

# At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia

REPORT • 2021



**UNSW**  
Australian  
Human Rights  
Institute



**Australian  
Human Rights  
Commission**

© Australian Human Rights Commission and Australian Human Rights Institute University of New South Wales (UNSW) Sydney 2021.

The Australian Human Rights Commission and the Australian Human Rights Institute, UNSW Sydney encourages the dissemination and exchange of information presented in this publication.



All material presented in this publication is licensed under the Creative Commons Attribution 4.0 International Licence, with the exception of:

- photographs and images
- the Commission's logo, any branding or trademarks
- where otherwise indicated.

To view a copy of this licence, visit <https://creativecommons.org/licenses/by/3.0/au/>.

In essence, you are free to copy, communicate and adapt the publication, as long as you attribute the Australian Human Rights Commission and the Australian Human Rights Institute, UNSW Sydney and abide by the other licence terms.

**Please give attribution to: © Australian Human Rights Commission and the Australian Human Rights Institute, UNSW Sydney 2021.**

**At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia • September 2021**

ISBN 978-1-925917-56-7

This publication can be found in electronic format on the Australian Human Rights Commission's website at <https://humanrights.gov.au/our-work/publications> and at the Australian Human Rights Institute's website at <https://www.humanrights.unsw.edu.au/research>.

For further information about the Australian Human Rights Commission or copyright in this publication, please contact:

Australian Human Rights Commission  
GPO Box 5218, SYDNEY NSW 2001  
Telephone: (02) 9284 9600  
Email: [communications@humanrights.gov.au](mailto:communications@humanrights.gov.au)

Australian Human Rights Institute  
Room 125, The Law Building  
UNSW Sydney NSW 2052  
Telephone: (02) 9385 1803  
Email: [humanrights@unsw.edu.au](mailto:humanrights@unsw.edu.au)

**Design and layout:** Dancinggirl Designs

**Cover image:** Aerial view of people at Shibuya Crossing Intersection. Photo by Ryoji Iwata on Unsplash.

**Internal photography:** Adobe Stock. Photo page 10: Tim Mossholder on Unsplash.

The Australian Human Rights Commission is Australia's National Human Rights Institution. It is an independent statutory organisation with responsibility for leading the promotion and protection of human rights in Australia. For further information please visit <https://humanrights.gov.au/>.

The Australian Human Rights Institute is based at UNSW Sydney and aims to deliver interdisciplinary applied research that empowers communities and educates the next generation of human rights leaders. For further information about the Australian Human Rights Institute please visit [www.humanrights.unsw.edu.au](http://www.humanrights.unsw.edu.au).

#### **Acknowledgements**

Authors: Lauren Zanetti, Sarah McGrath and Professor Justine Nolan. The Australian Human Rights Commission also wishes to acknowledge the contribution of the following staff and Commissioners: Kate Griffiths, Divashna Govender, Nick Devereaux, Libby Gun, Natasha de Silva, Emeritus Professor Rosalind Croucher AM and June Oscar AO.

At the Crossroads:  
10 years of implementing the  
UN Guiding Principles on Business  
and Human Rights in Australia

2021

Australian Human Rights Commission  
Australian Human Rights Institute, UNSW



# Contents

<b>List of abbreviations</b>	<b>5</b>
<b>Executive Summary</b>	<b>6</b>
<b>A call to action</b>	<b>8</b>
<b>Chapter 1: Introduction</b>	<b>11</b>
1.1 Report overview	11
<b>Chapter 2: The UN Guiding Principles on Business and Human Rights</b>	<b>13</b>
2.1 Pillar I: The State duty to protect human rights	14
2.2 Pillar II: The business responsibility to respect human rights	14
2.3 Pillar III: Access to remedy	15
2.4 The relationship between the UN Guiding Principles on Business and Human Rights and other international standards	15
<b>Chapter 3: Key business and human rights issues in Australia</b>	<b>17</b>
3.1 Combatting modern slavery	17
3.2 Embedding human rights due diligence into business practice	20
3.3 Respecting the land rights of Aboriginal and Torres Strait Islander people	22
3.4 Addressing the adverse human rights impacts of climate change	26
3.5 Leveraging the role of institutional investors	31
3.6 Ensuring access to remedy for victims	34
<b>Chapter 4: Conclusion</b>	<b>39</b>
4.1 Business and human rights in Australia	39
4.2 A call to action	40
4.3 Implementation	41
<b>Acknowledgements</b>	<b>43</b>

# List of abbreviations

ALRC	Australian Law Reform Commission
AUM	Assets under management
AusNCP	Australian OECD National Contact Point
BHR	Business and Human Rights
ESG	Environmental, social and governance
ILO	International Labour Organisation
IPCC	United Nations Intergovernmental Panel on Climate Change
NAP	National Action Plan on Business and Human Rights
OECD	Organisation for Economic Cooperation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
PRI	Principles for Responsible Investment
SDGs	Sustainable Development Goals
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
UN Working Group on BHR	UN Working Group on the issue of human rights and transnational corporations and other business enterprises

# Executive Summary

The United Nations Guiding Principles on Business and Human Rights (UNGPs) are the authoritative global standard outlining the expectations of States and businesses in preventing and addressing business-related human rights abuses. The UNGPs were unanimously adopted by the United Nations (UN) Human Rights Council in 2011.

The Australian Government co-sponsored the resolution that adopted the UNGPs and has supported the UNGPs since their inception.<sup>1</sup> Globally there is growing evidence of the uptake of the UNGPs by business and industry associations and multi-stakeholder initiatives. We are also seeing the integration of the UNGPs into a wide range of standards, laws and policies.

June 2021 marked the 10-year anniversary of the introduction of the UNGPs. To reflect on this milestone, the Australian Human Rights Commission and the Australian Human Rights Institute, UNSW Sydney, have collaborated on this report, which considers progress and identifies gaps around the implementation of the UNGPs in Australia in the following six areas:

- Combatting modern slavery
- Embedding human rights due diligence into business practice
- Respecting the land rights of Aboriginal and Torres Strait Islander peoples
- Addressing the adverse human rights impacts of climate change
- Leveraging the role of institutional investors
- Ensuring access to remedy for victims

The report finds that over the past decade, there has been some progress towards implementation of aspects of the UNGPs in Australia by business and Government. Key areas of progress have included the Government's introduction of the *Modern Slavery Act 2018* (Cth) (Modern Slavery Act), which is part of a wider global pattern of establishing similar laws. Another key development is the strengthening of the Australian National Contact Point complaint mechanism, established by the Organisation for Economic Cooperation and Development's (OECD) *OECD Guidelines for Multinational Enterprises*. However, overall progress towards implementation of the UNGPs in Australia remains slow.

While some positive legislative and policy developments have occurred over the last decade, the approach to date has been ad-hoc and lacked cohesion in creating an enabling environment for rights-respecting business practices. For many Australian business, including institutional investors, a voluntary 'corporate social responsibility' mindset remains prevalent, and awareness of the UNGPs is low.

Corporate responses to the Modern Slavery Act range from rigorous to superficial, and an acceptance and understanding of the need to embed human rights due diligence as a standard of business conduct is limited. Remedy remains rare for many victims of business-related human rights harms, particularly but not limited to those that experience harms overseas. There is also a disconnect in Australia, and elsewhere, between the UNGPs and some of the key issues discussed in this report, such as climate change-related human rights harms and land justice for Australia's First Nations peoples.

There is a need for increased policy coherence in the implementation of the UNGPs, by and across Government, to ensure an enabling environment for rights-respecting business practices and that the Government applies the UNGPs to its own activities as an economic actor. Ultimately, this report highlights that, despite some key areas of progress, much work remains to be done to address the significant governance gaps in corporate accountability for adverse human rights impacts, to ensure victims have access to remedy, and to operationalise the business 'responsibility to respect' human rights in Australia.

Australia is at a crossroads. There is both an immediate urgency and opportunity to substantively implement the UNGPs in Australia. The disproportionate impacts of COVID-19 on vulnerable workers globally has highlighted the need for stronger social safeguards and a people-centred approach to business. At the same time, climate change poses one of the most significant threats to human rights globally.

The scale and complexity of the human rights challenges our society is facing require a comprehensive and coordinated approach. This report sets out a call to action with recommendations for Government, business and investors, on practical steps they can take to implement the UNGPs, and realise a transformative vision for a more inclusive and rights-respecting global economy.



# A call to action

## *Recommendations*

1. **Australian businesses and institutional investors** (asset owners and managers):
  - a. invest in building human rights knowledge and capacity within their business and actively consult with external experts and rights-holders in order to meaningfully implement the UNGPs.
  - b. implement the UNGPs, including by:
    - i. adopting a human rights policy and carrying out human rights due diligence to identify, address and remediate human rights risks and impacts of their business activities, relationships (including their supply chains), investment activities and investees
    - ii. establishing and participating in effective grievance mechanisms, to facilitate early and effective remedies for human rights harms in their operations, global supply chains and portfolios.
  - c. embed in their human rights due diligence processes consideration and engagement with the priority issues raised in this report:
    - i. to address and remedy labour exploitation and modern slavery risks
    - ii. to identify and address adverse climate-related human rights impacts and set targets to direct their activities towards supporting a swift and just transition to a net-zero emissions economy by 2050 (in line with the Paris Agreement aim of limiting global warming to 1.5°C), ensuring any policy advocacy supports this aim, and disclosing emissions annually
    - iii. respect the rights of Aboriginal and Torres Strait Islander peoples, including ensuring meaningful adherence to the principle of free, prior and informed consent before commencing and throughout the life of a project and through supporting the Uluru Statement from the Heart.
2. **Institutional investors** (asset owners and managers): require investees to conduct human rights due diligence and work towards common, UNGP-aligned environmental, social and governance methodologies, benchmarks and metrics.
3. **Australian Government:** protect human rights by ensuring businesses meet the responsibility to respect human rights in accordance with the UNGPs by:
  - a. strengthening the enforcement framework of the *Modern Slavery Act 2018* (Cth) to ensure substantive compliance with the purpose of the law, including the establishment of an Independent Anti-Slavery Commissioner and a national compensation scheme for victims

- b. legislating for mandatory human rights due diligence by companies including the need to adhere to the principle of free, prior and informed consent
- c. meaningfully incorporating the principle of free, prior and informed consent into the *Native Title Act 1993* (Cth)
- d. supporting the Paris Agreement's aim of limiting global warming to 1.5°C, by formally committing to reduce economy-wide emissions to net-zero by 2050 if not earlier and to a stronger 2030 emissions reduction target, ensuring the availability of funding and policy infrastructure to support businesses to contribute to meeting those targets, and facilitating an orderly and just transition
- e. supporting mainstreaming of UNGP-aligned investment practices by setting regulations and supporting industry standards that support businesses and institutional investors to undertake human rights due diligence and standardised disclosure in line with the UNGPs
- f. developing a comprehensive legal and policy response to the human rights impacts of Australian companies here and abroad including consideration of how to lower the barriers to remedy, including the establishment of a statutory civil cause of action for serious human rights violations committed by Australian companies and subsidiary companies they control.





