

Tackling child labour:

Three policy measures for
the Australian Government

Introduction

There are an estimated 168 million child labourers in the world today, and World Vision works with thousands of children either currently or formerly engaged in, or at risk of entering, child labour.

There are many divergent perspectives and constructs of childhood and child labour, and at least as many theories about whether and how to deal with the economic exploitation of children. As the world's largest child-focused international development agency, World Vision contends that child labour is both a symptom and a cause of poverty.

The only way to effectively tackle the problem is to address its underlying drivers. These include poverty, inequality, entrenched social attitudes about the roles and status of children, weak child protection systems, and an increasingly competitive global market that encourages a "race to the bottom" for ever-cheaper sources of labour and materials.

The complex reality of child labour defies simple solutions. Simply shutting down the plantations, factories and mines that utilise child labour is likely to push the problem further underground. It can also serve to exacerbate the poverty that drives children to work in the first place.

This does not mean, however, that there are not decisive actions that governments, businesses and communities can take. In the four years between 2008 and 2012, the estimated number of child labourers went from more than 215 million to fewer than 170 million.¹ A more than 20 percent reduction in the estimated number of child

labourers is excellent progress and testament to the success of global efforts to eliminate child labour.

However, more than one in 10 of the world's children over age five continue to toil in conditions that deprive them of their childhood, their potential and their dignity, and are harmful to their physical and mental development and the economies developing around them.²

Acknowledging the devastating effects of child labour, in September 2014, the Australian Senate voted in favour of a motion urging the Minister for Employment to raise the issue at the G20 Labour and Employment Ministers' meeting.

With Australia's Minister as chair, the 2014 Labour and Employment Ministers' communique articulated "a strong stand against forced and child labour".³ Following the meeting, the Australian Government acknowledged the symbolic significance of the assembled government ministers, collectively representing two-thirds of the world's population, signing on to a document about forced and child labour.⁴

While the value of this symbolism should not be discounted, it is concrete action that will accelerate the elimination of child labour. The Australian Government has an opportunity to contribute to this action and to continue to show leadership in global efforts to end child labour.

The eventual elimination of child labour will require a holistic approach addressing all of its underlying social, cultural and economic drivers.

But as long as there are markets that continue to accept child labour as an inevitability, there will be people who will seek to profit from the exploitation of children. As one of the world's leading economies, one of the most meaningful contributions that Australia can make to tackling child labour is to help reduce the global market for goods produced through the economic exploitation of children.

This report draws on World Vision's experience to propose three concrete, practical policy measures that the Australian Government can undertake.

- I. Develop a national action plan on business and human rights that clearly demonstrates the government's commitment to take a strong stand against forced and child labour and

provides clarity and guidance for Australian businesses about their responsibility to respect human rights.

2. Reform the Commonwealth Procurement Rules to require that companies bidding for government contracts demonstrate that they have in place appropriate measures to identify and address risks of child labour in their supply chains.
3. Create the legislative and regulatory environment to enable and require Australian companies to report on, and their directors to take responsibility for, the impacts that their global operations may have on children's right to be protected from economic exploitation.

1. International Labour Organization (2013) "Marking Progress against Child Labour – Global estimates and trends 2000-2012"

2. International Labour Organization (5 January 2015) "What is Child Labour" [online]. Available at: <<http://www.ilo.org/ipec/facts/lang--en/index.htm>>

3. G20 Australia 2014 (12 February 2015) "G20 Labour and Employment Minister Declaration Melbourne, 10-11 September 2014: Preventing structural unemployment, creating better jobs and boosting participation" [online]. Available at: <<https://g20.org/wp-content/uploads/2014/12/2014%20LEMM%20Declaration.pdf>>

4. Senator the Hon Eric Abetz (12 February 2015) "Joint media conference with Turkish Deputy PM at G20 Labour and Employment Ministerial Meeting, Melbourne" [online]. Available at: <<https://ministers.employment.gov.au/abetz/joint-media-conference-turkish-deputy-pm-g20-labour-and-employment-ministerial-meeting>>



These children in northern India work with their parents making polythene rope. Photo Annila Harris/World Vision

Definitions and figures

World Vision believes that every child is entitled to a childhood, with opportunities to play, socialise and attend school.

For the purposes of this discussion, a child is classified as any person under 18 years of age. We recognise that ideas about childhood and child-appropriate activities vary across national and cultural borders,⁵ but this definition is consistent with the main international conventions relating to child labour and child rights, including the Convention on the Rights of the Child and the Worst Forms of Child Labour Convention. With near-universal ratification of these conventions, it has been clearly demonstrated that “the international community has determined that persons under 18 are children and have the right to special protection”.⁶

While there can be benefits to children engaging in light and age-appropriate forms of work – vocational education opportunities, for example, or an after-school job – child labour refers to any

“work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development”.⁷

The Worst Forms of Child Labour Convention, 1999 (No.182), has been ratified by 178 countries, making it the most widely supported convention of the International Labour Organization (ILO) and demonstrating near-universal commitment to the goal of eliminating the most heinous forms of child labour.

These worst forms represent the most extreme types of child labour, including slavery, trafficking and debt-bondage, commercial sexual exploitation, and involvement in illicit activities such as illegal drug production and distribution. Worst forms also include hazardous forms of labour, involving work in other dangerous or unhealthy conditions that put children at risk of death, injury or ill health.

5. For an analysis of some of major debates about child labour, see Abebe, T. & Bessell, S. 2011, “Dominant Discourses, Debates and Silences on Child Labour in Africa and Asia”, *Third World Quarterly*, 32 (4), pp. 765-786

6. International Labour Organization (2011) “Children in Hazardous Work: what we know, what we need to do”, p. 3

7. International Labour Organization (5 January 2015) op. cit.



Children can be found working in small-scale mines across Africa, Asia and South America. Photo: Antonio Massipa/World Vision

Children in employment

This category consists of all children engaged in economic activity, in both formal and informal economies. All types of work performed by children, including light work, are categorised as children in employment. It is important to note that while child labour and worst forms of child labour are subsets of children in employment, not all forms of work performed by children should be considered child labour.

Child labour

In the absence of a standardised definition of child labour, the 2008 International Conference of Labour Statisticians undertook to develop a framework for statistical identification of child labour. The complete framework warrants exploration, and it essentially asserts that child labour is:

- any work carried out by children below the minimum age specified for light work (generally any child aged below 12 years is included in this category, although the framework allows for the fact that age group limits may differ across countries depending upon national circumstances);
- “regular work” (ie, work that cannot be considered “light work”) carried out by children within or below the age range specified for light work only (generally, children aged 14 and below are included in this category, but again allowing for different national circumstances in the definition of the age range);
- work that is designated as hazardous, and/or involves work for long hours or at night,

carried out by children within or below the age range specified as the general minimum working age (generally, any child aged 17 or below is included in this category); and

- any work that is classified as one of the worst forms of child labour (see below).

Worst forms of child labour

The worst forms of child labour, as defined by Article 3 of ILO Convention No.182, are:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

For more information, see International Labour Organization (2009) “Report of the Conference”, 18th International Conference of Labour Statisticians, Geneva, 24 November-December 2008.

