role of parents and carers over this time is critical.⁴⁵ It is therefore essential that governments create conditions that support parents and carers to spend time with their children over this period, including through the provision of paid parental leave for employed or working parents and carers.

Despite improvements in recent years, Australia lags behind other Organisation for Economic Co-operation and Development (OECD) countries in the provision of paid maternity and parental leave for employed parents and carers. In Australia, mothers (often called 'primary carers') can access 18 weeks of parental leave pay (paid at the federal minimum wage)⁴⁶ compared to an OECD average of 55 weeks in the early years of a child's life⁴⁷. Fathers and partners can access two weeks of paid leave compared to an OECD average of 8.17 weeks (father-specific leave).⁴⁸

Especially given Australia's relative economic prosperity, Australia should be seeking to better support children and working parents and carers during the critical early years of a child's development (see further **3.3.4 Parental leave** in the Interim National Baseline Assessment).



2 (viii)

Recommendation

Ensure access to affordable, quality and culturally appropriate childcare and early learning opportunities for all children, especially Aboriginal and Torres Strait Islander children

How this can be achieved

- a) Ensure access to affordable, quality and culturally appropriate childcare and early learning opportunities for all children, including children with working parents and caregivers.
- b) As recommended by *Family Matters*, ensure Aboriginal and Torres Strait Islander children have access to quality and culturally safe early childhood education and care through measures including:
 - i. A target and strategy to Close the Gap in developmental outcomes for Aboriginal and Torres Strait Islander children in the early years, and in access to vital preventive services in early childhood education and care (ECEC) and maternal and child health. This must include:
 - Funding universal preschool access for 3 and 4 year olds, including additional funding to ensure a minimum 3 days per week access for Aboriginal and Torres Strait Islander children; and
 - Investing in quality Aboriginal and Torres Strait Islander community-controlled integrated early years services through a specific program with targets to increase coverage in areas of high Aboriginal and Torres Strait Islander population and high levels of disadvantage.
 - ii. Priority investment in service delivery by community-controlled organisations in line with self-determination, including through investment targets aligned to need and “Aboriginal and Torres Strait Islander first” procurement policies for services to Aboriginal and Torres Strait Islander families.
 - iii. Establishment and resourcing of state-based and national commissioners, peak bodies and other representative bodies for Aboriginal and Torres Strait Islander children.

Current gap/limitation

The ability of families to access affordable, quality and culturally safe early childhood education and care (ECEC) opportunities is critical for their child’s development. It is essential that governments provide such opportunities for all children, including, but not limited to, the children of working parents and carers.

Although Australia has made significant progress in improving quality and increasing participation rates in recent years, concerns persist about affordability, as well as the availability of culturally competent services for Aboriginal and Torres Strait Islander children and families. In 2014, it was estimated that an additional 15,000 places would be required if Aboriginal and Torres Strait Islander children’s enrolment was proportionate to their representation in the general population, and participation rates have not improved since. Additionally, Aboriginal and Torres Strait Islander 5 year olds are about 2.5 times more likely to be developmentally vulnerable in 2 or more domains of the Australian Early Development Census when they start school.⁴⁹ Furthermore, recent changes to Australia’s childcare system under the Jobs for Families Child Care Package introduced an activity test that decreases the minimum government subsidised hours of childcare available for some families on low incomes where either parent does not meet work or study requirements. Though reliable data are not yet available, services for Aboriginal and Torres Strait Islander children have reported that children are accessing fewer hours of early childhood education and care or dropping out because of challenges with the new system, including because of the activity test that unjustly excludes children based on their parents’ circumstances.⁵⁰ Evidence indicates that improving access to quality and culturally safe early childhood education and care for Aboriginal and Torres Strait Islander children requires local ownership of programs, employing Aboriginal and Torres Strait Islander people; and incorporating culture, including Aboriginal and Torres Strait Islander languages, within services (see further **3.3.6 Access to services** in the Interim National Baseline Assessment).

