

## **CHAPTER 21 LABOUR**

### **Article 21.1 Definitions**

For the purposes of this Chapter:

“ILO Declaration” means the International Labour Organization (“ILO”) *Declaration on Fundamental Principles and Rights at Work and its Follow-up* done at Geneva on 18 June 1998;

“labour laws” means laws and regulations,<sup>1</sup> or provisions of laws and regulations, of a Party that are directly related to the following internationally recognised labour rights:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour for children and minors;
- (d) the elimination of discrimination in respect of employment and occupation; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and

“modern slavery” means human trafficking, slavery and slavery-like practices, including servitude, and forced or compulsory labour, as defined in the laws and regulations of each Party.

### **Article 21.2 Right to Regulate and Levels of Protection**

1. Each Party recognises the sovereign right of the other Party to establish its own levels of domestic labour protection and its own priorities on labour, and to establish, adopt or modify its labour laws and policies accordingly, in a

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<sup>1</sup> For Australia, “laws and regulations” or “laws or regulations” means an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government.

manner consistent with its international labour commitments referred to in this Chapter.

2. Each Party shall strive to ensure that its labour laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve such laws and policies with the goal of providing high levels of labour protection.

### **Article 21.3 Statement of Shared Commitment**

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration, regarding labour rights within their territories.
2. The Parties recognise that, as stated in paragraph 5 of the ILO Declaration, labour standards should not be used for protectionist trade purposes.

### **Article 21.4 Labour Rights**

1. Each Party shall adopt and maintain in its laws and regulations, and practices thereunder, the following rights as stated in the ILO Declaration<sup>2,3</sup>:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.

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<sup>2</sup> The obligations set out in Article 21.4 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.

<sup>3</sup> To establish a violation of an obligation under paragraph 1 of Article 21.4 (Labour Rights) a Party shall demonstrate that the other Party has failed to adopt or maintain a law, regulation or practice to encourage trade or investment.

2. Each Party shall adopt and maintain laws and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>4</sup>

### **Article 21.5 Non Derogation**

The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws. Accordingly, neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its laws or regulations:

- (a) implementing paragraph 1 of Article 21.4 (Labour Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or
- (b) implementing paragraph 1 or 2 of Article 21.4 (Labour Rights), if the waiver or derogation would weaken or reduce adherence to a right set out in paragraph 1 of Article 21.4 (Labour Rights), or to a condition of work referred to in paragraph 2 of Article 21.4 (Labour Rights), in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory,

in a manner affecting trade or investment between the Parties.

### **Article 21.6 Enforcement of Labour Laws**

1. Neither Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.
2. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources between labour enforcement activities among the fundamental labour rights and acceptable conditions of work enumerated in Article 21.4 (Labour Rights), provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

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<sup>4</sup> For greater certainty, this obligation relates to the establishment by a Party in its laws, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

### **Article 21.7** **Modern Slavery**

1. The Parties affirm their endorsement of the *Call to Action to End Forced Labour, Modern Slavery and Human Trafficking* launched at the UN General Assembly in New York City on 19 September 2017, their commitment to advancing the *Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains* and the *United Nations Guiding Principles on Business and Human Rights*. The Parties underline the importance of ratification of the *Protocol of 2014 to the ILO Forced Labour Convention, 1930*, done at Geneva on 11 June 2014.
2. Each Party shall, subject to its laws and regulations, strive to ensure that private and public sector entities operating in its territory take appropriate steps to prevent modern slavery in their supply chains. To this end, each Party shall, to the extent it considers appropriate, adopt or maintain measures:
  - (a) to facilitate private sector entities to identify and address modern slavery in their global and domestic supply chains, including by publishing relevant guidance to raise awareness, to promote responsible business conduct, and to foster collaboration across sectors and with civil society;
  - (b) to require responsible business conduct and supply chain transparency in respect of private sector entities operating in its territory, including regular public reporting on steps taken;
  - (c) to facilitate public sector entities to identify and address modern slavery in their global and domestic supply chains. To this end, each Party shall also strive towards transparency and regular public communication of the actions public sector entities have taken in this respect;
  - (d) to facilitate the improvement of the capability of staff in public sector entities working on government procurement and commercial matters to identify and address modern slavery in supply chains; and
  - (e) to deter the use of fees for work-finding services sought from or charged to workers in sectors considered appropriate by the Party.