Business can have many positive impacts on human rights. For example, through the creation of decent jobs, supporting freedom of expression through information technologies and advancing community health and development through the provision of medicines or infrastructure.<sup>2</sup> However, there is also growing recognition globally of the adverse impacts of business activities on people and the planet.

Momentum in this area has been driven in part by the introduction of the *UN Guiding Principles on Business and Human Rights* (UNGPs) in 2011.<sup>3</sup> The UNGPs are the authoritative global standard outlining the expectations of States and businesses in preventing and addressing business-related human rights abuses. The UNGPs were unanimously adopted by the United Nations (UN) Human Rights Council in 2011. The Australian Government co-sponsored this resolution and has supported the UNGPs since their inception.<sup>4</sup>

Globally there is growing evidence of the uptake of the UNGPs by business and industry associations, multi-stakeholder initiatives and the integration of the UNGPs into a wide range of standards, laws and policies. However, such efforts have coincided with a range of tragic events with ongoing repercussions, such as the collapse of the Rana Plaza garment factory building in Bangladesh in 2013, which killed at least 1,132 people.<sup>5</sup> They have also dovetailed with a growing focus on 'stakeholder capitalism', sustainability and environmental, social and governance (ESG) issues, and recognition of the material risk that human rights issues increasingly pose to business. As the global consensus on the normative authority of the UNGPs continues to grow, business and governments are facing increasing pressure from consumers, investors and civil society organisations to implement the UNGPs in a substantive way. Despite this pressure, there remains a gap between the principles and practice.

June 2021 marked the 10-year anniversary of the introduction of the UNGPs. This milestone provides an important opportunity to reflect on progress made in Australia towards their implementation and to identify gaps in policy, law and practice, and to explore possible solutions.

## 1.1 Report overview

Section 2 of this report outlines what the 'Protect, Respect and Remedy' framework of the UNGPs expects from States (including Australia) and business including investors, highlights the global momentum towards implementation of the UNGPs and explains the relationship between the UNGPs and other international frameworks, such as the UN Sustainable Development Goals.

Section 3 acknowledges progress and identifies gaps around implementation of the UNGPs in Australia in the following six focus areas:

- 3.1 Combatting modern slavery
- 3.2 Embedding human rights due diligence into business practice
- 3.3 Respecting the land rights of Aboriginal and Torres Strait Islander peoples
- 3.4 Addressing the adverse human rights impacts of climate change
- 3.5 Leveraging the role of institutional investors
- 3.6 Ensuring access to remedy for victims

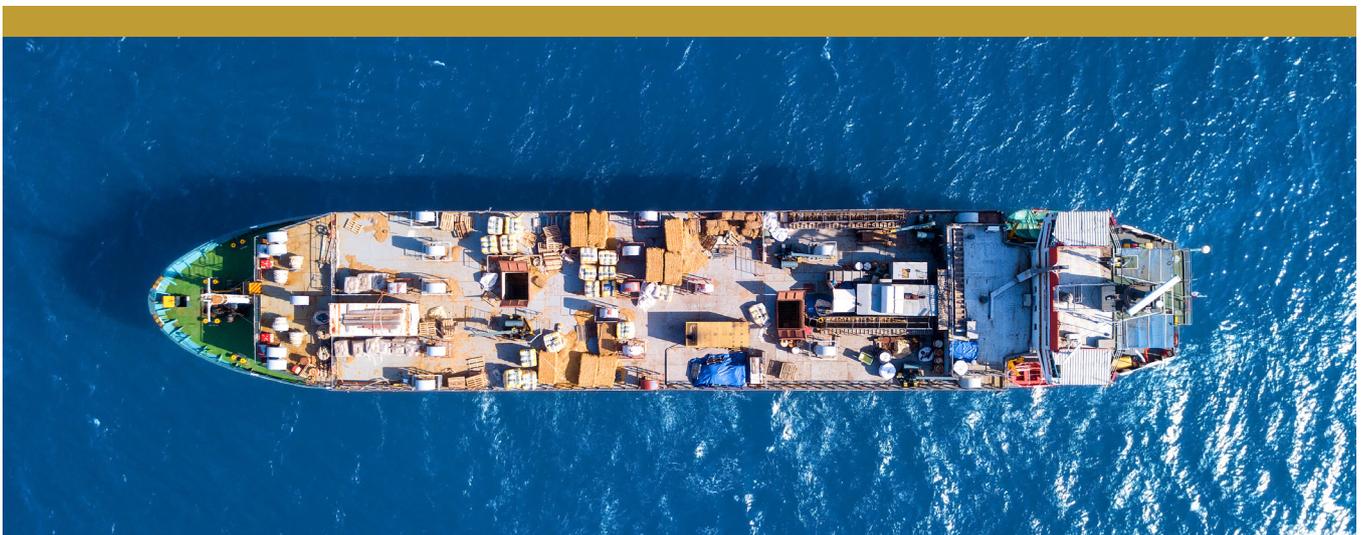
The report also contextualises Australia's progress towards implementation of the UNGPs through comparisons with other countries and draws on insights from key Australian stakeholders drawn from business, civil society, unions and academia (see the Acknowledgements at the end of this report).

While the six focus areas covered by this report are among the most significant business and human rights issues for Australia, they reflect only a portion of the diverse human rights issues that arise in the context of business activities. For example, there are important human rights considerations relating to: the development and impacts of technology; the relationship between corruption and human rights harms; the content and implementation of international trade and investment agreements; and the practices of business in conflict or post-conflict settings and economic actors owned or controlled by States. In addition, certain groups – such as women and children, migrant workers and human rights defenders – are often particularly vulnerable to business-related human rights abuse and require specific attention.

### **A global stocktake on the implementation of the UN Guiding Principles on Business and Human Rights**

A wider global stocktake on the implementation of the UNGPs is currently being conducted by the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group on BHR). To date, that project has culminated in a June 2021 report, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade*, which will be followed in late 2021 by a *Roadmap for the next decade* report with recommendations for the implementation of the UNGPs globally in the next 10 years.<sup>6</sup>

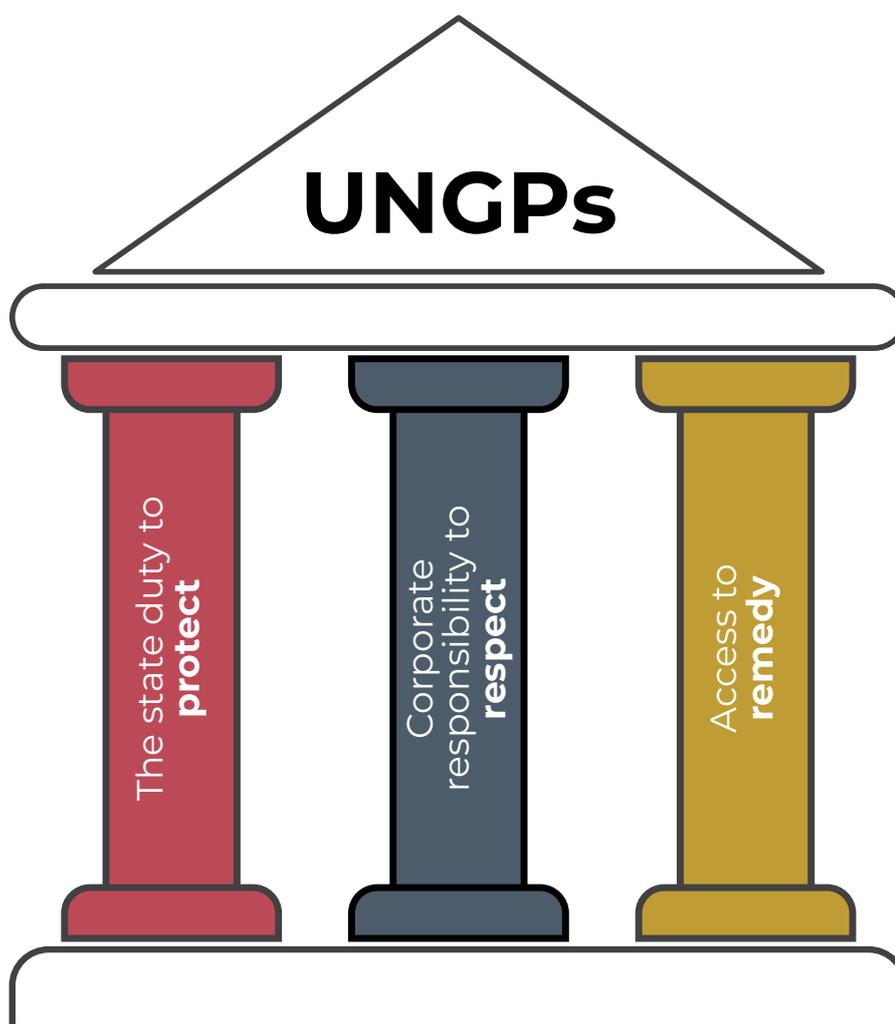
Section 4 of this report reflects on this report's findings, reiterates the recommendations of the call to action for business, investors and Government, and highlights the range of stakeholders involved in their implementation, and more generally in advancing the UNGPs.