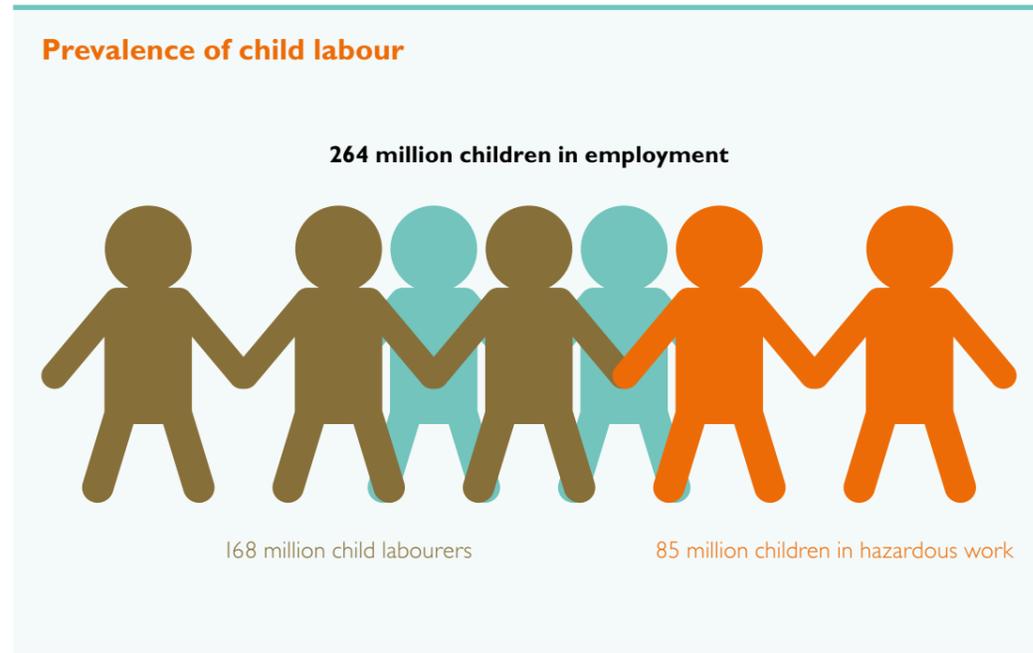


Figure 1: Hazardous work is a subcategory of child labour, which in turn is a subcategory of children in employment

As of 2012, the ILO estimates that more than 264 million children are in employment around the world. Of that figure, nearly 168 million work in conditions classified as child labour. These 168 million children represent more than 10 percent of the world's children aged five and above.⁸

Even more alarming is the fact that, of these 168 million children in labour, more than 85 million are found in hazardous work. That is, work that is classified as one of the worst forms of child labour; "which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".⁹

Child labour by region¹⁰

While the largest number of child labourers is found in Asia and the Pacific (approximately 78 million), children in sub-Saharan Africa are statistically the most likely to enter into child

labour, with more than 21 percent of all children in the region engaged in a form of child labour.

With approximately 12.5 million child labourers, Latin America and the Caribbean is home to far fewer than Asia and the Pacific or sub-Saharan Africa, but the region has the highest proportion of child labourers in hazardous work (approximately 9.6 million or 77 percent of child labourers). In comparison, nearly 49 percent of child labourers in sub-Saharan Africa are engaged in hazardous work, while that figure is closer to 43.5 percent in Asia and the Pacific.

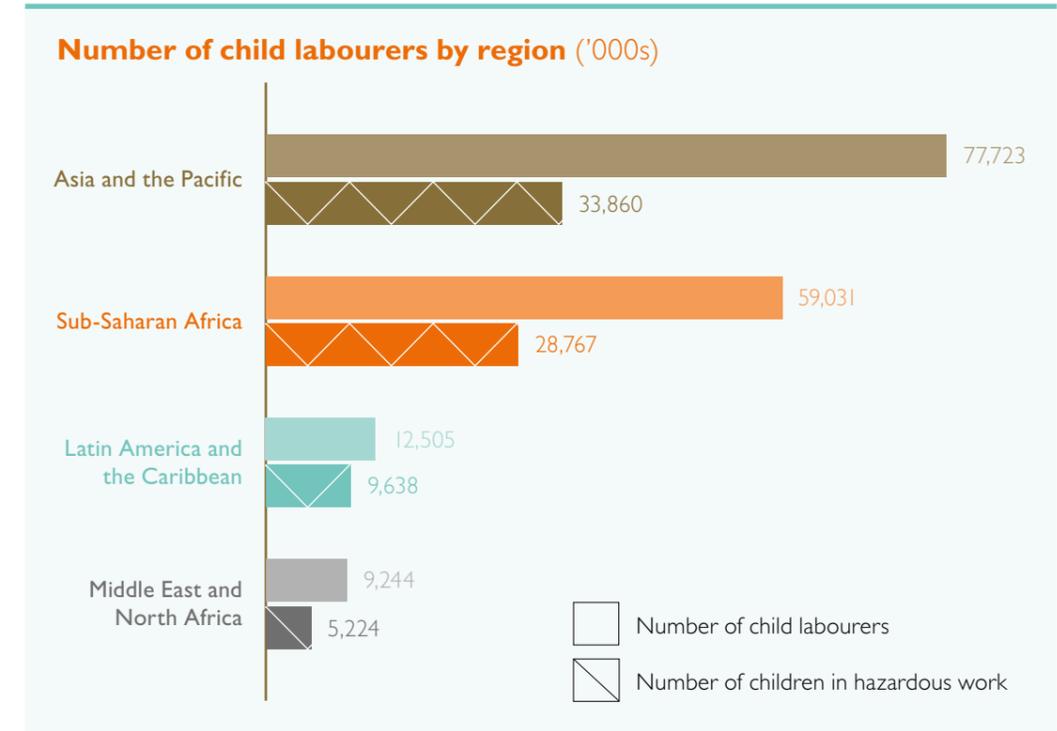
In 2012, there were an estimated 9.2 million children in labour across the Middle East and North Africa, with 5.2 million (56 percent of total child labourers) engaged in hazardous work. However, recent reports suggest that the problem may be worse than these figures suggest, exacerbated by the conflict in Syria.¹¹

8. International Labour Organization (2013) op. cit.

9. International Labour Organization (1999) "C182 Worst Forms of Child Labour Convention, Article 3(D)

10. International Labour Organization (2013) op. cit.

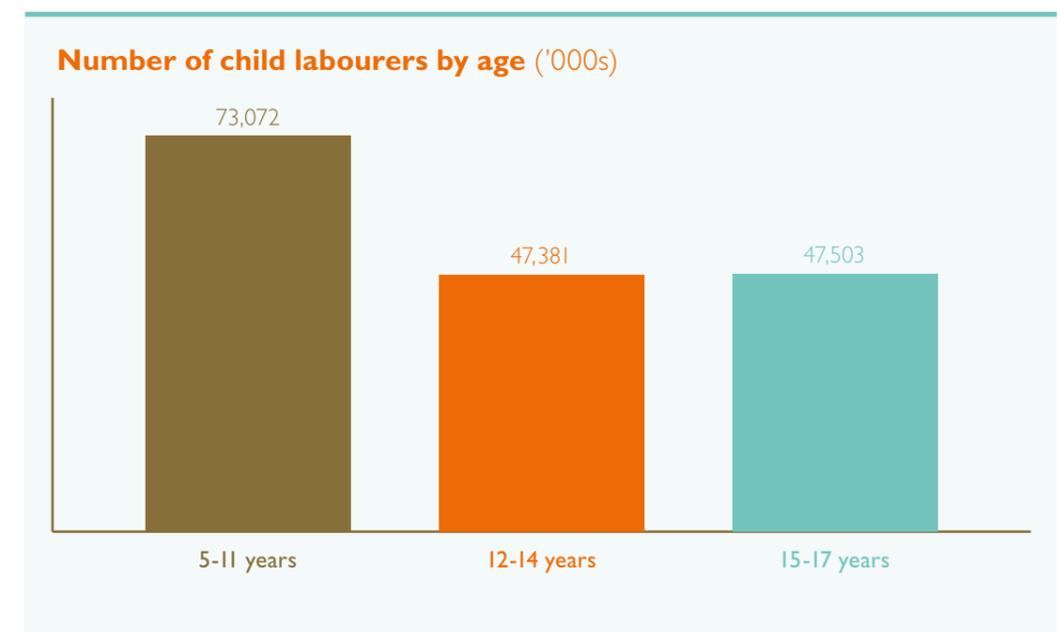
11. See, for example: United Nations High Commission for Refugees (19 December 2013) "Child Recruitment, Child Labour, Discrimination and Loneliness: the crisis of Syria's refugee children" [online]. Available at: <<http://www.unhcr.org/5297409e6.html>>



Child labour by age

Based on the ILO's 2012 estimates, 73 million (44 percent of total) child labourers are between five and 11 years of age. The remaining 56 percent are roughly equally divided between the 12-14 (47.3 million) and 15-17 (47.5 million) age groups.

