**LEIGH DAY SUBMISSIONS TO THE OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP FOR THE ELABORATION OF AN INTERNATIONAL BINDING LEGAL INSTRUMENT ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS, RESOLUTION A/HRC/26/9 (the “Working Group”)**

**11 October 2016**

**SUBMISSION 4 – ISSUES AND RECOMMENDATIONS REGARDING ACCESSIBILITY AND EFFECTIVENESS OF UK JUDICIAL MECHANISMS FOR PROTECTING THE RIGHT TO EFFECTIVE REMEDY FOR VICTIMS OF MODERN SLAVERY**

Introduction

1. Set out below are Leigh Day’s submissions to the UK Parliament Joint Committee on Human Rights (JCHR) Inquiry into Human Rights and Business dated 31 August 2016 in relation to modern slavery. The mandate of this Inquiry is set out at paragraph 4 of Submission 1.
2. Whilst the issues and recommendations set out below were raised by Leigh Day in the UK context, they are relevant to the mandate of the Working Group as they address the existing limitations of national judicial mechanisms for holding business to account in relation to modern slavery.

Accessibility and effectiveness of UK judicial mechanisms for protecting the right to effective remedy for victims of modern slavery

1. Section 54 of the UK Modern Slavery Act 2015 (the “Act”), which entered into force on 29 October 2015, introduced a new requirement for businesses operating in the UK with an annual turnover of more than £36 million (including the turnover of any subsidiaries) to produce an annual slavery and human trafficking statement, setting out how they are preventing slavery and human trafficking taking place in their supply chains.  This is the first time that a country had introduced such a human trafficking reporting requirement.
2. The increased focus on supply chain transparency by the UK Government has followed a number of shocking allegations in recent years of multinational corporations profiting from products produced by forced labour.[[1]](#footnote-1)  A recent study by the Ethical Trading Initiative also found that 71% of companies believe there is a likelihood of modern slavery occurring at some point within their supply chains.
3. While the UK National Action Plan places substantial emphasis on the introduction of the Modern Slavery Act, and while the increased focus by the UK Government on supply chain transparency is positive, there are significant deficiencies in the legislation and continued barriers to justice for victims of modern slavery.
4. Victims of modern slavery are unable to bring a civil action based on the crimes detailed in the Modern Slavery Act unless they are able to “fit” the crimes to torts such as negligence or trespass to the person. Neither human trafficking nor forced labour are, per se, actionable torts. A proposal to include specific civil wrongs of trafficking, slavery, servitude and forced or compulsory labour in the Act was debated during passage of the Modern Slavery Bill but was rejected by the House of Lords.
5. In our experience, it is difficult to seek redress for the full effects of modern slavery, including for the dehumanising effect it has on victims, merely by reference to existing tort law. We note that Lady Hale recently commented in the case of *Taiwo v Olaigbe and another* [2016] UKSC 31 on the fact that the civil remedies currently available for modern slavery are not sufficient:

*“It follows that these appeals must fail. This is not because these appellants do not deserve a remedy for all the grievous harms they have suffered. It is because the present law, although it can redress some of those harms, cannot redress them all. Parliament may well wish to address its mind to whether the remedy provided by section 8 of the Modern Slavery Act 2015 is too restrictive in its scope and whether an employment tribunal should have jurisdiction to grant some recompense for the ill-treatment meted out to workers such as these, along with the other remedies which it does have power to grant” [para 34].*

1. At present, claimants must seek to claim for redress by way of pleading and proving multiple causes of action, thereby increasing the complexity of such litigation. Pursuing complex claims leads to increased costs and can result in defendants seeking to rely on the proportionality rule (see Submission 2) to limit disclosure and/or expert evidence, which can prevent access to critical evidence.
2. Victims of modern slavery in UK business supply chains are particularly disadvantaged by the current legal framework. Whereas victims of modern slavery in the supply chains of US businesses are able to pursue civil claims against those companies under legislative provisions, no equivalent law exists in the UK. For example, seven Cambodian labourers allegedly exploited while working in Thailand’s seafood industry have recently been able to commence litigation in the United States against four seafood companies, two American importers and two Thai firms, under the Trafficking Victims Protection Act (“TVPA”). The TVPA (18 U.S. Code § 1595 - Civil remedy) provides much greater access to justice than that currently available in the UK, authorizing victims of human trafficking or forced labour to bring a civil action against whomever “knowingly benefits, financially or by receiving anything of value, from participation in a venture which that person knew or should have known” was engaged in peonage, forced labour, involuntary servitude, unlawful conduct with respect to documents, and human trafficking.
3. Commercial organisations are able to comply with the reporting requirement established under section 54 of the Act by simply stating they have taken no steps to ensure that slavery is not taking place in their supply chains. This runs contrary to the UK Government’s stated commitment to enhance supply chain transparency and accountability, and encourage human rights due diligence regarding supply chains.
4. In respect of the modern slavery statements which have been published to date, we also note that an [analysis](https://mail.leighday.co.uk/owa/redir.aspx?C=hVBhEOJlMDECAaR7yU8DSbU_NpgnNUxZYXuHIsavrrVKkNDfE9DTCA..&URL=https%3a%2f%2fbusiness-humanrights.org%2fsites%2fdefault%2ffiles%2fdocuments%2fCORE%2520BHRRC%2520Analysis%2520of%2520Modern%2520Slavery%2520Statements%2520FINAL_March2016.pdf) by the CORE Coalition and the Business & Human Rights Resource Centre in January and February of 2016 found that the majority of statements did not yet comply with the requirements of the Act.  Out of 75 statements analysed, only 22 were signed by a director and only 9 of the statements met the minimum requirements and covered the six areas which section 54(5) of the Act suggests that modern slavery statements should include.
5. Civil society groups, including Liberty and Kalayaan, have also been critical of the Act’s failure to protect migrant domestic workers, one of the groups most at-risk of modern slavery. A proposed amendment to the Act which would have enabled domestic workers to change their employer (within the same sector) and extend their visas was passed in the House of Lords, only to be rejected by the House of Commons.
6. In addition, despite the expansion of legal aid to include applications for leave to enter or to remain in the UK, claims under employment law and claims for damages by victims of slavery, servitude or forced or compulsory labour, the practical reality is that legal aid for victims of trafficking is very difficult to obtain. Moreover victims of modern slavery do not presently have the costs protection afforded by QOCS (see Submission 3) save to the extent that their claim relates to personal injuries.

## Recommendations:

## Commercial organisations should be required to undertake and report on their human rights due diligence. Consistent with this objective, Parliament should remove section 54(4)(b) of the Modern Slavery Act, which currently permits a commercial organization to comply with the reporting obligation by issuing a statement that the organization has taken no steps to ensure that slavery and human trafficking is not taking place in its supply chain or any part of its business.

## The Modern Slavery Act should be amended to introduce specific civil wrongs of trafficking, slavery, servitude and forced or compulsory labour, including for victims of modern slavery in the supply chain

## Parliament should consider the introduction of legislation akin to the Trafficked Victims Protection Act to enable victims of modern slavery in the supply chains of UK businesses to access remedy in the UK.

## In claims arising from modern slavery, the "proportionality" test should be relaxed to avoid it acting as a bar to access to justice.

## QOCS should be extended to apply in claims arising from modern slavery.

1. ‬ . [↑](#footnote-ref-1)