# 02 The UN Guiding Principles on Business and Human Rights

The UNGPs are an authoritative global standard introduced in 2011 that articulates the current expectations on States and businesses with respect to preventing and addressing adverse business impacts on human rights. They seek to address the 'governance gaps' around business accountability for human rights impacts, which arise in part from the disconnection between the globalised nature of contemporary business and the often weak or non-existent state-based regulation of business conduct with respect to rights.

The UNGPs comprises 31 principles within a three-pillar framework, referred to as the 'Protect, Respect and Remedy' framework.



- Pillar I:** the State **duty to protect** against human rights harms, including by business
- Pillar II:** the business **responsibility to respect** human rights
- Pillar III:** the need to ensure that there is **access to remedy** for business-related human rights harms

## 2.1 Pillar I: The State duty to protect human rights

Pillar I reflects the general position in international law that each State has a duty to protect against human rights harms by businesses in their territory and jurisdiction, including through effective laws, policies, regulation and adjudication. The UNGPs suggest that to fulfil this duty and foster business respect for human rights, States should use a 'smart mix' of measures including mandatory, voluntary, international and national initiatives. States are also expected to protect against human rights harms by business enterprises they own, control, which receive substantial State support (including for example, export credit agencies), including where its acts can be attributed to the State.<sup>7</sup> States are also expected to promote respect for human rights through their commercial transactions, including procurement activities.<sup>8</sup> The implementation of Pillar I is most notably reflected through the introduction of National Action Plans on Business and Human Rights, which have been developed or are under development in 43 countries with a mixed record of success.<sup>9</sup>

In 2017, the Australian Government established a multi-stakeholder advisory group to consider the implementation of the UNGPs in Australia.<sup>10</sup> The advisory group made a range of recommendations to the Australian Government, including the development of a National Action Plan, but this has not been progressed by the Government. The implementation of Pillar I by States is also reflected in the emergence of a range of domestic legislation and policy. Key examples include modern slavery reporting laws in the UK, California and Australia, and human rights and environmental due diligence laws in France, Norway, the Netherlands and Germany, and potentially across the European Union.<sup>11</sup> The UNGPs have also been incorporated into a range of international soft law standards, most notably the OECD Guidelines, as well as international arbitration rules and corporate benchmarking initiatives.<sup>12</sup>

## 2.2 Pillar II: The business responsibility to respect human rights

Pillar II of the UNGPs sets out the expectation that all businesses have a 'responsibility to respect' human rights, regardless of their size and wherever they are operating. The UNGPs explain that the business can demonstrate they are meeting their responsibility to respect human rights by having:

- a public policy commitment to respect human rights
- a continuous process of 'human rights due diligence', to identify, prevent, mitigate and account for adverse human rights risks and impacts, arising from their activities or relationships – such as in their supply chain
- providing for or cooperating in the remediation of human rights harms if they occur.

The UNGPs recognise this will be an ongoing process and ask that businesses start by addressing their most severe risks of harm to people first. Importantly, the business responsibility to respect human rights extends to operating contexts in countries that lack sufficient laws or regulation requiring businesses uphold international human rights standards. The implementation of Pillar II is demonstrated by the uptake of the UNGPs by leading businesses globally, through human rights policies and due diligence (either voluntarily or in response to regulation) and supported by a proliferation of practical and interpretative guidance across different sectors.

The UNGPs differ from traditional notions of 'corporate social responsibility'. While corporate social responsibility is voluntary, the UNGPs are a universal standard, which apply regardless of whether businesses adopt the UNGPs. The UNGPs focus on risks of harm *to people* (rather than *to business*) and expect businesses to 'know and show' their human rights risks and how they are addressing them. The UNGPs are also clear that a business cannot offset its human rights responsibilities in one area by 'doing good' in another.

## 2.3 Pillar III: Access to remedy

Pillar III asks States and business to take appropriate steps to ensure victims of business-related human rights harms have access to remedy, including through judicial, administrative, legislative, or company level grievance mechanisms. While there is, in theory, a wide range of options for remedy, in practice there is 'not enough actual remedy'.<sup>13</sup> In Australia, and globally, Pillar III is under-implemented, especially in relation to ensuring pathways to remedy for victims of harms occurring extraterritorially. As a result, a parallel process is underway at the UN to develop a binding treaty on business and human rights that seeks to provide more concrete pathways to remedy for victims.<sup>14</sup> The treaty's proponents intend that it will address the limitations of the UNGPs including their voluntary nature.

## 2.4 The relationship between the UN Guiding Principles on Business and Human Rights and other international standards

### (a) The UNGPs and the OECD Guidelines on Multinational Enterprises

The *OECD Guidelines for Multinational Enterprises* (OECD Guidelines) are a set of State-backed recommendations on standards for responsible business conduct, which 48 signatory governments, including Australia, have asked their multinational enterprises to observe wherever they are operating. The OECD Guidelines provide a standard for responsible business conduct across a range of related areas such as human rights, labour rights, environment, information disclosure, industrial relations, tax and bribery.<sup>15</sup> The OECD Guidelines were revised in 2011 to include a new human rights chapter that is consistent with the UNGPs, and to apply the due diligence framework of the UNGPs to the responsible business conduct areas in the OECD Guidelines.<sup>16</sup> The OECD Guidelines also provide for a complaint mechanism (called a 'National Contact Point') for breaches of the standards in the OECD Guidelines, which is discussed in Part 3.6 – Ensuring Access to Remedy for Victims.





### (b) The UNGPs and the SDGs

In 2015, the UN Sustainable Development Goals (SDGs) were adopted by all UN member states. The 17 SDGs provide a shared global framework for a sustainable and just future and call for concerted action by governments, business and civil society to end poverty, foster just and inclusive societies and 'realise the human rights of all'.<sup>17</sup> The SDGs are underpinned by human rights standards<sup>18</sup> and cover a wide range of sustainability goals – including on gender quality, climate change, biodiversity, decent work and sanitation. They explicitly call for business to be a key partner in achieving the SDGs, while protecting rights in accordance with the UNGPs.<sup>19</sup> The UN Working Group on Business and Human Rights has explained that the most powerful way businesses can contribute to the SDGs is to first conduct due diligence in accordance with the UNGPs to prevent and mitigate a business' *own* adverse impacts in SDG goal areas.<sup>20</sup> The UN Working Group on Business and Human Rights explains:

Business strategies to contribute to the Sustainable Development Goals are no substitute for human rights due diligence ... businesses need to realize and accept that not having negative impacts is a minimum expectation and a positive contribution to the Goals.<sup>21</sup>

### (c) The UNGPs and the Global Compact Principles

The UN Global Compact (UNGC) is a voluntary initiative established in 2000 that seeks to align business operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment, and anti-corruption (the Global Compact Principles).<sup>22</sup> The Global Compact Network Australia is the Australian chapter of the UNGC and in 2020 had 108 business members. The Global Compact Principles laid the foundations for the adoption of the UNGPs in 2011,<sup>23</sup> and UNGPs are now the authoritative framework that informs the Global Compact Principles as they relate to respecting human rights.<sup>24</sup> All businesses have a responsibility to respect human rights in accordance with the UNGPs, regardless of their size, sector or whether they are members of the UNGC.

# 03 Key business and human rights issues in Australia

The following sections explore the implementation of the UNGPs across a number of priority issues within the Australian business and human rights landscape.

## 3.1 Combatting modern slavery

Modern slavery occurs in every region of the world, including in Australia. The International Labour Organization (ILO) and Walk Free estimate that there are more than 40 million people around the world who can be categorised as modern day slaves.<sup>25</sup> The Australian Government estimates that there are at least 1,900 victims of modern slavery in Australia,<sup>26</sup> as a conservative estimate.

There is no globally recognised definition of modern slavery. It is an umbrella term that incorporates a range of serious exploitative practices, including: trafficking in persons; slavery; servitude; forced marriage; forced labour; forced marriage; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour.<sup>27</sup> Each of these terms is defined in treaties of the UN and the ILO.

Forced labour is a form of modern slavery particularly relevant to workplace exploitation and often prevalent in global supply chains. Forced labour is defined in ILO Convention No. 29 as work that people must perform against their will under the threat of punishment.<sup>28</sup> Of the 25 million people the ILO estimates to be working as forced labourers, 16 million of these are working in the private economy and half of those are experiencing debt bondage (where individuals work to pay off a debt, while losing control over working conditions and repayments).<sup>29</sup> Modern slavery is best understood as existing on a continuum of exploitation.<sup>30</sup> Such an outlook recognises that people can be exposed to working conditions that gradually worsen, sometimes leading to modern slavery.

Modern slavery is a term that has contemporary resonance and is of increasing concern to governments, business, trade unions, civil society, investors and consumers. The SDGs call for the abolition of modern slavery by 2030.<sup>31</sup> Based on current estimates, 'that means around 10,000 people need to escape from slavery each day'.<sup>32</sup>

The COVID-19 pandemic has exacerbated the risks of modern slavery and the impacts have fallen most severely on vulnerable populations, including those working in essential industries producing food and medical equipment.<sup>33</sup> The UN 'recommends that States ensure implementation of the UN Guiding Principles on Business and Human Rights ... and increase awareness of contemporary forms of slavery and the risks faced by the vulnerable workers among businesses',<sup>34</sup> to better address these impacts.

Australia's Modern Slavery Act was adopted in 2018, seven years after the introduction of the UNGPs. The UNGPs embody 'principled pragmatism'<sup>35</sup> as a means of connecting businesses with their rights responsibilities. This pragmatism is also evident in Australia's approach to addressing modern slavery, which emphasised corporate reporting as the key to combatting the problem. Stakeholders interviewed for this report agreed that the UNGPs had a more indirect, rather than direct, impact on the development of this approach.