Of the 85 million children estimated to be in a hazardous form of labour, 37.8 million are aged between five and 14 years, with more than half that number under the age of 12.



Impacts of child labour

Child labour by sector

Worldwide, the majority of child labourers (58.6 percent) are engaged in the agricultural sector. While much of this work consists of work on family farms, it also includes industrial-level agriculture, as well as hunting, forestry and fishing. Many of the widely reported instances of child labour in global value chains (for example, cocoa, palm oil, fishing and cotton harvesting) are included in this category.

Approximately 7.2 percent of child labourers are employed in the industrial sector, including manufacturing, construction and mining. This category includes children working in, for example, garment factories, brickworks and artisanal mines.

Together, the industrial and agricultural sectors account for more than 110 million (65.8 percent of total) child labourers, and are likely to be the two sectors upon which global public procurement can have the greatest impact.

These figures present some challenging facts and dispel some of the pervasive myths about child labour. For example, there appears to be

a persistent belief that the majority of work carried out by children is not particularly burdensome. We know that is not the case, however, as more than 63 percent of children in employment work in conditions that are classified as child labour. Of those, more than half work in hazardous conditions.

Another common assumption is that the majority of child labourers are near adulthood and “close enough” to an acceptable working age. Again, we know from the latest estimates that this is not the case. More than 71 percent of child labourers (approximately 120 million) are aged between five and 14 years.

This figure alone should be enough to mobilise the necessary global support and leadership to accelerate action on reducing the market for goods produced through child labour as well as addressing the root causes. Yet the high proportion of child labourers in the lower age groups is not only of moral significance, it is also highly relevant to the issue of a country’s job market, its stock of human capital and potential for growth.



Working in artisanal mines can impair children’s growth and development. Photo: Doudou Kajangu/World Vision

The impact of child labour on the accumulation of human capital

“Children subject to long working hours cannot attend school and therefore have limited opportunities to develop their human capital. At the aggregate level, this is likely to translate into weaker productivity growth which is the basis for improved living standards.

Second, certain forms of child labour (under hazardous conditions) may affect the health conditions and longevity of children, thereby also affecting human capital. The incidence of injuries among child labourers is as high as 17% in countries for which data are available.

Finally, and more importantly, the “worst forms” of work have devastating effects on the health and psychological development of the children involved in such practices.”

Organisation for Economic Co-operation and Development (2003) “Combating Child Labour: a review of policies”, p.9

The World Economic Forum (WEF), in its 2013 Human Capital Report, declared that a “nation’s human capital endowment – the skills and capacities that reside in people and that are put to productive use – can be a more important determinant of its long-term economic success than virtually any other resource”.¹²

The WEF’s human capital index, which measures the stock of human capital of 122 countries, is based on four pillars: Education, Health and Wellness, Workforce and Employment, and Enabling Environment. With the first three of these pillars directly impacted by child labour, it should not be surprising that many of the countries that rank lowest on the index are those with a high prevalence of child labour.

The majority of literature on the relationship between child labour and human capital tends to focus on education as the primary contributor to a child’s development of human capital. The evidence confirms that schooling attendance, performance and academic attainment are all generally lower for working children.¹³ Data published by the Organisation for Economic Co-operation and Development (OECD), for example, clearly demonstrate that economically active children “attend school less frequently than their non-working counterparts”.¹⁴

The health consequences of child labour are also significant and should not be examined in isolation. A child’s health can have far-ranging consequences for other aspects of human capital accumulation, including, but not limited to, the ability of a child to obtain a quality education.¹⁵

12. World Economic Forum (2013) “The Human Capital Report”, p. 1

13. Edmonds, E. 2008, “Child Labor”, pp.3607-3709 in Schultz, T. & Strauss, J. (eds.), Handbook of Development Economics, Elsevier

14. OECD (2003) “Combating Child Labour: a review of policies”, p. 22

15. Leinburger-Jabari, A., Parker, D. & Oberg, C. 2005, “Child Labor, Gender and Health”, Public Health Report, 120 (6): pp. 642-648

The impact of child labour on health

The World Bank,¹⁶ World Health Organization (WHO)¹⁷ and OECD¹⁸ have all documented the significant short- and long-term impacts that child labour has on child health. Child labour can affect the immediate health outcomes of children through any number of illnesses and injuries, but can also have extensive long-term developmental consequences.¹⁹ This is supported by the WHO, which cites serious immediate and long-term health consequences of child labour and explains that “exposure to occupational hazards may have acute consequences such as illnesses or injuries

but may not manifest until years after exposure, resulting in great health burden”.²⁰

World Vision’s research on trafficking in persons in Thailand found that nearly one in five Thai community members surveyed had observed non-Thai migrant children working in dangerous conditions in their community. The same research showed that of children and adolescents from the Lao People’s Democratic Republic who had migrated for work, for example, 55 percent of those surveyed felt their work placed them at risk of injury.

Empirical evidence demonstrates the link between child labour and negative child health outcomes. A study on children engaged in carpet weaving

in rural Pakistan, for example, has found children suffered musculoskeletal injuries, cuts and bruises and respiratory illness from the inhalation of fibres and chemicals.²¹

Other studies on the health effects of child labour include green tobacco sickness suffered by children harvesting tobacco in Malawi;²² severe injuries suffered by child street-labourers in Latin America;²³ and heat exposure, insect bites and toxic chemical exposure suffered by children working in India’s plantation and agriculture sectors.²⁴

The negative health impacts of child labour are not limited to a child’s physical wellbeing; the long-term psychosocial effects of child labour must also be considered.²⁵ The ILO outlines how child labour, and in particular hazardous work, has lasting psychological, social and intellectual impacts, which can have drastic effects on a child’s development.²⁶

There are numerous empirical studies supporting this, including a study of child labourers in southern Brazil, which showed that child labourers in domestic services exhibited behavioural problems at a level much higher than children not working.²⁷ Another study, of child scavengers in the Philippines, demonstrates a “progressive decline” of the “intellectual functioning” of child labourers and an increased school dropout rate.²⁸

The impact of child labour on local and global economies

There is general consensus regarding “a very strong cross-country negative correlation between child labour and per capita GDP” and, more specifically, a strong negative correlation between labour force participation of children aged 10-14 and GDP per capita.²⁹ The World Bank also acknowledges this negative relationship, observing an “inverse relationship between GDP per capita and child labour participation rates”.³⁰

Further, the International Trade Union Confederation asserts that the availability of cheap child labour drives down wages and “also increases adult unemployment, especially among young workers, as children can be employed to do the same job for lower pay”.³¹

A review of the literature supports this claim, and there is a general consensus that children’s participation in labour markets can negatively affect the level of adult wages.³² For example, an ILO study in Uttar Pradesh, India, found that children labouring in the carpet manufacturing industry, who were hired at lower wages, “depressed the going wage rate for adult workers”.³³

Basu and Van³⁴ articulate an economic model that suggests participation in child labour has a depressive effect on adult wages, which then results in households relying on child labour to supplement household income.