2 (ix)

Recommendation

Curb rising childhood obesity through a national strategy that includes measures to reduce children's exposure to marketing and advertising of unhealthy foods and beverages

How this can be achieved

Ensure that the 'national strategy on obesity' as announced by the COAG Health Council in October 2018:

- a) is informed by the Convention on the Rights of the Child and specifically the right to health;
- b) has a stated objective of reducing children's exposure to the marketing of food high in saturated fats, trans-fatty acids, free sugars and salt (HFSS) in line with the World Health Organisation's 'Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children' and the 'Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children'.
- c) includes measures (including legislative measures) to strengthen the regulation of marketing and advertising of unhealthy foods in line with recommendations of public health experts, including mandatory time-based restrictions of unhealthy food and beverage advertising on broadcast media (television and radio), defining and addressing digital food marketing and providing for independent monitoring and enforcement.

Current gap/limitation

The Australian Bureau of Statistics has reported '[a]lmost one quarter (24.9%) of children aged 5-17 years were overweight or obese in 2017-18 (17% overweight and 8.1% obese)'.⁵¹ The issue of children being overweight and obese has been described as a 'major public health issue in Australia'.⁵² Yet, in 2015, children in Australia were exposed to an estimated 3 advertisements for unhealthy foods every hour.⁵³ In the same year, analysis of Australia's system of self-regulatory codes found that since their introduction, there has been no change to the rate of unhealthy food advertising.⁵⁴ Further analysis has concluded that this system is 'ineffective'⁵⁵ and 'clearly not drafted with a view to limiting the amount or type of food advertising to which children are exposed'⁵⁶. Given the drastic impacts overweight and obesity has both on the health of individual children, and the costs to society as a whole, it is incumbent on the Australian Government to take meaningful and mandatory measures to protect children from the influence of marketing and advertising of unhealthy foods (see further **3.6.2 Harmful products** in the Interim National Baseline Assessment).

2 (x)

Recommendation

Ensure access to remedy for children harmed by business activities and operations – both domestically and extraterritorially

How this can be achieved

Improve and establish avenues to remedies for children who have experienced business-related human rights abuses, including where abuses have occurred outside Australia. Specifically, the Australian Government should:

- a) as recommended by the UN Committee on the Rights of the Child '[e]xamine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of Australian companies and their subsidiaries regarding abuses to human rights, especially child rights, committed in the territory of the State party or overseas and establish monitoring mechanisms, investigation, and redress of such abuses, with a view to improving accountability, transparency and prevention of violations';
- b) ensure legal aid commissions and community legal centres are established and funded to ensure specialist children's legal services are available to advise and represent children in every jurisdiction (state/territory and federal);
- c) ensure access to community legal services that are culturally safe and ideally Aboriginal and Torres Strait Islander-led for Aboriginal and Torres Strait Islander children;
- d) implement all of the reforms recommended in the 2017 Independent Review of the Australian National Contact Point;
- e) establish a national compensation scheme for victims/survivors of Commonwealth crimes (including trafficking and slavery); and
- f) sign and ratify the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*.

Current gap/limitation

Children in Australia who might be adversely affected by Australian businesses, face significant legal, financial, procedural and practical barriers to access remedies for business-related human rights abuses.⁵⁷ These barriers include the complexities around the legal standing rights of children; a lack of knowledge and understanding of rights and remedies, and the costs of bringing cases. For children in foreign legal jurisdictions who have experienced business-related human rights abuses, these barriers are further exacerbated by complex rules governing applicable law, restricted interpretations of court jurisdiction and difficulties determining potentially liable parties and their location. Remedies are, with rare exceptions, generally confined to those available under local law and in practice, these are rarely effective.

Some avenues that are available in Australia for business-related abuses have been criticised for having significant deficiencies. For example, the Australian National Contact Point – a forum in the Treasury established in accordance with Australia's obligations under the OECD Guidelines on Multinational Enterprises – was found to be 'significantly lacking' against core criteria of visibility, accessibility, transparency and accountability, according to an independent review conducted in 2017.⁵⁸ Additionally, Australia has not signed and ratified the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure* that would provide children with an important avenue of complaint through the United Nations Committee on the Rights of the Child. It is essential that Australia establish or otherwise improve avenues through which children and families – both domestically and overseas – can pursue remedies in the event of business-related human rights abuses (see further **3.10 Remedies** in the Interim National Baseline Assessment).