Since 2011, the socialisation of the UNGPs among governments, business and civil society has laid the groundwork for greater acceptance of the need to establish laws linking business with rights responsibilities. While the Modern Slavery Act does not directly reference the UNGPs (although reference in s 16 to due diligence stems from the UNGPs), their influence is more directly evident in the accompanying Government guidance which draws on the UNGPs framework to discuss the responsibility of business to take action to combat modern slavery.<sup>36</sup>

#### **(a) Australia's Modern Slavery Act**

From 2020, Australian businesses, universities and not-for-profits with an annual consolidated revenue of \$100 million or more, are required to publish an annual 'modern slavery statement'. This expectation also applies to the Commonwealth Government. Section 16 of the Modern Slavery Act requires these annual public statements to detail: the identity, structure, operations and supply chains of the reporting entity, the modern slavery risks identified, actions taken to assess and address these risks (including due diligence and remediation), how the entity assesses the effectiveness of such actions and the process of consultation with other entities it owns or controls, plus other relevant information. Statements must be approved by the principal governing body of the entity (a company's board of directors, or equivalent) and signed by a responsible member of the entity. To date, more than 4,400 entities have submitted their statements, which are published on a free, online, government-run register. While not required by the Modern Slavery Act, the Government's guidance encourages reporting entities to conduct human rights due diligence in line with the UNGPs to identify and respond to modern slavery risks.

#### **(b) Progress to date**

The Modern Slavery Act and the Government's supporting guidance has helped to socialise some Australian businesses to the UNGPs and their responsibility to respect human rights. However, early analysis of the first year of statements indicates mixed results, with varied levels of corporate engagement with modern slavery risks.

A study of modern slavery reports from ASX200 companies notes that they demonstrate a 'race to the middle approach (seeking to satisfy the legal requirements of the Modern Slavery Act without disclosing more than key peers)'.<sup>37</sup> Another report on the first year of statements noted that while 'some organisations have gone to extensive lengths to understand their supply chains and the risks that lie within it ... Others have barely scratched the surface'.<sup>38</sup> An analysis of reports issued by the property sector acknowledged that while property owners are making commitments to eradicate modern slavery, they are 'failing to meaningfully engage workers in their supply chains' and there is a danger of 'cosmetic' rather than substantive compliance with the law and its purpose to reduce modern slavery.<sup>39</sup>

The danger of encouraging cosmetic rather than substantive compliance with the Modern Slavery Act was a common concern raised by stakeholders interviewed. Criticisms of the Modern Slavery Act include the lack of effective enforcement mechanisms, too little focus on remediation and support for survivors and the absence of an independent modern slavery commissioner who could coordinate and oversee regulatory responses.

These concerns, and the variable reporting responses, are consistent with evidence to date gathered from other jurisdictions, such as the United Kingdom (Modern Slavery Act 2015) and California (California Transparency in Supply Chains Act 2010), which have also adopted a mandatory disclosure approach to addressing modern slavery. The rationale behind these laws, and that of Australia's Modern Slavery Act, is that the reputational implications of forced disclosure will compel companies to undertake human rights focused examination of their supply chain practices and thus improve respect for human rights and reduce modern slavery. However, simply institutionalising transparency is unlikely to lead automatically to improvements in corporate behaviour, although it is a useful first step. What is key, is ensuring that the laws encourage a move toward substantive compliance with human rights standards and which prioritise practices and accountability not just policies and processes.

The application of the Modern Slavery Act to the Australian Government is an important development and first step towards partial application of the UNGPs to the Australian Government's procurement activities, in accordance with the first Pillar of the UNGPs. The Government's first modern slavery statement has provided early signals that the Government is laying the groundwork to establish improved practices in responding to modern slavery risks in government procurement. Given the Australian Government's significant annual public procurement budget, government-led modern slavery risk management has the potential to drive modern slavery risk management practices throughout parts of the Australian market.

### (c) Looking ahead

What is increasingly evident is that reporting alone will not end modern slavery and multiple mechanisms and a diversity of stakeholders are needed to address this challenge. The Modern Slavery Act is scheduled for review in 2022, which provides an opportunity to strengthen the law and focus on enforcement and remediation to ensure substantive compliance with the purpose of the law, and to consider the establishment of an Independent Anti-Slavery Commissioner and a national compensation scheme for victims in Australia.

Other useful complementary legislative measures that have been proposed that would support the Modern Slavery Act include the establishment of an Australian Magnitsky-style law<sup>40</sup> and a US-style customs law to ban goods produced by forced labour.<sup>41</sup> New South Wales (NSW) is the only Australian state or territory to have passed its own modern slavery legislation, however the NSW Act is yet to be enacted. While effective and improved legislative approaches are crucial (including strengthening the enforcement framework), so too is the response of business to rise to this challenge by providing meaningful disclosure on modern slavery risk, conducting human rights due diligence and establishing a process for remediation in line with the UNGPs.

See the **call to action** for:

- business and investors – recommendations 1(a), (b) and (c)(i)
- Government – recommendation 3(a)



### 3.2 Embedding human rights due diligence into business practice

Human rights due diligence is a concept that is gaining traction in the business and human rights field. It is essentially asking business to 'know and show' what they are doing to prevent and mitigate human rights abuses. Due diligence is an integral component of the UNGPs and its effective development, and implementation is noted as a shared responsibility of both government and business. It was introduced in the UNGPs as the primary tool by which businesses, including investors, could discharge their responsibility to respect rights.

#### Human rights due diligence

Human rights due diligence, as set out in the UNGPs, is comprised of four key elements. Namely, businesses are expected to:

1. assess their actual and potential adverse human rights impacts
2. integrate these findings internally and take appropriate preventative and mitigating action
3. track the effectiveness of their response
4. publicly communicate how they are addressing their human rights impacts.<sup>42</sup>

UNGP 17 sets out the basic parameters of the recommended due diligence process and notes that human rights due diligence may cover impacts a business causes, contributes to or is directly linked to it via its operations and relationships (such as supply chains), and will vary in complexity according to the size of the business and the severity of risk.<sup>43</sup>

A key feature that distinguishes human rights due diligence from traditional corporate due diligence is that human rights due diligence focuses primarily on detecting the risks that the company may pose to *people*, as opposed to *risks to the business*. As such, human rights due diligence is designed to be an ongoing interactive mechanism that keeps the business apprised of its impact on workers (including throughout their global supply chains), the community and a broader set of stakeholders. Like other risk management frameworks, human rights due diligence expects that businesses will prioritise addressing their most severe risks of harm to people first.

Since the advent of the UNGPs in 2011, there have been significant advances in further defining and refining the concept (including by the OECD),<sup>44</sup> and in some select cases, legally mandating companies to conduct such assessments. The recent moves to make human rights due diligence mandatory in some jurisdictions comes after ten years of limited uptake by business and some lingering ambiguity about what due diligence should entail. In a 2020 study conducted by the European Commission on options for regulating due diligence, only one-third of business respondents indicated that they currently undertook some form of due diligence.<sup>45</sup>

#### (a) Human rights due diligence in Australia

Due diligence is briefly referenced in s 16 of the Modern Slavery Act and discussed in more detail in the accompanying Government guidance.<sup>46</sup> There is early evidence that a limited number of Australian businesses reporting under the Modern Slavery Act are beginning to implement human rights due diligence processes to identify and address their modern slavery risks.<sup>47</sup> The possibility of more firmly embedding human rights due diligence into the modern slavery law has long been considered as part of the Modern Slavery Act's review, with the 2017 Modern Slavery Act Inquiry's *Hidden in Plain Sight* report noting that 'any further due diligence measures should be considered as part of the three year review' (due in 2022).<sup>48</sup>

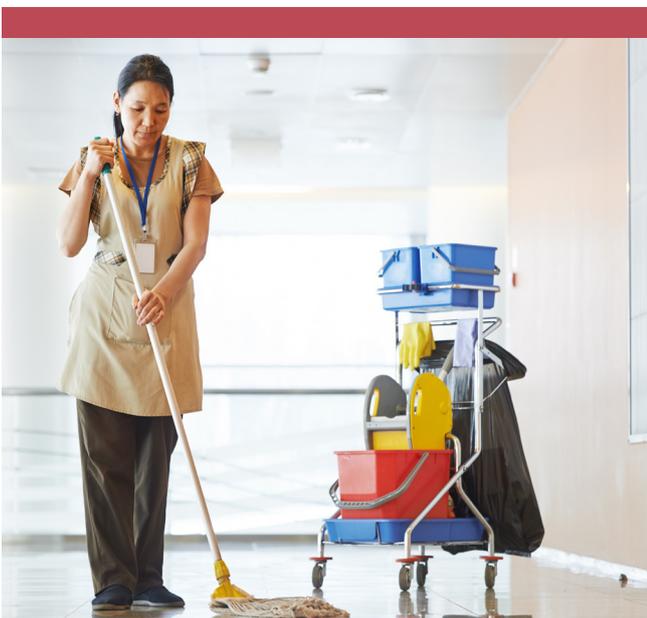
A 2020 report from the Australian Law Reform Commission also recommended strengthening Australia's framework for addressing corporate human rights abuses (including but not limited to modern slavery) by making human rights due diligence mandatory.<sup>49</sup> Utilising due diligence to prevent social harms is already used in Australia in environmental law including, for example, in the *Illegal Logging Prohibition Act 2012* (Cth), which creates an offence of failing to have in place adequate due diligence procedures in relation to the importation of illegally harvested timber (ss 12–14). The regulations outline the specific ways in which business should conduct due diligence, including the requirement for adequate record-keeping.

### **(b) The global outlook**

Globally several countries continue to advance proposals to implement laws focused on human rights due diligence and disclosure. On 29 April 2020, the European Commissioner for Justice announced that the European Council would introduce rules for mandatory corporate environmental and human rights due diligence in 2021. The announcement was the latest in a series of developments representing a rising tide of human rights and environmental due diligence obligations.