In Mozambique, children dig and sift silt from riverbeds in search of gold. Photo: Antonio Massipa/World Vision

16. Beegle, K., Dehejia, R. & Gatti, R. 2004, “Why should we care about child labour? The Education, Labour Market, and Health Consequences of Child Labour”, World Bank Policy Research Working Paper, No.3479

17. World Health Organization (2005) (13 March 2014) “The Global Occupational Health Network (GOHNET) Newsletter”, Issue 9, Summer [online]. Available at: <http://www.who.int/occupational_health/publications/newsletter/Gohnet9eng.pdf?ua=1>

18. OECD (2003) “Combating Child Labour: a review of policies”, p. 22

19. For detailed analysis of the public health implications of child labour, see Fassa, A., Parker, D. & Scanlon, T. 2010, “Child Labour: A Public Health Perspective”, Oxford University Press, New York, USA

20. World Health Organization (2005) op. cit.

21. Awan, S., Nasrullah, M. & Cummings K.J. 2010, “Health hazards, injury problems, and workplace conditions of carpet weaving children in three districts of Punjab, Pakistan”, International Journal of Occupational and Environmental Health, 16 (2): pp. 115-121

22. Plan International (2009) “Hard work, long hours and little pay”

23. Pinzon-Rondon A.M., Koblinsky S.A., Hofferth, S.L., Pinzon-Rondon, C.E. & Briceno, L. 2009, “Work related injuries among child street-labourers in Latin America: prevalence and predictors”, Revista Panamericana de Salud Pública, 2009, 36 (3): pp. 235-243

24. Agnihotram, R.V. 2005, “An Overview of Occupational Research in India”, 9 (1): pp. 10-14

25. Benvegna, L.A., Fassa, A., Facchini, L., Wegman, D. & Dall’Agnol, M. 2005, “Work and Behavioural Problems in Children and Adolescents”, International Journal of Epidemiology, 34: pp. 1417-1424

26. ILO (2011) “Children in Hazardous Work: what we know, what we need to do”

27. Benvegna et al. op. cit.

28. Fassa et al. op. cit.

29. Barnett, R. & Espinosa-Vega, M. 2005, “Barriers to Capital Accumulation and the Incidence of Child Labor”, Working Paper, International Monetary Fund, p. 1

30. Barnett and Espinosa-Vega, ibid.

31. International Trade Union Confederation (2010) “Union View”, No.18, p. 8

32. Grimsrud, B. 2001, “What Can Be Done about Child Labour? An Overview of Recent Research and Its Implications for Designing Programs to Reduce Child Labor”, Social Protection Discussion Series, The World Bank, p. 6

33. Levison, D., Anker, R., Ashraf, S. & Barge, D. 1996, “Is Child Labour Really Necessary in India’s Carpet Industry?” Labor Market Paper, No.15, ILO, Geneva

34. Basu, K. & Van, P.H. 1998, “The Economics of Child Labor”, American Economic Review, 88: pp. 412-427

However, Basu and Van also demonstrate that parents will usually withdraw their children from the labour market once the household income surpasses a certain threshold in the form of adult wages.³⁵ This supports the assertion that not only does a reduction in child labour support an increase in adult wages, but also that higher adult wages can result in a reduction in child labour.

This assertion is also supported by Goto,³⁶ who takes the analysis further by demonstrating how reductions in child labour, accompanied by an increase in household income, can have a ripple effect. Reduced child labour leads to the emergence of new social norms that oppose child labour, leading to even greater reductions in child labour participation rates.

Of course, child labour has much broader and longer-term economic impacts than the immediate effects on individual household incomes. Empirical evidence directly links child labour to a wide range of other negative impacts on macroeconomic growth, including:

- depressed wages, which, when combined with capital market imperfections, constrain entrepreneurship and lead to an increasingly stagnant, low-wage economy;³⁷
- increased adult unemployment in some cases³⁸ (a study in Mexico, for example, demonstrated that a decrease in the number of children engaged in the corn industry was accompanied by an increased demand for adult labour³⁹);

- slowing technological progress, as the availability of cheap child labour reduces incentives for employers to modernise production processes;⁴⁰
- problems attracting foreign inward investment (a high prevalence of child labour has been shown to deter foreign direct investment⁴¹); and
- reduction in earnings (engagement in child labour reduces potential lifetime earnings by an estimated 13-20 percent and increases the likelihood of being poor in later life by as much as 30 percent⁴²).

The fact that more than 10 percent of the world's children aged five years and above are working in unacceptable conditions to the detriment of their health, education and childhood should be enough to motivate action. However, child labour does not just harm the health, safety and morals of children; it harms the very economies that are developing around them.

This does not only have implications for the countries in which the majority of child labourers reside. In our increasingly interconnected world, low-wage stagnant economies, decreased technological progress and reduced human capital potential – all associated with and exacerbated by child labour – can wreak havoc on every major industry and on global economic growth.

35. Basu and Van, *ibid.*

36. Goto, H. 2011, "Social Norms, Inequality and Child Labor", *The Journal of Socio-Economics*, 40 (6): pp. 806-814

37. Bangere, A. & Newman, A. 1993, "Occupational choice and the process of development", *Journal of Political Economy*, 101, pp. 274–298

38. Diamond, C. & Fayed, T. 1998, "Evidence on substitutability of adult and child labour", 34 (13): pp.62-70, p. 1

39. Doran, K. 2013, "How Does Child Labor Affect the Demand for Adult Labor? Evidence from Rural Mexico", *Journal of Human Resources*, 48 (1.3): pp. 702-735

40. Galli, R. 2001, "The Economic Impact of Child Labour", *The Institute for Labour Studies, International Labour Organization, Geneva*

41. Braun, S. 2006, "Core Labour Standards and FDI: Friends or Foes? The Case of Child Labour", *Institute for Economic Theory, Humboldt-Universität zu Berlin*

42. Ilahi, N., Orazem, P. & Sedlacek, G. 2005, "How Does Working as a Child Affect Wage, Income and Poverty as an Adult?", *The World Bank*

Three ways for the Australian Government to help tackle child labour



Child labour can be found at almost every stage of a global value chain, including production of raw materials.
Photo: Simon Peter Esaku/World Vision

1. Develop a national action plan on business and human rights

In recent years, the business community has become increasingly aware of the myriad risks associated with human rights abuses, including use of child labour, in their global operations. However, until recently, human rights have generally been seen as the exclusive domain of the state, and the role of business in ensuring that people's rights are respected and protected has been murky at best.

In 2011, the UN Human Rights Council brought some clarity to the issue by unanimously endorsing the UN Guiding Principles on Business and Human Rights (UNGPs). It is the duty of states, the UNGPs explain, to protect human rights, and the responsibility of business to respect human rights.

A crucial part of protecting human rights, and making clear the state's expectations that business respect human rights, is the development of a national action plan on business and human rights. At the time of writing, at least 30 countries have either completed or commenced development of their national action plans, while the Australian Government has yet to commit to do so.

The UNGPs were widely welcomed by business leaders around the world,⁴³ and business and civil society have been actively engaged in the development of many of the existing national action plans. Far from being seen as a burden on business, the UNGPs offer clarity and assurance that governments support businesses in meeting their responsibility to respect human rights.

This section makes the case that the Australian Government should work with business and civil society to develop a national action plan on business and human rights that clearly articulates the government's commitment to taking a strong stand against forced and child labour.

Growing awareness of the relationship between business and human rights

Since at least the 1990s there has been widespread condemnation of the use of "sweatshop" and child labour in the manufacturing of products, particularly apparel. We are now more aware, however, that exploitative labour practices may be found at almost every stage of a global value chain. No efforts to eradicate the market for child labour can be taken seriously unless the extraction and production of raw materials and components are targeted as much as the manufacturing and assembly of the final product.

