



Global Compact
Network Australia



Australian
Human Rights
Commission

2017 Australian Dialogue on Business and Human Rights

Effective Human Rights Due Diligence

31 October 2017, Melbourne

Summary Document

On 31 October 2017, the Global Compact Network Australia (GCNA) and the Australian Human Rights Commission (the Commission) convened Australia's fourth national, multi-sector, multi-stakeholder dialogue on business and human rights (the Dialogue). Over 100 representatives from business, government, civil society and academia met in Melbourne, Australia to explore current practices, challenges and opportunities based on the UN Guiding Principles on Business and Human Rights (the UN Guiding Principles).

The principal theme for the Dialogue in 2017 was human rights due diligence. The significance of human rights due diligence can be seen from the central role it plays in the UNGPs in enabling companies to discharge their 'responsibility to respect' human rights. To discharge their responsibility to respect, companies are required to complete a number of steps:

1. Adopt a 'policy commitment to meet their responsibility to respect human rights'
2. Conduct human rights due diligence 'to identify, prevent, mitigate and account for how they address their impacts on human rights,' and
3. Establish processes 'to enable the remediation of any adverse human rights impacts they cause or to which they contribute'.

In other words, human rights due diligence is the means through which businesses can operationalise their responsibility to 'know and show' that they are aware of potential human rights violations, and have taken steps to prevent or mitigate human rights impacts.

This summary report outlines the Dialogue highlights, in keeping with the Chatham House rule of non-attribution, under which the meeting was held. This report does not necessarily represent the GCNA's, the Commission's or any participating

organisation's views. The Dialogue Agenda is available [here](#). A media release for the event is available [here](#).

1. Introduction: the business and human rights context

The Dialogue was opened by Wurundjeri Elder Colin Hunter with a warm and engaging Welcome to Country ceremony. Human Rights Commissioner Edward Santow also spoke, reminding participants that at the same time we are urging human rights 'to come off the page' we should also avoid letting the 'perfect' become 'the enemy of the good'.

Rachel Nicolson and Alice Cope, in their roles as Allens Partner/GCNA Director and GCNA Executive Director respectively, highlighted some of the major developments in the business and human rights space over the last year. These include the UK Government's release of updated guidance on compulsory reporting under the *Modern Slavery Act 2015* (UK) and the commitment from 45 Asia-Pacific governments to eradicating modern slavery in August 2017. A UN intergovernmental working group tasked with drafting a new international legal instrument to regulate the activities of transnational corporations (TNCs) in connection to human rights, held its third meeting in Geneva in October 2017. In Switzerland, the Swiss Responsible Business Initiative continues to press for an amendment to the Swiss Federal Constitution that would require companies to conduct mandatory human rights due diligence. Key judicial decisions in class actions against Shell and Unilever in the UK, and against Nevsun Resources in Canada, show that strategic litigation will remain an important area of contestation for human rights advocates in the foreseeable future.

More countries are developing national action plans on business and human rights (NAPs) and innovative legislative initiatives are emerging across a range of jurisdictions. This includes efforts in France to introduce laws imposing additional due diligence requirements on large businesses. At the same time, however, the United States is going backwards in certain respects by repealing the Extractive Industries Transparency Initiative (EITI) requirements for extractive companies. In Australia, significant support has developed for an Australian Modern Slavery Act at the same moment as the federal government has elected not to pursue an Australian NAP, at least in the short-term.

More broadly, it is becoming increasingly clear that global trends including nationalism, movement of people, inequality and climate change cannot be separated from the business and human rights agenda. There are evident links between business and human rights and the sustainable development goals,

poverty, human, economic growth, gender inequality, and immigration. Furthermore, businesses now face heightened expectations from local and international audiences regarding how they manage and respond to human rights issues existing at the industry level.

Shifting dynamics in the labour market also have implications for business and human rights as the number of people underemployed or 'employed' by the gig economy continues to increase. There is also an increasing focus on the role of human rights defenders, and the role of business in ensuring their safety. Remedy continues to be a critical issue, and has been designated a core focus for the UN Annual Forum on Business and Human Rights in Geneva in November 2017.

2. Keynote speech

The keynote speech was given by the Honourable Michael Keenan, the Australian Minister for Justice. On 16 August 2017, the Minister released a consultation paper on the Australian Government's proposed model for a Modern Slavery in Supply Chains Reporting Requirement. The proposed reporting requirement will require large corporations and other entities operating in Australia to publish annual statements outlining their actions to address modern slavery in their operations and supply chains. Since then, the Government has held consultation roundtables in Canberra, Melbourne, Sydney and Perth during September-October 2017. The Minister highlighted that modern slavery takes many forms, and that it takes many years for this practice to be eliminated. He stressed that the Australian Government was keen to work with businesses to help them ensure that their supply chains are free of modern slavery. The Minister also reflected on the experience of other governments in implementing the reporting requirement, and stated that in his view, the UK model had so far been largely successful.