The new EU regime will add to existing legal obligations and further codify existing soft law frameworks. It will also be relevant to legal actions for alleged human rights abuses, establishing the standard of conduct expected from companies. However, the potential enforcement framework remains as yet unclear. Also in 2021, both Germany and Norway proposed new laws on mandatory human rights and environmental due diligence in supply chains.<sup>50</sup> These new laws follow the 2017 French Corporate Duty of Vigilance Law, which requires large French companies to identify and prevent adverse human rights and environmental impacts, including those resulting from their supply chains. They also follow the 2019 (not yet enacted) Dutch Child Labour Due Diligence Act that will require companies selling products or services to Dutch end-users to identify whether child labour is present in their supply chain and, if this is the case, to develop a plan of action to address it and issue a due diligence statement. Australian businesses with exposure to European markets via their operations or subsidiaries will likely feel the effects of this expanding regulatory landscape.<sup>51</sup>

The French and Dutch laws provide for stronger enforcement measures than the Australian, UK and Californian modern slavery laws (discussed in Section 3.1). In France, a court may impose an injunction on companies to comply with the vigilance requirements (akin to a duty of care) and companies may potentially be held liable under a civil lawsuit where companies have failed to implement due diligence plans and harm has occurred that can be causally linked to that failure. The Dutch law actively involves the regulator in the enforcement framework and provides for a process of due diligence implementation and the potential for fines to be imposed for noncompliance. This series of developments clearly represents a rising tide of mandatory human rights and environmental due diligence obligations that is relevant and influential on how a stronger rights-respecting business regulatory framework may be designed in Australia.



### (c) Moving forward: What role is there for mandatory due diligence in Australia?

Stakeholders interviewed for this report generally acknowledged that there needs to be greater definitional clarity around the concept of human rights due diligence but a cross section of interviewees from business and civil society all agreed on its potential utility in strengthening Australia's business and human rights regulatory framework. Mandating human rights due diligence would essentially create a 'do no harm' standard of care, guided by the processes set out in the UNGPs. It is critical, however, that it does not become just a tick-box list of actions for companies to follow or an over-reliance on formalistic social audits.<sup>52</sup>

The UNGPs introduced human rights due diligence as a comprehensive, proactive, preventive (or mitigating) repeated exercise, to discover actual and potential human rights risks in business activities. This aim of encouraging substantive actions, rather than shallow or cosmetic or ritualistic management of human rights risk, is what any new law must strive for. A clear enforcement framework, which may include both incentives (including education and access to procurement contracts) and sanctions (including penalties and liability) to encourage behavioural change, is key to designing effective regulation.<sup>53</sup> Both the standards which establish the human rights due diligence approach and the accompanying enforcement framework must not be an afterthought (or outsourced to the market as in the Modern Slavery Act), but designed as close-fitting pieces of the one puzzle. Due diligence should not be one size fits all, and what in the end is considered effective and reasonable must be assessed based on each company's unique operations which aligns with the due diligence requirements set out in UNGP 17.

See the **call to action** for:

- business and investors – recommendations 1(a), (b) and (c)
- Government – recommendation 3(b)

## 3.3 Respecting the land rights of Aboriginal and Torres Strait Islander people

Globally, indigenous peoples are disproportionately negatively impacted by business activities and operations.<sup>54</sup> Recognising the challenges that indigenous peoples face in realising their rights, the UNGPs acknowledge that special attention may need to be given to their unique experiences and that supplementary principles and standards, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), are relevant.<sup>55</sup> UNDRIP provides a framework for the protection of the rights of indigenous peoples and should be used alongside the UNGPs.<sup>56</sup> UNDRIP sets out how existing human rights treaties apply in the particular circumstances of indigenous peoples. For governments, this means ensuring that measures to fulfil their state duty to protect are implemented in accordance with UNDRIP, and for businesses, that human rights due diligence is conducted in a way that respects the rights of indigenous peoples including their right to free, prior and informed consent, even if domestic legislation does not require it.

UNDRIP was endorsed by the Australian Government in 2009. While not legally binding, UNDRIP elaborates on how the rights contained in a range of international human rights treaties apply to the specific circumstances of indigenous peoples globally. At the heart of UNDRIP are the concepts of self-determination and free, prior and informed consent, which are fundamental elements of the rights of indigenous peoples. According to the International Work Group for Indigenous Affairs, free, prior and informed consent is 'an indispensable aspect of the full operationalisation of the Guiding Principles in the indigenous rights context'.<sup>57</sup> Additional principles enshrined in UNDRIP, which are critical to ensuring the realisation of land rights for indigenous peoples, include the protection of culture and equality and non-discrimination.<sup>58</sup> Notably, article 31 of UNDRIP states that:

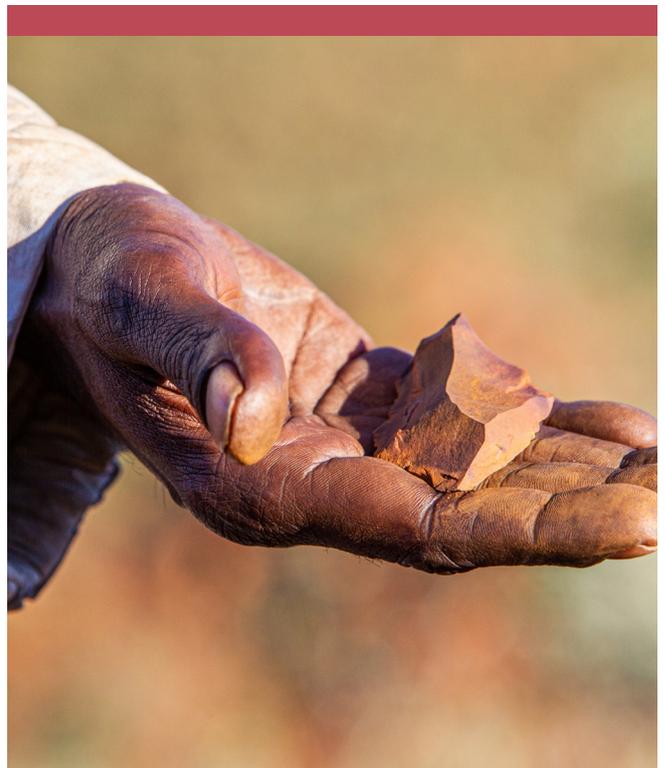
Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.<sup>59</sup>

## Free, prior and informed consent

A 2010 Oxfam guidance on the meaning of free, prior and informed consent reflects the following:

- Free means no force, coercion, intimidation, bullying and/or time pressure.
- Prior means that indigenous peoples have been consulted before the activity begins.
- Informed means that indigenous peoples are provided with all of the available information and are informed when either that information changes or when there is new information. It is the duty of those seeking consent to ensure those giving consent are fully informed.
- Consent requires that the people seeking consent allow indigenous peoples to say 'yes' or 'no' to decisions affecting them according to the decision-making process of their choice. To do this means indigenous peoples must be consulted and participate in an honest and open process of negotiation that:
  - » balances out differences in power between the negotiating parties
  - » ensures indigenous peoples are able to specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities.<sup>60</sup>

Land and country play a critical role in the lives of Aboriginal and Torres Strait Islander peoples. Yet, overdevelopment, extensive mining and the impacts of climate change have often prevented Aboriginal and Torres Strait Islander peoples from accessing, caring for and protecting country including cultural heritage sites.<sup>61</sup> This has had a huge impact on Aboriginal and Torres Strait Islander peoples' ability to exercise their right to cultural practices (UNDRIP art 11) and other cultural rights. Recent events, such as the destruction of Juukan Gorge, along with issues related to racial equality and discrimination amplified by the Black Lives Matter movement, have thrown into the spotlight the work that needs to be done to bridge the gap between international human rights standards and their realisation for Australia's Aboriginal and Torres Strait Islander peoples in the context of business activities.



## Juukan Gorge

In 2020, Rio Tinto blew up 46,000 year-old Juukan Gorge rock shelters in the Pilbara region of Western Australia. The destruction of the Aboriginal heritage sites drew extensive domestic and global attention and has highlighted the need for corporate, cultural and legislative change. There was also significant pressure and scrutiny from investors, ultimately leading to the resignation of the CEO and two senior executives.<sup>62</sup>

Following the incident and extensive public outcry, the Joint Standing Committee on Northern Australia launched an inquiry into how the destruction of the caves came about, the processes that failed to protect the site, the impacts on Traditional Owners, and the legislative changes required to prevent such incidents from recurring.<sup>63</sup> Although the Committee's final report remains pending, the Committee has found that, based on the evidence received to date, the legal framework for the protection of Aboriginal heritage in Australia remains inadequate<sup>64</sup> and without 'government and industry action, indigenous heritage will continue to be at risk'.<sup>65</sup>

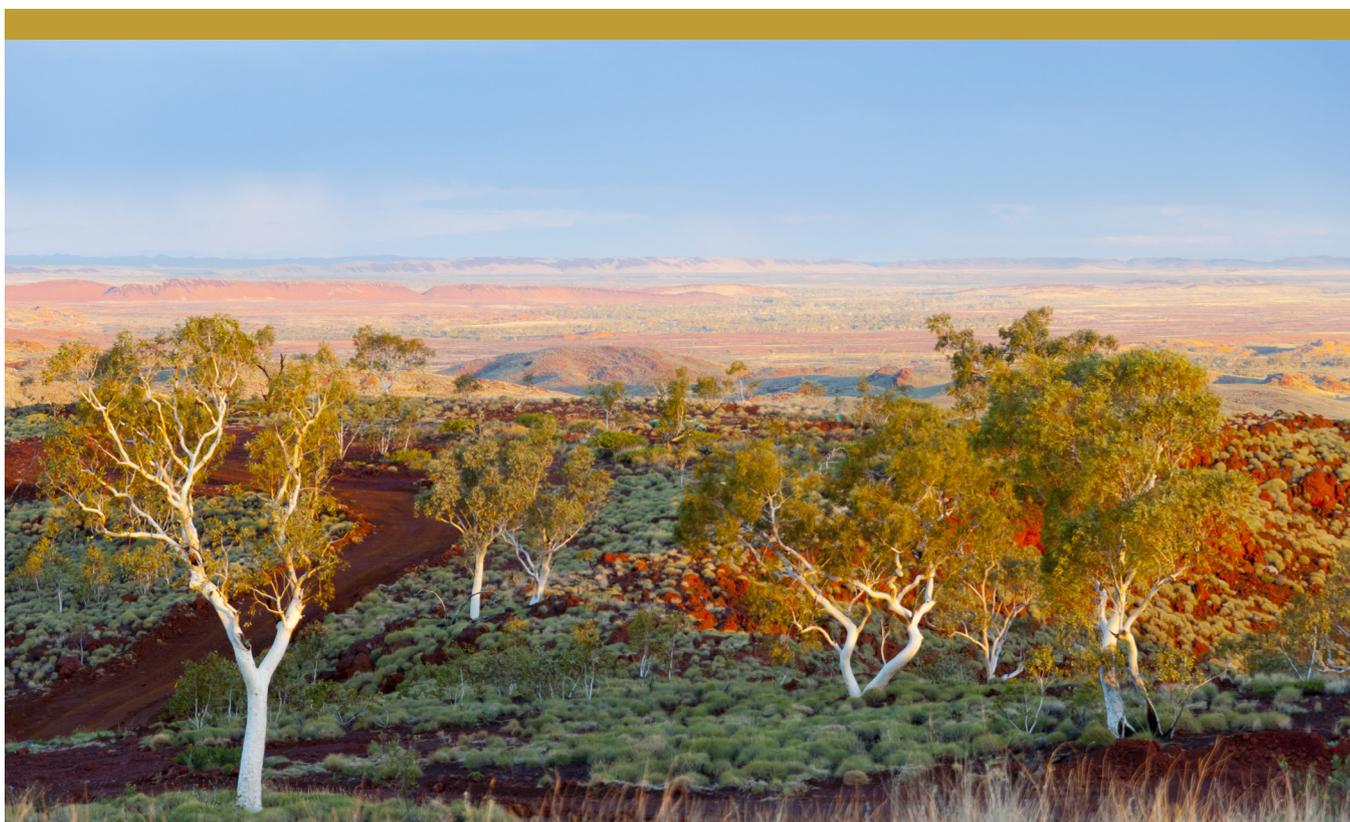
### (a) The long road to securing land justice in Australia