3. To assist in the implementation of paragraph 2, the Parties shall endeavour to cooperate, share information and best practice, and, as appropriate, identify areas of alignment to tackle modern slavery.

#### **Article 21.8**

##### **Non-Discrimination and Gender Equality in the Workplace**

1. The Parties acknowledge the importance of gender equality and non-discrimination in employment and income opportunities for sustainable, equitable, and inclusive economic growth. Accordingly, each Party affirms its commitments to non-discrimination in employment, occupations, and places of work, and to take measures to advance anti-discrimination practices and address discriminatory practices, including those related to workplace sexual harassment, gender-based violence, gender pay gaps, and flexible working arrangements, as well as improve women's access to decent work.
2. The Parties agree to share information on their respective domestic approaches and cooperate, as appropriate, on activities to address discriminatory practices, promote equality of opportunity in employment, and improve women's access to decent work and the benefits of trade or investment. The Parties recognise the importance of carrying out cooperation activities with the inclusive participation of women.

#### **Article 21.9**

##### **Corporate Social Responsibility**

Each Party shall endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party.

#### **Article 21.10**

##### **Public Awareness and Procedural Guarantees**

1. Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.
2. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. These tribunals may

include administrative tribunals, quasi-judicial tribunals, judicial tribunals, or labour tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labour laws:
  - (a) are fair, equitable, and transparent;
  - (b) comply with due process of law; and
  - (c) do not entail unreasonable fees or time limits or unwarranted delays.
4. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable law.
5. Each Party shall ensure that:
  - (a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and
  - (b) final decisions on the merits of the case:
    - (i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard;
    - (ii) state the reasons on which they are based; and
    - (iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.
6. Each Party shall provide that parties to these proceedings have the right to seek review or appeal, as appropriate under its law.
7. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under the Party's labour laws and that these remedies are executed in a timely manner.
8. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.
9. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

**Article 21.11**  
**Public Submissions**

1. Each Party, through its contact point designated under Article 21.14 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.
2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:
  - (a) raise an issue directly relevant to this Chapter;
  - (b) clearly identify the person or organisation making the submission; and
  - (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.
3. Each Party shall:
  - (a) consider matters raised by the submission and provide a timely response to the person or organisation that made the submission, including in writing as appropriate; and
  - (b) make the submission and the results of its consideration available to the other Party and the public, as appropriate, in a timely manner.
4. A Party may request from the person or organisation that made the submission additional information that is necessary to consider the substance of the submission.

**Article 21.12**  
**Cooperation**

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' wellbeing and quality of life and the principles and rights stated in the ILO Declaration.
2. In undertaking cooperative activities, the Parties shall be guided by the following principles:

- (a) consideration of each Party's priorities, level of development and available resources;
  - (b) broad involvement of, and mutual benefit to, the Parties;
  - (c) relevance of capacity and capability-building activities, including technical assistance between the Parties to address labour protection issues and activities to promote innovative workplace practices;
  - (d) generation of measurable, positive, and meaningful labour outcomes;
  - (e) resource efficiency, including through the use of technology, as appropriate, to optimise resources used in cooperative activities;
  - (f) complementarity with existing regional and multilateral initiatives to address labour issues; and
  - (g) transparency and public participation.
3. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities. Subject to the agreement of each Party, cooperative activities may take place bilaterally and in international fora such as the ILO.
4. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the Parties. The Parties shall decide, on a case-by-case basis, the funding of cooperative activities.
5. In addition to the cooperative activities outlined in this Article, the Parties shall, as appropriate, caucus and leverage their respective membership in regional and multilateral fora to further their common interests in addressing labour issues.
6. Areas of cooperation may include:
- (a) promotion of the awareness of and respect for principles and rights as stated in the ILO Declaration and for the concept of Decent Work as defined by the ILO;
  - (b) labour laws and practices, including the effective implementation of the principles and rights as stated in the ILO Declaration;
  - (c) sharing best practice and the promotion and protection of equality and elimination of discrimination in respect of employment and occupation for migrant workers, or in the areas of age, disability, gender, pregnancy, race, sexual orientation, and other characteristics

of a diverse, multigenerational workforce that are not related to merit or the requirements of employment;