A Statement of Support for an Australian Modern Slavery Act was also presented at the Dialogue, with signatories including the Australian Human Rights Commission and a number university and NGO representatives. This Statement welcomed the Australian Government's initiative on a Modern Slavery Act, and highlighted the importance of independent leadership, effective compliance, transparency, access to remedy, government procurement, UNGP alignment and continual improvement in advancing the initiative.

3. Elements of human rights due diligence

In this session, each panel member provided an overview of one of the four key elements of human rights due diligence. UN Guiding Principle 17 explains that

human rights due diligence 'should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.'

- **Impact assessment**

A human rights impact assessment refers to a process to systematically identify, predict and respond to the potential human rights impacts of a specific business operation. Impact assessments should examine the human rights risks that arise within the business' operations (for example, risks to direct employees) and to external stakeholders (such as affected communities) potentially impacted by the business' activities, including its business relationships. Companies need to go beyond making a general assessment of human rights risks by evaluating the impact of the business on specific groups. Special attention needs to be paid to groups that are particularly vulnerable or at risk. Companies also need to recognise that impact assessments should be conducted with reference to all internationally-recognised human rights. Where appropriate domestic laws are not in place to protect human rights, companies should conduct impact assessments with reference to internationally recognised human rights standards. In essence, each business should consider whether it has developed processes for assessing human rights impacts and whether the assessment has identified rights holders and other stakeholders that are/may be impacted by the company's operations. This step must include meaningful consultation with affected rights holders and other stakeholders.

- **Integrating/acting on findings**

The second step is integration and acting on findings. One challenge for large businesses in this area arises from the fact that the people responsible for assessing human rights impact are likely to be different from the staff conducting the activities that typically generate the relevant impact. In general, those assessing the impact do not control decisions and actions that can mitigate or remedy potential human rights violations. Through integration, business can involve the actors who control decisions in identifying and implementing solutions. Businesses have a responsibility to act on findings where they identify that they have caused or contributed to, or are directly linked to adverse impacts on human rights. This step involves developing a concrete action plan with clear indicators for implementation in order to cease or mitigate negative impacts. In particular, where a company has caused or contributed to adverse impacts on human rights, businesses should provide for or cooperate in remediation through legitimate processes, such through operational level grievance mechanisms.

- **Tracking responses**

The third step involves tracking the effectiveness of the company's response to potential or actual adverse human rights impacts (possibly using both quantitative and qualitative indicators) in order to be able to account for their progress in respecting human rights. Stakeholders who have been victims of adverse impacts should be regularly consulted by the company to ensure the effectiveness of its response. Companies need to be particularly aware of these issues in the context of procurement, which can impact upon a wide range of human rights depending on the supply chain. As mentioned by the panel, these processes do not necessarily involve 'reinventing the wheel': many companies are used to demonstrating compliance with statutory and regulatory requirements, and this same capacity can be used in human rights due diligence.

- **Communication**

The fourth step involves effectively communicating how human rights impacts are to be addressed. The commentary to Guiding Principle 21 explains that the process of 'showing' companies respect human rights in practice, 'involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.' The panel discussed this in the context of the proposed Australian Modern Slavery Act, which will require disclosure on a range of issues including how companies have independently determined the areas of greatest risk and how they have structured their due diligence processes. Good or services sourced from emerging economies or through long and complex supply chains involves particular challenges in this context that must be carefully thought through. The discussion highlighted that communication must also be focused on remedy – it is not sufficient for companies to describe the due diligence processes they followed; they must also disclose what abuses they found and what was done to provide remedy.

4. Identifying and prioritising human rights risks

Identifying human rights impacts is the first step in human rights due diligence. This session focused on how companies identify their human rights impacts and risks and prioritise them for action. First, the panel discussed how obtaining information on the company's actual and potential impacts is particularly important when it is impossible for a company to address all identified human rights risks simultaneously. This helps to ensure that a company's human rights strategy is focused on where the risks to individuals is the greatest. Second, it is important for companies to consider the impacts upon specific groups. This might include the company's own employees,

local communities, and customers. It might also be helpful to start a human rights assessment by concentrating on particular relationships, projects, or communities. Finally, the industry and location of business operations is always going to be a key factor in assessing which human rights impacts should take priority.

5. Embedding human rights due diligence in business

This session sought to explore how companies formally embed human rights considerations and due diligence into their organisations. In one organisation represented on the panel, the process starts with a series of commitments regarding how the company treats its staff and interacts with local communities where they operate. Other panel members discussed the particular issues faced by actors in the mining industry. Many mining companies have multiple operations across diverse locations including Australia, Indonesia, central and south America and West Africa. The most important human rights issues for these actors usually involve managing impacts with local communities on the ground. Working with multiple languages groups, including English, French, Spanish, Indonesian, Spanish and Portuguese, adds another complex element to the project of embedding human rights in companies working across borders.

Panel members also discussed the importance of undertaking a human rights impact assessment, as this can form the basis of policy guidance going forward. In one case, a human rights impact assessment led to a series of positive developments including the incorporation of human rights standards in memorandums of agreement, a human rights emphasis in new security contracts, and special training for all internal staff. The panel also noted that it is crucial to have internal structures, such as specific (and senior) committees, that are tasked with implementing human rights standards across the entire organisation. The importance of building trust with local communities was also emphasised in this session.