Unfortunately, Juukan Gorge is not an anomaly. There are many examples, including some later examples where companies have failed to engage in meaningful human rights due diligence processes and obtain free, prior and informed consent before permanently destroying culturally significant sites.<sup>66</sup>

Moreover, access to justice and compensation for land dispossession is a key area of 'unfinished business' that remains unresolved for Aboriginal and Torres Strait Islander peoples.<sup>67</sup> Australia's performance in this area has also been scrutinised at the international level, with the UN Committee on the Elimination of Racial Discrimination expressing concerns about the lack of free, prior and informed consent in relation to extractive and development projects in Australia.<sup>68</sup>

Beyond the failings of companies to engage in effective due diligence processes, there are many challenges associated with the legal regime related to land rights and native title. Despite the growing domestic and international recognition of the need for free, prior and informed consent, it is not yet effectively embedded into Australian law.

The *Native Title Act 1993* (Cth) is the legal avenue to recognise native title in Australia and to regulate the interaction between native title rights and interests and other interests.<sup>69</sup> Yet a number of barriers exist that impede First Nations peoples in Australia from realising benefits from the native title regime. These include: the overly high burden of proof required to prove connection to country; the significant power imbalance enshrined in the *Native Title Act 1993* (Cth) when it comes to negotiating acts by third parties on native title land; a lack of knowledge (among all parties) of native title rights (and interactions between native title rights and rights in other state and territory-based land rights regimes); the complexity of funding arrangements and lack of resources for claiming native title; and the lack of resources to manage land held under native title and to negotiate with third parties regarding acts on that land.<sup>70</sup> Furthermore, the system is highly complex and technical in nature with multiple legislative regimes relevant to native title and related claims and negotiations at the federal, state and territory levels, including land rights regimes as well as heritage laws and the laws relating to corporations and trusts.<sup>71</sup> The native title system can also be socially destructive, causing or exacerbating tensions and lateral violence within communities.<sup>72</sup>



### **(b) Catalysts for change**

Despite the overall lack of progress in this area, interviewees highlighted that there are a number of emerging drivers of positive change. For example, Reconciliation Action Plans have provided a platform within the corporate sector to discuss and foster reconciliation, but also increase the understanding of human rights more broadly. However, there is always a danger of such plans being used for ‘greenwashing’ and the avoidance of substantive action. The action taken by Reconciliation Australia to remove companies from its Elevate Action Plan Program may be a useful accountability tool.<sup>73</sup> The increasing rise in investor action on indigenous consent and land is also a positive development,<sup>74</sup> along with a growing collaboration between investors with community groups and Aboriginal leaders.<sup>75</sup> Another welcome development has been the corporate support from a range of major Australian businesses for the Uluru Statement from the Heart, and its call for implementation of a constitutional voice, treaty and truth-telling processes.<sup>76</sup>

### **(c) A need for greater action**

2022 marks the 30<sup>th</sup> anniversary of the landmark Mabo decision which held that the common law of Australia recognised a concept of native title to the traditional lands and waters of Aboriginal and Torres Strait Islander peoples in Australia. It led to the introduction of the *Native Title Act 1993* (Cth). Yet, the realities that many Aboriginal and Torres Strait Islander people face in securing rights under the Native Title Act highlight the significant need for greater action by governments and business.

Although beyond the scope of this report, stakeholders interviewed highlighted that while it is important to address the deficiencies of the native title system, any action in this area must sit within a broader reform agenda that is grounded in voice, treaty and truth. This has also been emphasised by June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner, who states, ‘we cannot reduce native title to a singular focus on land. Native title is a fundamental part of social justice – it must sit within a whole of systems reform.’<sup>77</sup>

The interviews highlighted the need for greater education and engagement across the business community around the UNGPs and UNDRIP, particularly the importance of free, prior and informed consent and its practical application. While the role of the extractive sector is critically important in this area, education and awareness raising efforts must go beyond this sector. The UN Global Compact Network Australia has played a leading role in this regard with the development of guidance for Australian businesses on implementing UNDRIP.<sup>78</sup>

Overall, when compared to some other areas examined in this report, progress in UNGPs implementation in relation to land rights and native title is lagging. Moving forward, both government and business must invest significant resources to ensure greater implementation of the UNGPs in a way that is fully grounded in the key principles of self-determination and free, prior and informed consent.

See the **call to action** for:

- business and investors – recommendations 1 (a), (b) and (c)(iii)
- Government – recommendations 3(b) and (c)

### 3.4 Addressing the adverse human rights impacts of climate change

The relationship between human rights and climate change is clear. The UN Office of the High Commissioner for Human Rights (OHCHR) highlights that globally rising temperatures due to human activity are contributing to extreme weather events including floods, droughts, heatwaves, cyclones, rising sea levels and biodiversity loss and ecosystem collapse.<sup>79</sup> The 2021 report of the UN Intergovernmental Panel on Climate Change (IPCC) warned that extreme weather events are increasing in frequency and intensity.<sup>80</sup>

The physical impacts of climate change have direct and indirect negative impacts on virtually all human rights, including the right to life, adequate food, health, water and sanitation, adequate housing, self-determination, and cultural rights.<sup>81</sup> Climate-related human rights impacts are expected to include death, injury, disease, malnutrition, displacement, and loss of livelihood, among other harms, and are already disproportionately affecting the world's most vulnerable.<sup>82</sup> The UN Secretary-General has described climate change as 'the biggest threat to our survival as a species and is already threatening human rights around the world'.<sup>83</sup>

Australians have begun to experience increased frequency and severity in extreme weather linked to climate change, including bushfires and extreme heat along with ocean warming with damage to marine ecosystems.<sup>84</sup> These events affects Australians' rights to life, to health and to enjoy and benefit from culture, among others.<sup>85</sup> It disproportionately affects socially disadvantaged Australians and Aboriginal and Torres Strait Islander people due to their connection with country.<sup>86</sup> Climate change also poses a serious threat to Australia's Pacific Island neighbours due to rising sea levels, and is linked to increased modern slavery risks.<sup>87</sup>

Government and business responses to climate change tend to be approached primarily through an environmental or economic lens, however given the significant human rights implications of climate change, a wider human rights lens is also needed.

#### (a) Climate change, global targets and a just transition

Urgent concerted action from governments and business is required to address climate change and its human rights impacts. The 2015 Paris Agreement, adopted by 196 countries including Australia, aims to limit global warming to well below 2°C, and preferably to 1.5°C compared to pre-industrial levels.<sup>88</sup> In 2018, an IPCC report explained that even if global warming is limited to 1.5°C, there will still be significant impacts on the planet and human rights, which are expected to increase considerably in severity with 2°C warming.<sup>89</sup>

In 2018, the IPCC explained that for there to be a reasonable chance of limiting global temperature rises to 1.5°C, greenhouse gas emissions (emissions) need to be reduced to 45% below 2010 levels by 2030, and reach net-zero by 2050.<sup>90</sup> The IPCC's 2021 report warns that, without rapid reductions in emissions, global warming will exceed 1.5°C within the next two decades.<sup>91</sup> 121 countries have committed to net-zero emissions by 2050 or earlier.<sup>92</sup> In May 2021, the International Energy Agency (IEA) reported that there is a 'narrow' path to net-zero 2050, which 'requires all governments to significantly strengthen and then successfully implement their energy and climate policies' and involves no new fossil fuel projects and significant investment in clean energy technologies, which is 'fair and inclusive'.<sup>93</sup> The IEA predicts this will create investment opportunities, millions of jobs and growth in global GDP.<sup>94</sup>



---

*'The attention of governments, regulators and investors has recently shifted to achieving the 'stretch' target under the Paris Agreement, of limiting global warming to 1.5°C above pre-industrial averages, in an effort to limit the worst physical impacts associated with climate change ... Already, governments representing more than 70% of the global economy have announced policies to transition their economies to 'net zero' by 2050 (including every Australian State and Territory) – in many cases with commitments to halve emissions by 2030 as they work towards the longer-term target. These global emissions reduction commitments are increasingly being applied across adjacent areas of regulation – including tariffs and trade, and capital regulatory requirements.'*

**Australian Institute of Company  
Director's Climate Risk Governance  
Guide (August 2021) page 7**

---

Alongside the human rights impacts arising in connection with emissions (as well as pollution, deforestation and the like), human rights risks also arise where climate action is not pursued in a rights-respecting manner.<sup>95</sup> The Paris Agreement affirms States' obligation to respect and promote human rights when taking climate action and the importance of a just transition.<sup>96</sup> A just transition is one that ensures the shift to a low carbon economy is inclusive, eradicates poverty and provides decent work and quality jobs for those affected.<sup>97</sup> Similarly, the SDGs stress the importance of 'leaving no one behind', including in relation to SDG 13 on climate action.