The OECD estimates that more than 50 percent of the world's manufacturing imports are primary goods, parts and components, or semi-finished products.⁴⁴ While the emergence of global value chains presents opportunities for Australian companies to reduce costs and increase profits, as well as opportunities for developing countries to participate more fully in the global economy, it also makes it more challenging to guarantee the integrity of supply chains. Participation in global value chains provides Australian businesses with great opportunities, but also exposes them to increased risks of human rights abuses, including use of child labour throughout their supply chains.

Recently noted examples revealing the use of child labour at the early stages of global value chains include cotton picking,⁴⁵ processing of palm oil,⁴⁶ copper and cobalt mining,⁴⁷ rubber extraction,

salt production, and the harvesting and processing of seafood.⁴⁸

A January 2014 article⁴⁹ on the use of child labour in mica mines in the Indian state of Jharkhand emphasises the mineral's use in cosmetics. However, mica is more commonly used as a filler and extender in building materials, as a key ingredient in paint, in automotive brake linings and clutch plates, and as an electrical insulator in electronic devices.⁵⁰

Of course, mica is just one example of a raw material with near countless industrial applications that has been linked to child labour. Palm oil, for instance, can be found in a wide range of foods, but also in soaps and detergents, pharmaceutical products and oleochemical applications such as biodiesel production.⁵¹

Similarly, while cotton is most known for its use in garment manufacturing, it is also used in the production of fishing nets, bookbinding and archival paper, and feed for cattle. Cottonseed oil is also found in a range of food products, pharmaceuticals, plastics, and a cottonseed byproduct is even used in the production of bank notes.⁵²

Many companies have made encouraging steps towards better addressing the risks of forced and child labour in their supply chains. This reflects not only a moral commitment to respecting human rights, but a growing awareness of the risks that association with human rights abuses can pose to a company and its shareholder value.



Exhaustion, heat stroke and malnutrition are common amongst children working on cotton farms. Photo: Collins Kaumba/World Vision

43. Ruggie, J.G. (30 May 2011) "Presentation of Report to United Nations Human Rights Council", Geneva

44. OECD (2013) "Interconnected Economies: benefitting from global value chains" (preliminary version)

45. Kandiyoti, D. 2009, "Invisible to the World: the dynamics of child labour in the cotton sector of Uzbekistan", School of Oriental and African Studies, University of London

46. International Labour Organization (10 November 2013) "Child Labor in Plantation" [online]. Available at: <http://www.ilo.org/jakarta/areasofwork/WCMS_126206/lang-en/index.htm>

47. World Vision DRC (2013) "Child Miners Speak: key findings on children and artisanal mining in Kambove DRC"

48. International Labour Organization (2005) "Good Practices and Lessons Learnt in Combatting Hazardous Work in Child Labour"

49. Doherty, B. & Whyte, S. 2014, "India's Mica Mines: the shameful truth behind mineral make-up's shimmer", The Sydney Morning Herald, 19 January

50. Dolley, T.P. 2010, "Mica", 2008 Minerals Yearbook, United States Geological Survey

51. Malaysian Palm Oil Board (31 December 2013) "Applications" [online]. Available at: <<http://www.palmoilworld.org/applications.html#>>

52. Cotton Australia (31 December 2013) "Uses of Cotton" [online]. Available at: <<http://cottonaustralia.com.au/australian-cotton/basics/uses-of-cotton>>

“Human rights controversies including modern slavery and child labour could be detrimental to company shareholder value, through reduced sales or business opportunities, or diversion of senior management and board time and effort. Conversely, a strong reputation could enhance brand value and sales.

Campaigns by NGOs (Non-Governmental Organizations) and the media increasingly target well known retail brands. Increasing transparency resulting from disclosure regulation aims to provide information to help buyers to make choices.

Companies could be excluded from procurement opportunities, partnerships or project opportunities, as governments and corporates implement supply chain policies, or attempt to avoid controversial suppliers or partners ...

... Conversely, a strong reputation could enhance brand value and sales.”⁵³

In response to these concerns, there has been a proliferation of guidelines and codes, as well as private and business-led certification labels, all of which start with an underlying set of standards or aims.

For some, such as GoodWeave, a network of not-for-profit organisations that maintains a labelling process to certify non-use of child labour in the production of rugs and carpets, the elimination of child labour in the supply chain is the primary motivation. For others, such as the Ethical Trading Initiative and the Fair Labor Association, it is one of a number of goals related to human rights and labour rights. While the elimination of child labour may not be the primary goal of organisations such as Fairtrade International and Rainforest Alliance, participant companies will nevertheless sign up to criteria relating to non-use of child labour as part of a package of ethical standards.

While many of these initiatives provide clear and valuable guidance about how businesses can address the risks of child labour and other human rights abuses in their global operations, they do not firmly establish the extent to which businesses

are responsible for respecting human rights. In a world in which 37 of the 100 largest economies are corporations, and, when comparing revenue to GDP, “Sinopec–China Petroleum is bigger than Nigeria and Chile, and Volkswagen Group is bigger than Greece and Pakistan,”⁵⁴ old ways of thinking about human rights as the exclusive domain of governments are neither appropriate nor practical.

What had been missing, at least until recently, was a “single, coherent set of standards addressing the respective responsibilities of states and corporations with regards to business impacts on human rights”.⁵⁵

UN Guiding Principles on Business and Human Rights

In 2011, the United Nations Human Rights Council unanimously endorsed the UNGPs, “stressing that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State, [and] emphasizing that transnational corporations and other business enterprises have a responsibility to respect human rights”.⁵⁶

The UNGPs were developed through more than six years of research, led by Harvard University’s Professor John Ruggie, and involved in-depth consultation with business, governments and civil society.⁵⁷ Prior to the Human Rights Council’s endorsement, “scores of individual companies, corporate law firms and institutional investors [took] the unusual step of issuing public statements of support for the Guiding Principles”.⁵⁸ The International Trade Union Confederation also welcomed the adoption of the UNGPs.⁵⁹

The UNGPs do not represent new international law obligations. Rather, they articulate “the implications of existing standards and practices for states and businesses; integrating them within a single, logically coherent and comprehensive

template; and identifying where the current regime falls short and how it could be improved”.⁶⁰ This template takes the form of a three-pillared, Protect, Respect, Remedy framework, consisting of:

- the state duty to protect human rights;
- the corporate responsibility to respect human rights; and
- the need for rights and obligations to be matched to appropriate and effective remedies when breached.

Most importantly, the UNGPs provide clarity and certainty, for business, governments and civil society, about the respective roles and responsibilities of governments and businesses in ensuring human rights are protected and respected.

An Australian national action plan on business and human rights

As previously explained, the UNGPs clearly establish that it is the duty of states to protect human rights, while business has a responsibility to respect human rights.

At its most basic level, this means that companies are expected to avoid causing or contributing to human rights abuses and take steps to “prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not directly contributed to those impacts”.⁶¹

States, on the other hand, are required “to take all reasonable measures to investigate, prevent, punish and redress business-related human rights violations through adjudication, legislation, policies, and regulations”.⁶²



The UN Guiding Principles provide clarity for business and governments on their responsibilities for protecting human rights. Photo: Annila Harris/World Vision

53. Prior, E. 2014, “Modern Slavery & Child Labour: Assessing Risks in Global Industries and ASX-Listed Companies”, Citi Research

54. De Felice, D. & Graf, A. 2015, “The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights”, J Human Rights Practice, 7 (1) pp. 40-71

55. Ball, R. 2014, “An Australian National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights”, Human Rights Law Centre

56. Human Rights Council Res. 17/4, U.N. Doc. A/HRC/RES/17/4 (June 16, 2011)

57. Ruggie, J.G. 2013, “Just Business: Multinational Corporations and Human Rights”, WW Norton & Co., New York

58. Ruggie, J.G. (30 May 2011) op. cit.

59. International Trade Union Confederation (2012) “The United Nations ‘Protect, Respect, Remedy’ Framework for Business and Human Rights and the United Nations Guiding Principles for Business and Human Rights: a guide for trade unionists”

60. Ruggie, J.G. (30 May 2011) op. cit.

61. Ball, op. cit.

62. Ball, ibid.

An important part of meeting their duty to protect is that governments are expected to promote respect for human rights in all their commercial dealings (UNGP Six) and clearly convey the expectation that businesses will respect human rights throughout their global operations (UNGP Two).