6. Human rights due diligence in business relationships

This session considered the practical ways in which human rights is being integrated with business operations. It had a strong focus on retail and manufacturing industries (as well as the relationship between these two spheres). Several of the panellists had travelled overseas at various points to see how company products were manufactured. Participants noted that in this context, it is vital to have good relationships with the managers of your suppliers and to conduct due diligence in a systematic fashion. Sometimes it will be necessary to visit factories in the supply chain to ensure that you have a clear understanding of the manufacturing processes

and associated employment/human rights practices. Panellists discussed the challenges in knowing precisely what is happening in your supply chain all of the time. This is particularly the case when you are buying from 100+ vendors. Employment conditions, including overtime and health/safety requirements, are a constant concern, and it can be difficult to prevent employee abuse. Companies need to consider appropriate benchmarks to set standards in the procurement phase. It may also be helpful to engage with workers and/or engage auditors to verify with workers that their employment is meeting certain standards. The panel also said that a company generally had a greater ability to influence businesses down the supply chain if they were involved in long-term relationships.

7. Communicating and benchmarking on human rights

Several themes emerged in the discussion in this session. First, the panel pointed out that current benchmarks can be useful tools for measuring company progress on human rights issues, offering structure and a means of comparing different actors and can also be used to highlight aggregate performance.

Second, it is difficult to create benchmarks that are equally useful across a range of industries. For instance, the Corporate Human Rights Benchmark methodology was developed for apparel, mining (extractives) and medical companies. Figures demonstrate that the extractive industries are doing well compared to others, largely due to the fact that they have more experience following human rights controversies over the last two decades.

More generally, the panel observed that the number of human rights standards now in existence can make it difficult for internal staff to understand their obligations regarding external reporting. In some companies, there is a sense of being 'overwhelmed' or confused by the range of competing obligations. Others said that staff complained constant reporting was taking them away from other tasks, or openly queried who, at the end of the day, was actually reading all these reports?

The panel commented that benchmarking is important but by itself it unlikely to create a race to the top. Benchmarking therefore needs to be combined with other positive action. For instance, one panel member gave examples of how shareholder advocacy is generating pressure for better human rights standards in some companies. Others emphasised the importance of culture, noting that 'there is no substitute for values being the driver' in committing a company to better human rights standards. Finally, Australian companies interestingly tend to associate human rights risks with overseas operations – local risks are curiously a minor priority for

local companies despite the fact that human rights violations are a serious issue in several Australian sectors such as agriculture.

8. Responding to an Australian Modern Slavery Act

This was a practical session that required participants to discuss in groups two leading statements published under the *Modern Slavery Act 2015* (UK). Participants noted the strengths and weaknesses in both of the statements, and commented on the extent to which these UK companies had successfully underlined areas of risk and accurately documented actual violations and grievance mechanisms currently in place. This exercise highlighted the range of organisations and viewpoints represented in the room, and allowed industry representatives to identify and explain the particular challenges they might face if required to draft similar disclosure documents for their own company in the future.

The panel also addressed some of the similarities and differences between the UK and proposed Australian statutory regime, noting that the UK system has been criticised for the overall quality of reports it has generated. Participants suggested ways in which industry could prepare for reporting requirements, including preparing an initial list of suppliers and procurement contacts. Companies should also recognise that it can take substantially longer than initially envisioned to put systems in place, and that securing and holding the support of the board and other senior managers is imperative.

9. High-level panel: leadership on business and human rights

The purpose of this session was to explore business leadership and how leaders can set ‘the tone from the top’ in connection to promoting human rights in business at home and abroad. The session canvassed a range of industries including air travel, mining and finance, each of which faces its own particular human rights challenges. Each company had a different model based on industry and company characteristics, but all noted that leadership from the board is crucial.

One commentator remarked that the biggest challenge in Australia is ‘short-termism’ in a context where it is important to have long-term planning. Changing this culture could be important to promoting progress in the future. Shareholder resolutions, investor input and dialogues with NGOs may also be helpful in focusing the attention of a company that needs to improve its human rights record. The involvement of NGOs may be particularly relevant where the impact of a company has a specific gender dimension, or impacts upon local communities.

It was agreed that companies can secure buy-in on human rights issues by engaging a range of different stakeholders, developing and supporting sustainability teams, and creating good conditions for employees. Encouraging communication with investors and educating staff is also important.

Finally, the panel considered the question of whether industry should play a specific role when they see the civil society space under threat. This is a particularly relevant issue at the moment, when civil society is under pressure in many countries and journalists/human rights defenders are placed in danger.

10. Conclusion

The Dialogue concluded with comments from the Human Rights Commissioner Edward Santow, who noted that the conversation around human rights and due diligence is increasingly sophisticated and focused on practical implementation beyond broad principle. He also emphasised the importance of NGOs, industry and government representatives participating in conversations in order to find common ground – it is in this space that progress will be made.