### **(b) UNGPs in the climate change context**

The relationship between business activities, especially those of fossil fuel companies, and climate change is well-established.<sup>98</sup> While the UNGPs do not address climate change, the UN Office of the High Commissioner on Human Rights (OHCHR) and the UN Special Rapporteur on Human Rights and Environment (Special Rapporteur) have published commentary confirming the UNGPs apply to climate-related human rights harms.<sup>99</sup>

#### *(i) UNGPs and expectations of governments*

The UNGPs reiterate that States have a duty to protect against human rights harms occasioned by businesses, and the OHCHR and the Special Rapporteur have confirmed that this includes climate-related human rights harms.<sup>100</sup> According to the OHCHR this means using a 'smart mix' of regulation, law, policy to encourage or require businesses to reduce emissions and take steps to prevent climate-related human rights harms, including transition risks.<sup>101</sup> The OHCHR suggests government action could include incentivising low or zero carbon investments and requiring businesses to: reduce their emissions; disclose their emissions and climate risks and impacts; and conduct human rights and environmental due diligence to prevent, mitigate and remedy their climate-related human rights impacts.<sup>102</sup>

#### *(ii) UNGPs and expectations of business*

The OHCHR has confirmed that under the UNGPs, businesses (including investors) are expected to respect human rights in the context of climate change, including in lobbying activities.<sup>103</sup> The UNGPs expect businesses to avoid *causing or contributing* to human rights harms through their own activities, including emissions, toxic wastes, pollution and deforestation.<sup>104</sup> Business should also seek to prevent or mitigate harms to which they are *directly linked*, including though the emissions from their value chain, or linked to an investment.<sup>105</sup> This expectation has parallels with the growing expectation globally that businesses should report on their direct and indirect emissions, including those arising in their supply chains, in line with Task Force on Climate-related Financial Disclosures recommendations.<sup>106</sup>

The cumulative and transnational nature of climate impacts arising from emissions, and their related individual and collective human rights harms, create some complexity in the application of the UNGPs, though attribution science is becoming increasingly sophisticated.<sup>107</sup> This complexity does not mean businesses should delay taking steps to address harms arising from their contributions to climate change and engaging in mitigation and adaptation activities in a rights-respecting manner.<sup>108</sup> The OHCHR has also outlined that implementing the UNGPs in the climate context means business should: have a policy commitment to respecting human rights, by mitigating climate change (with specific measures to that end); incorporate climate-related human rights risks into their human rights due diligence; and ensure those impacted have access to remedy.<sup>109</sup> The Special Rapporteur has also said that business responsibilities relating to climate change include reducing their emissions, including from their value chains, and publicly disclosing their emissions and climate risks.<sup>110</sup> These expectations are bolstered by a growing body of climate-related litigation, including on human rights grounds.<sup>111</sup>

## Notable developments – Climate and human rights litigation

### *Challenges to government*

- In 2019, the Supreme Court of the Netherlands held that the Dutch government has a duty to protect against the adverse effects of climate change on human rights and must take action to reduce emissions in the Netherlands.
- In 2019, eight Torres Strait Islanders from low-lying islands vulnerable to climate impacts lodged a complaint with the UN Human Rights Committee (which remains underway) alleging that the Australian Government's inaction on climate violates their right to life and culture.
- In 2020, a group of young people challenged the Queensland government's approval of a coal mine. In that case, which remains underway, the young people argue the approval is incompatible with the right to life and culture and will disproportionately impact the rights of young people.
- In 2021, the Australian Federal Court held that a duty is owed by the Minister for the Environment to Australian children to take reasonable care to avoid causing injury arising from the impacts of climate change, when considering whether to approve the extension and expansion of a coal mine. The Minister has lodged an appeal against this judgment.

### *Challenges to business*

- The Commission on Human Rights of the Philippines investigated a complaint brought by Greenpeace and other civil society organisations against 50 major fossil fuel companies (Carbon Majors), which relied on the UNGPs. In 2019 the Commission said that the significant, collective contribution of the Carbon Majors to climate change violated the human rights of Filipino people.
- In a landmark case in 2021, the District Court of the Hague held, relying on a range of grounds including the UNGPs, that by 2030 Royal Dutch Shell (Shell) has an obligation to reduce the Shell group's emissions targets in order to meet the 1.5°C target in the Paris Agreement.<sup>112</sup>



Applying the OECD Guidelines, a number of National Contact Points have accepted complaints relating to climate impacts by business. For example, in 2020, the Australian National Contact Point (see Section 3.6) accepted a complaint for consideration which was filed by Australian bushfire victims and Friends of the Earth against ANZ Bank relating to the disclosure of its reduction targets.

### **(c) Australia and the UNGPs in the climate context**

Australia has not formally committed to a 2050 net-zero emissions target, but has indicated its goal is to reach net zero emissions 'as soon as possible, and preferably by 2050'.<sup>113</sup> The Government has committed to a target of reducing emissions by 26–28% below 2005 levels by 2030.<sup>114</sup> All state and territory governments in Australia have committed to net-zero emissions by 2050 and there are a range of state and federal initiatives and policies underway to tackle climate change.

Despite these developments, in 2021 the UN-backed annual Sustainable Development Report ranked Australia last out of 164 countries surveyed on progress towards SDG 13 on climate action.<sup>115</sup> Australia has a similar 'Very Low' overall ranking in the latest annual Climate Change Performance Index.<sup>116</sup> Australia has also had the second highest number of climate-related cases globally (against government and business) over the past 35 years.<sup>117</sup> Stakeholders interviewed said there was urgent need for increased Government action on climate change, including the creation of a more enabling environment for businesses to respond effectively.

The IPCC's 2021 report highlights the importance of rapid and early emission reductions to avoid warming above 1.5°C in the next two decades.<sup>118</sup> There is international pressure on Australia, echoed by Australian investors and business groups to increase its efforts to tackle climate change, including by formally committing to stronger 2030 targets and to net zero emissions by 2050, ahead of the November COP26 meeting in Glasgow.<sup>119</sup> To help create an enabling environment that supports and prompts businesses to take steps to prevent climate-related human rights harms, and to avoid the worst impacts of climate change, the Government should make a formal commitment to reach net zero emissions economy-wide by 2050, if not earlier and to stronger 2030 emissions reductions targets, in line with the Paris Agreement goal of limiting global warming of 1.5°C.<sup>120</sup> This commitment should be accompanied by funding, and policy and regulatory infrastructure to support businesses to contribute to meeting these targets, while facilitating an orderly and just transition.<sup>121</sup>

In 2020, the Australian Climate Roundtable (ACR) said that Australia is unprepared for the scale of the climate threat.<sup>122</sup> The ACR called on the Government to develop a coherent national response to climate change and to adopt a national net-zero emissions by 2050 target for the Australian economy. The ACR includes the Australian Industry Group, Business Council of Australia, Investor Group on Climate Change, National Farmers' Federation, WWF Australia, Australian Aluminium Council, Australian Conservation Foundation, Australian Council of Social Service, Australian Council of Trade Unions and the Australian Energy Council.

Regulator and business focus on climate risk (and opportunities) is growing.<sup>123</sup> Some Australian businesses and investors are taking a leadership role in tackling climate change, including making net-zero commitments, reducing and disclosing their emissions, supporting a just transition for workers and communities and advocating for climate action.<sup>124</sup> However, some stakeholders suggested there was limited focus on the links between climate and *risks to people* (rather than material *risks to business*). It was also recommended that sustainability professionals upskill to bridge these traditionally siloed concerns.

See the **call to action** for:

- business and investors – recommendations 1 (a), (b) and (c)(ii)
- Government – recommendations 3(d)

### 3.5 Leveraging the role of institutional investors

The UNGPs apply to all businesses, including institutional investors, (both asset owners and asset managers, together, ‘investors’). In an interconnected, global economy, investors are exposed to a range of human rights risks and impacts relating to the environment and climate change, technology, diversity, land justice, inequality, labour rights and many others. With influence and reach into virtually all industries, investors play a pivotal role in implementing the UNGPs by setting expectations in the market and deploying capital towards rights-respecting businesses. However, the UN Working Group on BHR observed in its 2021 report on institutional investors (UN Investor Report) that, despite some progress, the ‘vast majority of investors have yet to meaningfully engage with their human rights responsibilities’.<sup>125</sup> The UN Working Group on BHR also noted that ‘efforts to achieve the widespread implementation of the [UNGPs] throughout the economy will continue to be stymied unless investor respect for human rights is sped up and scaled up’.<sup>126</sup>

The UN Investor Report pointed out that much of the investment sector globally is still characterised by a culture of ‘short-termism’, which prioritises corporate quarterly earnings over long term sustainability.<sup>127</sup> However, the COVID-19 pandemic and the climate crisis are increasing the urgency of a wide range of human rights issues and stakeholder expectations regarding investors’ role in meeting these challenges. Investors have a historic opportunity to drive a just and sustainable recovery that centres respect for human rights and helps achieve the SDGs and limit global warming to 1.5°C in line with Paris Agreement goals.