- (d) collection and use of statistics; and
  - (e) any other areas as agreed by the Parties.
7. The Parties may undertake activities in the areas of cooperation in paragraph 6 through:
- (a) workshops, seminars, dialogues, and other fora to share knowledge, experiences and best practices, including online fora and other knowledge-sharing platforms;
  - (b) study trips, visits, and research studies to document and study policies and practices;
  - (c) collaborative research and development related to best practices in subjects of mutual interest;
  - (d) specific exchanges of technical expertise and assistance, as appropriate; and
  - (e) other forms as the Parties may decide.

### **Article 21.13 Committee on Cooperation**

The Committee on Cooperation established under Article 27.4 (Committee on Cooperation - Cooperation) shall consider any matter under this Chapter related to cooperation and support any cooperation activities.

### **Article 21.14 Contact Points**

1. Each Party shall designate a contact point for this Chapter and shall notify the other Party of the contact details of that contact point within 30 days of the date of entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to those contact details.
2. Any request, notification, or other document provided in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

**Article 21.15**  
**Public Engagement**

1. The Parties shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter.
2. Each Party shall establish or maintain, and consult, a labour consultative or advisory body or similar mechanism, for members of its public, including representatives of its labour and business organisations, to provide views on matters regarding this Chapter.

**Article 21.16**  
**Labour Consultations and Dispute Settlement**

1. The Parties shall make every effort to resolve any matter arising under this Chapter through cooperation and consultation based on the principle of mutual respect.
2. A Party (“the requesting Party”) may, at any time request labour consultations with the other Party (“the responding Party”) regarding any matter arising under this Chapter by delivering a written request to the responding Party’s contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request. The requesting Party shall circulate the request to the responding Party through their respective contact points.
3. The responding Party, shall unless agreed otherwise with the requesting Party, reply to the request in writing no later than seven days after the date of its receipt. The responding Party shall enter into labour consultations in good faith.
4. The Parties shall begin labour consultations no later than 30 days after the date of receipt by the responding Party of the request.
5. In labour consultations:
  - (a) each Party shall provide sufficient information to enable a full examination of the matter; and
  - (b) each Party shall treat any confidential information exchanged in the course of the consultations on the same basis as the Party providing the information.
6. Labour consultations may be held in person or by any technological means available to the Parties. If labour consultations are held in person, they shall

be held in the capital of the responding Party, unless the Parties agree otherwise.

7. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through labour consultations under this Article, taking into account opportunities for cooperation related to the matter. The Parties may request advice from an independent expert or experts chosen by consulting Parties to assist them. The Parties may have recourse to such procedures as good offices, conciliation, or mediation.
8. In labour consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies with expertise in the matter that is the subject of the labour consultations.
9. If the Parties are unable to resolve the matter, either Party may request the Joint Committee to convene to consider the matter by delivering a written request to the other Party through its contact point. The Joint Committee shall convene no later than 30 days after the day of the receipt of the request, unless the Parties agree otherwise, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts and having recourse to such procedures as good offices, conciliation, or mediation.
10. If the Parties are able to resolve the matter, they shall document any outcome including, if appropriate, specific steps and timelines agreed upon. The Parties shall make the outcome document available to the public, unless they agree otherwise.
11. If the Parties have failed to resolve the matter no later than 60 days after the day of the receipt of a request under paragraph 2, or any other period as the Parties may agree, the requesting Party may request the establishment of a panel under Article 30.8 (Request for Establishment of a Panel – Dispute Settlement) and, as provided in Chapter 30 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.
12. In addition to the requirements set out in paragraph 1(a) of Article 30.10 (Qualification of Panellists – Dispute Settlement), for a dispute arising under this Chapter panellists other than the chair shall have sufficient expertise or experience in labour law or practice.
13. Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.
14. Labour consultations shall be confidential and without prejudice to the rights of a Party in any other proceedings.