05. What are Australia's current strengths in protecting children and their carers from actual or potential adverse impacts of business?

Building Better Business for Children also outlines a number of positive laws, frameworks and statutory office-holders that have been introduced by Australian Governments over the years. Although improvements can always be made, particularly with regard to monitoring and enforcement, these measures are noteworthy both for their demonstration of government commitment, and often in their novel approach to help workplace practices, and the functioning of markets, to respect and support the rights of children. These include:

1

Mandatory plain packaging of tobacco products

In 2011, the Australian Government introduced the world's first law to mandate the plain (or 'standardised') packaging of tobacco products.⁵⁹ The intervention has effectively reduced the attractiveness and appeal of tobacco products, including among young people, and has increased rates of quitting and attempts to quit among adult smokers.⁶⁰ The World Health Organisation considers this world-first measure to be 'an effective public health intervention'⁶¹ and numerous other countries have since introduced a similar plain packaging law, or are in the process of doing so (see further **3.6.2 Harmful products** in the Interim National Baseline Assessment).

2

A consumer protection framework

Australia has established numerous legal requirements relating to goods intended for use by children. A federal regulator - the Australian Competition and Consumer Commission (ACCC) – also exists to protect consumers, amongst other things. On numerous occasions, the ACCC has commenced court action to enforce Australia's laws regarding misleading and deceptive conduct in advertising, including against companies that produce products consumed by children (see further **3.5 Products** in the Interim National Baseline Assessment).

3

Work health and safety laws

The Commonwealth, States and Territories each have extensive work health and safety laws that are intended to help keep all workers, including young workers, safe at work. These laws provide, for example, that persons conducting a business or undertaking have a duty to, as far as reasonably practicable, ensure the health and safety of the workers they engage. They also create offences and penalties for certain breaches of these duties (see further **3.2.4 Protection of young workers** in the Interim National Baseline Assessment).

4

Protections in the context of employment and the Workplace Gender Equality Agency

There are considerable protections established under Australian law that benefit all employees, including young people and caregivers of children. These include:

- the National Employment Standards that mandate 10 minimum entitlements for all employees;
- mechanisms of educating and assisting workers, and carrying out compliance and enforcement activities through the office of the Fair Work Ombudsman;
- laws to help protect vulnerable workers from unscrupulous practices of employers, for example, when working in a franchise or undertaking work trials; and
- protections against discrimination on the basis of sex, family responsibilities, pregnancy and breastfeeding.

Additionally, the Workplace Gender Equality Agency (WGEA) is responsible for promoting and improving gender equality in Australian workplaces in accordance with the *Workplace Gender Equality Act 2012* (Cth) (see further **3.3 Decent work for young people / parents / caregivers** in the Interim National Baseline Assessment).

5

Mandatory reporting requirements to increase corporate transparency regarding 'modern slavery' risks

With increased public and parliamentary concern about slavery, human trafficking and exploitation – including in business supply chains – both the NSW Parliament and the Commonwealth Parliament passed laws in the course of 2018 with measures to address 'modern slavery'. The Commonwealth *Modern Slavery Act 2018* (Cth) requires entities with an annual consolidated revenue of more than \$100 million and that are based, or operating, in Australia, to report annually a 'Modern Slavery Statement'. The Statement must contain prescribed information on the risks of modern slavery (including the worst forms of child labour) in their operations and supply chains, and on their actions to address those risks. The Act also establishes a public repository and requires the Commonwealth to report. The *Modern Slavery Act 2018* (NSW) requires commercial organisations with an annual turnover of \$50 million and employees in New South Wales to publish a modern slavery statement. The Act also established the role of the NSW Anti-Slavery Commissioner who has important functions of identifying and providing assistance and support for victims of modern slavery, and providing public awareness about modern slavery, amongst other things (see further **3.1.4 Reporting** and **3.4.4 Protection** in the Interim National Baseline Assessment).

