

10 September 2021

Ms Christine Kaufmann
Chair, Working Party on Responsible Business
OECD Centre for Responsible Business Conduct
2, rue André Pascal
75016 PARIS FRANCE

By email: rbc@oecd.org

Dear Ms Kaufmann

OECD Guidelines for Multinational Enterprises

Thank you for the opportunity to provide a submission to the Organisation for Economic Co-operation and Development (**OECD**)'s public consultation on the OECD Guidelines for Multinational Enterprises (**OECD Guidelines**).

The Law Council of Australia (**Law Council**) notes that this consultation is an opportunity to reflect on the position of the OECD Guidelines as a set of non-binding recommendations from government to business with respect to responsible business conduct. They represent a global framework for such conduct covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation. As a member of the OECD, Australia is committed to promoting the use of the OECD Guidelines and their effective implementation.

The Law Council has long supported implementation of the OECD Guidelines, in particular the role of Australia's National Contact Point. At the same time, the Law Council recognises that a number of developments have occurred since the OECD Guidelines were last revised in 2011 which may have a bearing on how they are implemented today.

The Law Council's attached submission responds to select survey questions relating to the challenges of the OECD Guidelines, and opportunities to strengthen the standards so that they remain fit for purpose. The Law Council is grateful for the assistance of its specialist Business and Human Rights Committee, as well as the Victorian Bar Association in the preparation of this submission.

If you would like to discuss this matter further, please do not hesitate to contact me directly on [REDACTED]. Alternatively, please contact Ms Sarah Swan, Policy Lawyer, on (02) 6246 3703 or at sarah.swan@lawcouncil.asn.au, in the first instance if you require further information or clarification.

Yours sincerely



Dr Jacoba Brasch QC
President

Attachment

Question 2 – Main challenges of the OECD Guidelines and their implementation in advancing Responsible Business Conduct now and in the future

In circumstances where many jurisdictions have moved towards greater national regulation of responsible business conduct,¹ the lack of encouragement within the OECD Guidelines to the development of such measures raises the risk of them becoming outdated and/or being superseded. The Law Council recommends that Part II on the implementation of the Guidelines be updated to encourage adhering countries to move towards greater national regulation on responsible business conduct as set out in the Guidelines.

Question 5 – Opportunities for strengthening the OECD's standards

The Law Council recognises that the OECD Guidelines include guidelines directed to the need for business entities to avoid adverse human rights impacts within their own operations, to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their operations and to carry out human rights due diligence,² as well as to contribute to the effective abolition of child labour and the elimination of all forms of forced or compulsory labour, and to take adequate steps to ensure that forced or compulsory labour does not exist in their operations.³

The specific issue of modern slavery⁴ cuts across these existing Chapters of the OECD Guidelines, but also raises issues not currently addressed. For example, human trafficking and forced marriage, and the roles that enterprise operations play in contributing to conditions that may encourage this conduct, are not presently addressed in the OECD Guidelines.

The Law Council submits that specific reference should be made in a standalone chapter or in Chapters IV and V to modern slavery and the fact that, given their cross-jurisdictional reach and market power, enterprises have a responsibility to tackle modern slavery in the context of business operations. The Guidelines should state that adhering governments expect:

- a) enterprises to take measures to identify and eliminate modern slavery in their operation and supply chains;
- b) regulatory compliance, due diligence and quality management processes undertaken by enterprises to include express consideration of modern slavery; and
- c) cooperation from enterprises in enforcing these measures with reporting standards and appropriate penalties.

¹ See eg OECD, [Draft report for the stocktaking of the OECD Guidelines for Multinational Enterprises](#) (2021) [45]. This is consistent with the UN Guiding Principles (Principle 3).

² OECD Guidelines (2011) Ch IV – Human Rights, 31.

³ Ibid, Ch V – Employment and Industrial Relations, 35.

⁴ The definition of 'modern slavery' under Australia's *Modern Slavery Act 2018* (Cth) includes a range of conduct. In general terms, it encompasses eight types of serious exploitation: trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive recruiting for labour or services, and the worst forms of child labour.