The main mechanism through which governments are implementing the UNGPs and clearly conveying these expectations is through the development of national action plans, which can:

- help to coordinate efforts across the whole of government;
- help to avoid duplication or inconsistencies, thereby contributing to efficient use of resources;
- articulate to stakeholders a coherent policy position over a very complex and broad-ranging issue;
- create platforms for dialogue between government, business and civil society; and
- establish a process for responding to emerging needs and ensuring accountability with regards to the steps taken to implement the UNGPs.⁶³

To date, Denmark, Finland, Italy, Lithuania, the Netherlands, Spain and the United Kingdom have all published national action plans for the implementation of the UNGPs. More than 20 other countries, including the United States, Norway, France, Germany and Jordan, have national action plans in progress.



A national action plan on business and human rights should be central to Australia's strong stand against child labour. Photo: Annila Harris/World Vision

63. The Danish Institute for Human Rights and The International Corporate Accountability Roundtable (2014) "National Action Plans on Business and Human Rights. A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks"

Despite having co-sponsored the UN Human Rights Council resolution endorsing the UNGPs, however, the Australian Government has not yet incorporated them into national law or policy and has signalled no intention to develop a national action plan.

Development of a national action plan would be an important step towards a clear, coherent, whole-of government approach to business and human rights, and should be central to the Australian Government's strong stand against forced and child labour. It would strengthen human rights protections by filling governance gaps, and would be good for business by providing clarity and assistance for companies struggling to navigate human rights risks in their global operations.

World Vision urges the Australian Government to work across government and with business and civil society to develop a national action plan, drawing on the experiences of the 30 or more countries that have already produced or are currently working on their own plan.

World Vision would further expect to see the Australian national action plan strongly reflect the government's commitment, as articulated by the Minister for Employment following the G20 Labour and Employment Ministers' meeting, to take a strong stand against forced and child labour.

Case study: Child miners in Kambove, Democratic Republic of Congo

It has been estimated that as many as 30,000 miners under the age of 15 work in the artisanal mines of the Katanga Copperbelt of the Democratic Republic of Congo (DRC), with some labourers as young as six years old.*

World Vision's research into artisanal mining in the Kambove region of the DRC found that 19 percent of children surveyed reported seeing a child die on an artisanal mining site and 67 percent experienced frequent or persistent coughing.

Many of the minerals mined in southern Katanga are hazardous to the long-term health of child miners and the wider community. Cobalt, for example, has been linked to heart, thyroid and lung damage, and one study cited in the report found cobalt in 87 percent of children living close to a Katanga mining site. Critically, the study showed far higher levels of toxic metals in children compared to adults, even where the children had less direct exposure to the metals.

In interviews with child miners and their parents, World Vision researchers heard reports of respiratory disease, diarrhoea and vomiting, and fevers from ingesting dirty water. There are also serious concerns about the health impacts of radiation exposure from the uranium found in the copper and cobalt.

High rates of anaemia, frequent coughing, abdominal bloating, eye pain and skin irritation were all reported, as well as cuts and fractures suffered while working at the mine sites. There have also been numerous reports of girls suffering from genital infections after working waist-deep in pools of acidic water.

Source: World Vision DRC (2013) "Child Miners Speak: Key Findings on Children and Artisanal Mining in Kambove DRC"

* Tsurukawa, N., Prakash, S., & Manhart, A. 2011, "Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo", Oeko-Institut e.V., Freiburg, Germany



Children in Kambove, DRC, work as artisanal miners, one of the worst forms of child labour. Photo: Doudou Kajangu/World Vision

2. Reform public procurement

The Commonwealth Government is one of the largest and most influential consumers in Australia, spending around \$50 billion each year, with almost 40 percent of that spent on physical goods.⁶⁴ As outlined in the previous section, many of the goods that individuals and governments purchase have long and complex supply chains that may involve forced and child labour.

When choosing between companies bidding for a public contract, “value for money” is the key guiding concept, coupled with an emphasis on open, competitive tender processes. In this way, governments act not as regulators of companies but as customers.

Stumberg et al. propose that, given the vast scale of public procurement, “government does not merely purchase in the market; it creates markets”.⁶⁵ The size of these markets, combined with a narrow cost-benefit interpretation of “value

for money” (often conflated with “lowest possible price”), can engender a ruthless environment of low-bid competition. In such an environment, human rights abuses, including use of child labour, can be overlooked, particularly by subcontractors who are under pressure to keep costs low.

Howe suggests that “even where governments adopt an ethical purchasing policy, purchasing officers may give such policies very little weight compared to [the narrowly interpreted] value for money”.⁶⁶

Recently passed legislation in the European Union, for example, permits the application of a new criterion, Most Economically Advantageous Tender, which allows public authorities to put more emphasis on factors that are not directly linked to the lowest possible price, including social aspects.⁶⁷

However, even this very positive step only allows states to apply social criteria and there are questions about whether any resulting national legislation would be effective at ensuring respect for labour rights. This is especially of concern at the early stages of a product’s global value chain, and, “particularly in the case of supply contracts for products that are already ready for sale, the production stage could be claimed to have occurred prior to the actual performance of the contract”.⁶⁸

Given the scale of expenditure, of course governments have to balance a number of considerations, including a desire to procure the best possible product at the lowest possible price. It is the very scale of public procurement markets, however, that provide governments with the opportunity to use their influence as significant market actors. Governments can make clear their expectations as consumers and make a real impact on the global demand for goods produced through child labour.

In addition to these market-based incentives, public procurement provides governments with an opportunity to lead by example. McCrudden argues that:

“The inclusion of social and environmental conditions should not only be seen as being about the consequences of procurement decisions and the leverage those consequences give us on policy. When the government makes purchases, it acts in the name of its citizens and ought to hold up certain standards.”⁶⁹

The international legal and policy context

Under both customary law and various treaty obligations, states are legally required to address child labour, as well as other forms of child exploitation and human rights abuses. Recent international guidance has helped to shed further light on the role of the state and its regulatory responsibilities in relation to human rights issues arising in the context of business activities, including child labour.

Public procurement is explicitly referenced in the UNGPs, and is important in that context for three main reasons.

1. As part of their duty to protect, states should promote respect for human rights in all their commercial dealings (see Principle Six⁷⁰).
2. There needs to be policy coherence that ensures that government authorities have both the institutional environment and the support with which to understand and act in a manner compatible with a government’s human rights obligations (see Principle Eight⁷¹).
3. The three pillars of the “Protect, Respect and Remedy” framework are not intended to stand alone, but should be mutually supportive and reinforcing. Public procurement provides an opportunity for states to support the corporate responsibility to respect (see Principle Three⁷²).