6

Statutory office holders to help protect children online and to help protect the privacy of consumers

In 2015, the Australian Government appointed the world's first eSafety Commissioner through the *Enhancing Online Safety Act 2015* (Cth). This remains the only government agency in the world solely dedicated to leading and coordinating online safety efforts nationally, and to helping keep its citizens safer online. A core function of the eSafety Commissioner is its work with industry to take action against and remove child abuse material, image-based abuse and serious cyberbullying material targeting an Australian child from online services. Additionally, the Office of the Australian Information Commissioner is an independent statutory agency which was established in 2010. Its responsibilities include conducting investigations and handling complaints regarding privacy, as well as providing advice to the public, government and businesses about privacy and freedom of information (see further **2.2 National Priorities** and **3.7.1 Privacy** in the Interim National Baseline Assessment).

7

Criminal law prohibiting child exploitation

The Australian Government has identified combating child exploitation online as a priority issue for action. Australian law criminalises online child exploitation, and these laws apply to corporations and, in certain circumstances, apply extraterritorially. In March 2018, the Federal Government announced the establishment of the Australian Centre to Counter Child Exploitation (ACCCE) using \$68.6 million from the 2018-19 Budget. The ACCCE is focused on combating child abuse and exploitation in Australia broadly (including online, and child sex offences overseas) and brings together the Australian Federal Police (AFP), relevant Commonwealth, State and Territory agencies, non-government organisations and industry to 'create a hub of expertise and specialist skills needed to disrupt, prevent and investigate exploitation'⁶² (see further **2.2 National Priorities** in the Interim National Baseline Assessment).

8

Measures to prevent 'orphanage tourism'

The Commonwealth *Criminal Code* criminalises human trafficking, slavery and slavery-like practices such as forced labour, as well as child sex offences committed overseas – and these offences may be applicable in cases involving child exploitation in overseas residential institutions.⁶³ The Australian Government announced in 2018 the 'Smart Volunteering Campaign' which aims to prevent 'Australians from inadvertently contributing to child exploitation through the practice of orphanage tourism, including by participating in misleading volunteer programs'⁶⁴ (see further **3.4.2 Extraterritoriality** in the Interim National Baseline Assessment). Additionally, the *Modern Slavery Act 2018* (Cth) requires certain large businesses in Australia to report annually on their actions to address modern slavery risks in their operations and supply chains, (including risks in their operations or supply chains of child trafficking in overseas residential institutions), and report on their actions to address these risks (see further **3.1.4 Reporting** in the Interim National Baseline Assessment).

9

The Department of Foreign Affairs and Trade (DFAT) Child Protection Policy

The Australian Department of Foreign Affairs and Trade has a Child Protection Policy that applies to all DFAT business, including activities of its funded partners. The policy articulates a 'zero tolerance' of child exploitation and abuse,⁶⁵ and states that 'DFAT will not knowingly engage—directly or indirectly—anyone who poses a risk to children.' It requires that, where contact with children is identified, an assessment of child protection risk be conducted.⁶⁶ It is unique because it expresses both a policy of the federal Government not to engage with businesses that pose a risk to children, and because it applies to certain private sector entities operating abroad (albeit, a relatively small number of private sector organisations receiving DFAT funding) (see further **2.2 National Priorities** in the Interim National Baseline Assessment).

10

Information for businesses on children's rights featured on the business.gov.au portal

The Australian Government's guidance for businesses on the business.gov.au website helps promote awareness that business operations can potentially affect the rights of children. A collaboration between the National Children's Commissioner and the Department of Industry, Innovation and Science, the online resource includes a brief overview of children as consumers and of children's rights (see further **1.4 Other Standards** in the Interim National Baseline Assessment).

Endnotes

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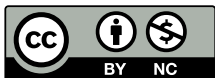
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