64. Department of Finance (12 February 2015) “Statistics on Australian Government Procurement Contracts” [online]. Available at: <<http://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>>

65. Stumberg, R., Ramasastry, A. & Athreya, B. 2013, “Government Procurement: Promoting Procurement Policies that Ensure Business Respect for Human Rights”, (Summary of Forthcoming Report), International Corporate Accountability Roundtable, p. 5

66. Howe, J. 2011, “The Regulatory Impact of Using Public Procurement to Promote Better Labour Standards in Corporate Supply Chains”, University of Melbourne Legal Studies Research Paper No. 528. Retrieved 7 May 2015 from SSRN database

67. European Parliament (17 January 2014) “New EU-procurement rules to ensure better quality and value for money” [online]. Available at: <<http://www.europarl.europa.eu/news/en/news-room/content/20140110IPR32386/html/New-EU-procurement-rules-to-ensure-better-quality-and-value-for-money>>

68. Electronics Watch (30 January 2014) “New EU Directive: Good news for socially responsible public procurement” [online]. Available at: <http://electronicswatch.org/en/new-eu-directive-good-news-for-socially-responsible-public-procurement_24085>

69. McCrudden, C. 2007, “Buying Social Justice: Equality, Government Procurement, & Legal Change”, Oxford University Press, p. 378

70. “States should promote respect for human rights by business enterprises with which they conduct commercial transactions.”

71. “States should ensure that government departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.”

72. “In meeting their duty to protect, States should: a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.”

Further, in 2013, the Committee on the Rights of the Child (CRC) adopted General Comment No. 16 (2013) on state obligations regarding the impact of the business sector on children's rights. The statement uses the framework established by the UNGPs to clarify state responsibilities under the CRC with respect to business.

General Comment No. 16 is very clear about the fact that, "States are not relieved of their obligations under the Convention and its protocols when their functions are delegated or outsourced to a private business or non-profit organisation."⁷³ It further explains, "States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children's rights ..."⁷⁴

Ethical public procurement

Australian governments have a history of using public procurement to advance social goods. In the lead-up to the Sydney Olympic Games in 2000, for example, the Sydney Olympic Games Organising Committee worked with labour organisations to establish a code which "required all manufacturers or suppliers of licensed products to certify that they and their contractors and subcontractors (not limited to 'onshore' businesses) met specified minimum labour standards".⁷⁵

More recently, in March 2015, the Commonwealth Government announced a new procurement target which will see the proportion of government contracts awarded to Indigenous businesses increase from less than one percent to at least three percent of total federal procurement contracts by 2020.⁷⁶

Around the world, many states and municipalities are making moves to reform their public procurement policies to better account for both social and environmental concerns. World Vision is encouraged by the general trend in this direction and the emergence of a concept widely referred to as "socially responsible public procurement".

Yet unlike specific models of ethical certification – such as Fairtrade, which guarantees (among other things) verified compliance with the ILO Core Labour Standards – terms like "socially responsible public procurement" and "ethical procurement" offer no assurances. The mere existence of an "ethical public procurement" policy provides no guarantees as to the level of commitment to non-use of child labour, robustness in verification, or even that non-use of child labour is included in eligibility or contracting criteria.

For example, in 2013, the Australian Prime Minister announced a new strategy on ethical public procurement. "She announced that the finance department would put new processes in place to ensure that government purchasing officers do all they can to avoid slavery in their supply chains."⁷⁷

However, this places the responsibility for identifying risks of forced and child labour on the bureaucracy, as businesses bidding on government contracts are still not required to demonstrate whether they conduct human rights due diligence on their supply chains.

Instead, Commonwealth Government procurement officers are encouraged "where possible, [to] check supply chains to ensure exploited labour has not been used".⁷⁸ It is "not clear how embedded the changes have become"⁷⁹ and there has yet to be any publicly available reporting on whether and how Commonwealth procurement officers are utilising this guidance.

Further, despite containing a section titled "Efficient, effective, economical and ethical procurement", the Commonwealth Procurement Rules, which were issued in July 2014, make no reference to the guidance issued by the Attorney-General's Department. Moreover, they make no mention of requiring, or even encouraging, procurement officers to avoid contracting with companies linked to child labour or other human rights abuses.

As Professor Ruggie advised in his report to the UN Human Rights Council, "States should not assume that businesses invariably prefer, or benefit from State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights."⁸⁰

World Vision proposes that reforming Australia's Commonwealth Procurement Rules to require companies to demonstrate that they have in place appropriate measures to identify and address child labour in their supply chains is a part of this "smart mix".

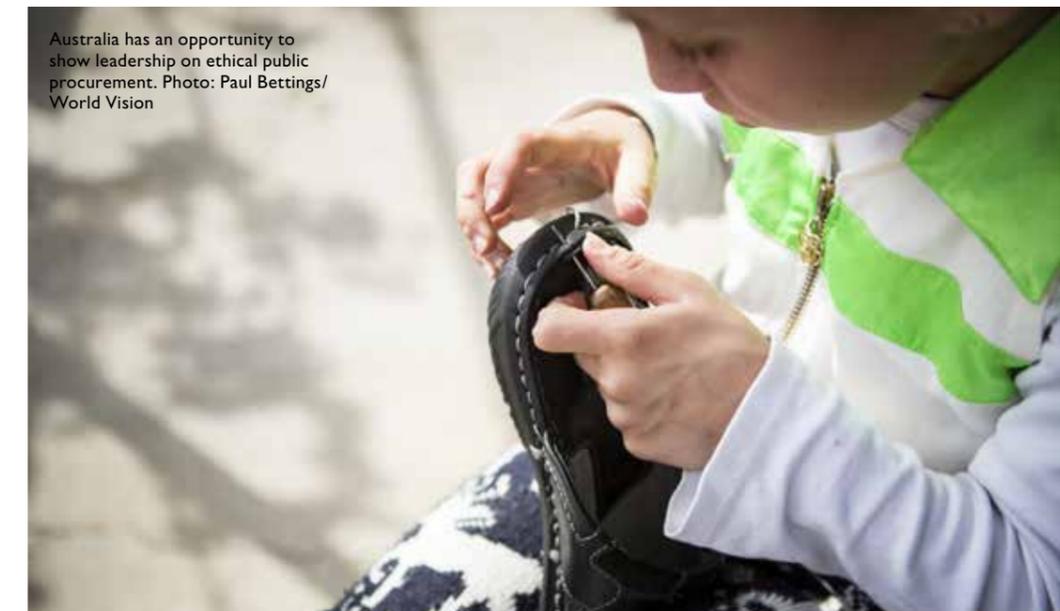
Used in such a way, the inclusion of social criteria in public procurement processes sends a powerful message about the standards required of companies with which the government does business. It is also a useful way of raising those standards in a non-prescriptive way. Rather than telling companies what to do, governments can support and encourage corporate efforts to better detect and address instances of child labour in their supply chains while also providing a clear business incentive to do so.

In 2014, World Vision called on the G20 to adopt a common approach to addressing child labour in public procurement. It was under Australia's

presidency that the G20 Labour and Employment Ministers committed to taking a strong stand against forced and child labour.⁸¹

Australia now has an opportunity to show leadership by developing and promoting a gold-standard approach to ethical public procurement. Such an approach should meet the following requirements.

1. Be grounded in the Protect, Respect, Remedy framework as articulated in the UNGPs and General Comment No. 16 in respect of the Convention on the Rights of the Child.
2. Ensure that public authorities follow the example set by leading multi-stakeholder initiatives and address supply chain labour standards issues in a manner that clearly prioritises the best interests of the child, and works with suppliers. Termination of the contractor/supplier relationship should be used as a last resort.
3. Draw on international best practice in relation to the design and implementation of compliance regimes, the exercise of proper due diligence, the verification and monitoring of corporate compliance (including through communication and reporting of performance), and in the handling of complaints.



Australia has an opportunity to show leadership on ethical public procurement. Photo: Paul Bettings/World Vision

73. United Nations Committee on the Rights of the Child (2013) "General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights", para 25

74. United Nations Committee on the Rights of the Child, *ibid.*, para 27

75. Howe, *op. cit.*, p. 336

76. Media Release, Minister for Indigenous Affairs, Sen the Hon Nigel Scullion and Minister for Finance, Sen the Hon Mathias Cormann (18 March 2015) "Commonwealth taking steps to increase Indigenous jobs" [online]. Available at: <<http://minister.indigenous.gov.au/media/2015-03-17/commonwealth-taking-steps-increase-indigenous-jobs>>

77. Prior, *op. cit.*

78. Attorney-General's Department (7 May 2015) "Ethical Procurement: Information sheet for Commonwealth Government procurement officers" [online]. Available at: <<http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Human%20Trafficking%20Information%20sheet%20for%20Commonwealth%20Government%20procurement%20officers.pdf>>

79. Prior, *op. cit.*

80. United Nations Office of the High Commissioner for Human Rights (2011) "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", p. 5

81. World Vision International (2014) "Creating markets for child-friendly growth – addressing child labour through G20 public procurement", Policy Report, April 2014

3. Create an enabling environment for corporate responsibility

There are a number of ways for the Australian Government to improve the regulatory and legislative environment for businesses to better respect human rights and address the risks of child labour in their supply chains. While the scope of this paper does not permit a thorough exploration of Australian corporations and securities law, there are two particular areas in which positive change might be achieved without the need for major reforms.

Corporate disclosure and reporting requirements

Under current Australian Stock Exchange (ASX) Listing Rules, publicly listed companies are required to inform the ASX about anything

that may adversely affect their share price. Such information may include issues that could negatively affect a company's reputation, such as association with child labour in their supply chains. However this is largely open to interpretation, and the rules do not explicitly require companies to seek out that potentially harmful information.

There are several examples of mandatory reporting initiatives relating specifically to supply chains that Australia could consider as possible models for requiring companies to demonstrate non-use of child labour. Notable examples include the California Transparency in Supply Chains Act and parts of the United States' Dodd–Frank Wall Street Reform and Consumer Protection Act relating to the mandatory reporting of potential use of conflict minerals.

The California Transparency in Supply Chains Act

This piece of legislation, which came into effect in January 2012, requires every "retail seller and manufacturer" doing business in California and having "annual worldwide gross receipts that exceed one hundred million dollars" to disclose "its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale".

The disclosure under the Act must be made readily available via the retail seller's or manufacturer's website (or in writing on request if the seller does not have a website).

The disclosure must set out, at a minimum, to what extent the retail seller or manufacturer:

- engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery (and whether the verification was conducted by a third party);

- conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains (and whether the verification was an independent, unannounced audit);
- requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and
- provides company employees and management, who have direct responsibility for supply chain management, with training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.⁸²

82. The California Transparency in Supply Chains Act (SB657)



The UK's Modern Slavery Act requires companies to report what they are doing to rid supply chains of labour exploitation. Photo: Annila Harris/World Vision

In March 2015, the United Kingdom passed the Modern Slavery Act 2015, which, in addition to enhancing support and protection for trafficking survivors, includes a transparency in supply chain clause. Among other things, this clause requires large companies conducting business in Britain to produce mandatory statements reporting on the steps they are taking to ensure their supply chains are free from labour exploitation.

Australia's current reporting framework contains no such requirement, but it does provide a strong foundation upon which supply chain accountability could be introduced to Australia's corporate reporting regime. Continuous disclosure obligations are supplemented by the annual reporting requirement of publicly listed companies under Australian corporations law.

That is, companies are required to report on any operational and financial matters of which a shareholder might require knowledge to make an informed assessment about the company's operations and prospects. Importantly, this includes operations beyond Australia's jurisdiction and may, therefore, apply to human rights issues in global supply chains, if a "reasonable person" would consider such information to be relevant to a shareholder.

However, the current regime only allows for the potential for companies to report on human rights impacts, which means that it does not require that companies report and disclose in respect of labour exploitation in their supply chains unless there is a demonstrated risk to a company's share price.

Conclusion

Directors' duties

Another crucial feature of the United Kingdom's Modern Slavery Act is that the transparency in supply chain clause also puts a legal responsibility on company directors to ensure that supply chain transparency measures are effectively implemented.

Under Australian law, on the other hand, directors are not expressly required to consider the company's impacts on non-shareholders, as their primary responsibility is to the company and therefore its shareholders.

Directors in Australia are currently under the following statutory duties:

- the duty of care, skill and diligence in managing a company's affairs;⁸³
- the duty to act in good faith and for a proper purpose;⁸⁴
- the duty to avoid conflicts of interest;⁸⁵ and
- the duty to prevent the company trading while insolvent.⁸⁶

While there is an increasing awareness of the reputational risks and resource costs associated with child labour and other human rights abuses, the Corporations Act does not explicitly require or even permit directors to consider the human rights implications of their company's activities. While case law has given directors a broad discretion to discharge their duties in good faith and in the best interest of the company,⁸⁷ this discretion is constrained by the more fundamental consideration of the financial health of the company.

As with the rules and legislation relating to corporate disclosure and reporting, the Corporations Act 2001 provides a strong foundation for creating the enabling environment for Australian company directors to ensure that their supply chains are not tainted by the use of child labour. The Australian Government should consider amending the Act to require – or at least explicitly permit – company directors to consider human rights issues as an aspect of their duty to act in the best interests of the company.

Australia's current legislative and regulatory environment may be a long way from the UK's Modern Slavery Act, and World Vision would most certainly welcome the development of similar legislation in Australia. In the meantime, the Australian Government can introduce specific obligations regarding human rights standards in company supply chains, especially related to identifying and mitigating risks of forced and child labour, to existing mandatory disclosure and reporting requirements and director duties.

World Vision urges the Australian Government to create the legislative and regulatory environment to enable and require Australian companies to report on, and their directors to take responsibility for, the impacts that their global operations may have on children's right to be protected from economic exploitation.

Contributing to global efforts to eliminate child labour not only meets Australia's moral and international legal obligations, it is also in our long-term national interest. As the global economy becomes ever more interconnected and interdependent, Australia simply cannot afford to stand by while more than 10 percent of the world's children work in conditions that are detrimental to their health, future productivity and their own countries' prosperity and development. World Vision has long declared that tackling child labour is "everybody's business", but it's also in everybody's interest.

There is no silver bullet with which to eliminate child labour. National action plans, public procurement rules and corporate law reform will not solve the problem on their own, nor do these represent the only actions that the Australian Government might take against child labour.

However, the recommendations in this report do provide opportunities for the Australian Government to help reduce the global market that accepts child labour as inevitable, and strike a meaningful blow against those who would profit from the suffering of children. Perhaps just as importantly, they provide clear, concrete

and relatively simple ways for the government to send a message to businesses, consumers and governments around the world that Australia takes a real stand against forced and child labour.

In summary, World Vision calls on the Australian Government to undertake the following three policy measures.

1. Develop a national action plan on business and human rights that clearly demonstrates its commitment to take a strong stand against forced and child labour and provides clarity and guidance for Australian businesses about their responsibility to respect human rights.
2. Reform the Commonwealth Procurement Rules to require that companies bidding for government contracts demonstrate that they have in place appropriate measures to identify and address risks of child labour in their supply chains.
3. Create the legislative and regulatory environment to enable and require Australian companies to report on, and their directors to take responsibility for, the impacts that their global operations may have on children's right to be protected from economic exploitation.

83. Corporations Act, s 180(1)

84. Corporations Act, *ibid*.

85. Corporations Act, ss 182(1), 183(1)

86. Corporations Act, ss 588G(1)

87. See *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL* (1968) 121 CLR 483; *Darvell v North Sydney Brick & Tile Co* (1989) 15 ACLR 230



More than 10 percent of the world's children over five years old work in conditions detrimental to their health and future productivity.
Photo: World Vision

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