#### (a) The expectations of the UNGPs on investors

The UNGPs expect that like other businesses, institutional investors will take steps to avoid and address adverse human impacts in their business activities, including as employers and as fiduciaries acting on behalf of investors, and across their investment activities and portfolios.<sup>128</sup> Investors can meet their responsibility to respect human rights by having a policy commitment to respect human rights in relation to investment activities, and carrying out ongoing human rights due diligence to identify, prevent, mitigate and address human rights risks across their activities and portfolios, prioritising the most severe risks.<sup>129</sup> The UNGPs also expect investors to track and publicly communicate these efforts, and have a process for enabling or contributing to remediation of adverse impacts with which they are involved. In the investment context, UNGP ‘impacts’ are generally referred to as ‘outcomes’.<sup>130</sup>



The UNGPs expect that investors will use and build their leverage (i.e. influence), for example through screening, stewardship activities, investment decisions and engaging with policy-makers and peers, to drive respect for human rights and the adoption of the UNGPs by investee companies in their portfolio and asset managers in investors' value chains.<sup>131</sup> This means to implement the UNGPs, investors will need to go beyond negative or positive screening and even some current responsible investment practices to ensure substantive commitment to respecting human rights. In 2020, the UN-backed Principles for Responsible Investment (PRI), which has over 3,000 signatories representing US\$103 trillion in assets under management (AUM), reinforced the expectations of the UNGPs in its campaign to mainstream rights-respecting investment.<sup>132</sup> The UNGPs' expectations of investors are detailed in a growing array of guides, including from the OECD, the UN and the PRI.<sup>133</sup>

### **(b) Growing trend towards responsible investment**

In recent years there has been global growth in responsible investment practices primarily through the integration of ESG considerations into investment practice. Investors increasingly recognise that failure to manage longer-term 'non-financial risks' such as climate change and human rights can expose companies to material risk and jeopardise a company's social licence to operate.<sup>134</sup> There is also a growing appreciation by investors that consideration of non-financial risks is permissible, and even required, in order to fulfil their fiduciary duties.<sup>135</sup> In 2020, ESG investing represented US\$40.5 trillion, which is over 40% of all global assets AUM.<sup>136</sup> In 2019 around 30% of Australia's total AUM (AU\$1 trillion) were managed through ESG integration.<sup>137</sup> So, while some Australian investors are putting greater focus on ESG, alongside other responsible investment strategies, such as SDG and impact investing, this is still not mainstream.

#### *(i) The rise of the 'S' in ESG*

Human rights are generally treated as a sub-category of the 'social' aspect of ESG alongside diversity, health and safety and labour rights, but are more correctly understood as encompassing all of the 'S' aspects of ESG. There has traditionally been less definitional clarity and focus on 'S' aspects of ESG, relative to 'E' and 'G' risks.<sup>138</sup> The recent so-called 'rise of the "S" in ESG' has been driven by growing evidence of the performance and lower downside risks of socially responsible investments.<sup>139</sup> In addition, there is increasing scrutiny of corporate human rights records, lawsuits, shareholder activism and an expanding body of regulations, stewardship codes, corporate ESG and human rights disclosures requirements and human rights due diligence laws. However, there are no harmonised global ESG standards and investors are grappling with inconsistent and at times superficial ESG metrics and company reporting, especially in relation to 'S' factors.<sup>140</sup> Human rights also tend to be siloed within ESG analysis, despite human rights underpinning 'E' and 'G' issues such as corporate lobbying, climate risk, tax fairness or access to water.<sup>141</sup>

---

*'Despite the trend towards increased ESG investing, human rights are still rarely addressed in a systemic or principled way'.*

**- United Nations Working Group on Business and Human Rights, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights* (2021) page 13**

---

### *(ii) Investor action on human rights*

Leading institutional investors in Australia and globally are increasingly focusing on human rights. In 2021, BlackRock, the world's largest asset manager overseeing \$US8.7 trillion in AUM announced plans to prioritise engagement with investees on their human rights impacts, require robust disclosure on human rights risk management and to vote against directors not effectively addressing or disclosing human rights risks or impacts.<sup>142</sup> Coalitions of global institutional investors (joined at times by Australian investors) have called for better company performance on human rights and for the introduction of due diligence laws.<sup>143</sup> Some Australian institutional investors have urged companies to address issues in this report such as climate change, modern slavery risks and protection of the cultural heritage of Aboriginal and Torres Strait Islander peoples.

A number of stakeholders interviewed pointed to the importance of the Government's introduction of the Modern Slavery Act in setting expectations and prompting investors to increase engagement on labour rights issues arising in investee supply chains globally and domestically, such as in the agricultural sector. One example is a coalition of Asia-Pacific institutional investors representing AU\$7.6 trillion AUM which have published modern slavery risk management expectations for Australian companies and are developing an investee engagement strategy.<sup>144</sup> In contrast to legislative-led change, the Juukan Gorge disaster involving Rio Tinto was the catalyst for investor engagement with mining companies and First Nations people on land rights and cultural heritage issues, as well as increased education and policy advocacy within the sector.<sup>145</sup>

Some international and Australian institutional investors are also supporting shareholder resolutions on human rights concerns.<sup>146</sup> Leading Australian investors have been engaging with investees on climate risks and on just transition issues for some time though these efforts have not always been framed in human rights terms.<sup>147</sup> In 2020, the Australian Sustainable Finance Initiative published a Roadmap for building a more resilient and sustainable financial system, including supporting the transition to a net-zero economy by 2050, achievement of the SDGs and UNGPs implementation.<sup>148</sup> Finally, some Australian investors are deploying capital towards realising human rights through impact and SDG investing. However, there is a lack of awareness within the sector that the UNGPs also apply to these important forms of investing to ensure they are 'doing good' while also 'avoiding harm'.<sup>149</sup>

### **(c) Next steps to mainstream UNGPs-aligned investment practice**

Some stakeholders interviewed noted that, while there is a general awareness of the UNGPs within the Australian investment sector, this often does not extend to their expectations for investors. To meet the expectations of the UNGPs, many investors will need to build on their existing ESG frameworks, and take a proactive approach to systemically managing the human rights risks in their portfolios, including via meaningful stakeholder engagement. A number of stakeholders interviewed pointed to the need for increased human rights expertise and resourcing within the sector, and for the development of tools to translate the expectations of the UNGPs to different human rights risks, asset classes, investment strategies and stages of the investment lifecycle.<sup>150</sup> One stakeholder suggested there was need for codification of the expectations of investors as fiduciaries when addressing the management of human rights risks in company engagement and voting on ESG-related resolutions.

### International developments

The risk management envisioned by the UNGPs asks investors to prioritise severe risks of harm to people rather than the most material ESG-related risks to investments, although these increasingly align. This has parallels with the concept of 'double materiality' in the EU's Non-Financial Reporting Directive.<sup>151</sup> This concept is also echoed in the EU's new suite of sustainable finance regulations, which are designed to drive capital toward sustainable investments, and increase transparency of investment advice and decisions around 'sustainable' investments.<sup>152</sup> The EU Taxonomy Regulation, for example, provides that for a business activity or investment product to be 'environmentally sustainable' it must meet certain 'green' criteria and 'minimum social safeguards' – the UNGPs and OECD Guidelines.<sup>153</sup> A Social Taxonomy for social objectives is also in development by the EU.<sup>154</sup>

These regulations are expected to affect institutional investors in other markets. The PRI points out that given the emerging regulations coalescing around the UNGPs and OECD standards 'investors can future-proof their approach to ESG issues by implementing these frameworks now.'<sup>155</sup>

A key challenge for investors is the historical lack of transparency and harmonisation around ESG ratings and methodologies for the assessment of 'social' risks.<sup>156</sup> However, there are efforts underway to standardise ESG reporting amongst standards bodies, and in some cases, to align reporting frameworks with the UNGPs.<sup>157</sup>

One stakeholder interviewed recommended that ESG research providers should be required to make their methodologies public to improve understanding of and accountability for human rights performance ratings of investee companies. There is also a growing array of benchmarking tools, metrics, research and products available to assess investees' human rights efforts and impacts.<sup>158</sup>

See the **call to action** for:

- Investors – recommendations 1(a), (b), (c) and 2
- Government – recommendation 3(e)

### 3.6 Ensuring access to remedy for victims

Under international human rights law, victims of human rights abuses have a right to an effective remedy.<sup>159</sup> This right is acknowledged and emphasised in the UNGPs which outline an expectation that both States and businesses have a role to play in enabling access to remedy for victims of business-related human rights abuses. Despite this well-recognised right, remedy is rare for victims of business-related human rights harms.<sup>160</sup> A number of stakeholders interviewed highlighted that a range of practical, procedural, and legal barriers to remedy exist. For example, workers and communities seeking remedy often face weak regulatory environments, and significant financial, language, evidentiary and legal hurdles to accessing remedy, both at home and abroad.<sup>161</sup> In addition, retaliation against human rights defenders advocating for corporate accountability and remedy for their communities is increasing internationally.<sup>162</sup>

The UNGPs expect that Australia will take steps to ensure victims of business-related human rights abuses in Australia, or involving Australian companies operating abroad within Australia's jurisdiction, have access to effective remedy.<sup>163</sup> The UNGPs also expect States to ensure that both judicial and non-judicial pathways to remedy are available to victims, and to consider ways to reduce legal, procedural and other practical barriers to remedy.

While judicial mechanisms (i.e. courts) are essential to ensuring access to remedy, the UNGPs also highlight the importance of complementing and supplementing such mechanisms with state-based, non-judicial mechanisms (administrative, legislative or otherwise), which tend to be much faster, cheaper and less formal.<sup>164</sup> Business is also expected to provide for or facilitate remediation for adverse impacts that they have caused or contributed to.

### **(a) Avenues to remedy for business-related human rights harms in Australia**

Australia has a patchwork of regulations targeting corporate conduct in Australia with accompanying judicial and non-judicial avenues to remedy for domestic victims of human rights abuses, though they are seldom framed in human rights terms.<sup>165</sup> They include federal and state-based criminal laws that apply to corporations (including for offences such as slavery and trafficking) and facilitate civil claims against corporations under federal- and state-based labour, work health and safety, privacy, environmental, consumer, native title, discrimination and corporations laws.<sup>166</sup>

Australia also has a range of non-judicial grievance mechanisms that can provide potential pathways to remedy in some circumstances. For example, the Fair Work Commission, sector-based Ombudsman offices (which deal with issues such as privacy and health), the Australian Human Rights Commission and state-based human rights and equal opportunity commissions which deal in particular with discrimination complaints, and the Australian OECD National Contact Point (discussed below).<sup>167</sup> However, this remedial landscape largely existed prior to the introduction of the UNGPs. In addition, the cost and complexity of accessing the court system is still prohibitive for many Australians, and barriers to both judicial and non-judicial mechanisms remain, especially for certain groups such as migrant workers and traditional owners of land.<sup>168</sup>

### **(b) Avenues to remedy human rights harms involving Australian companies overseas**

A key gap in Australia's implementation of the UNGPs is the lack of pathways to remedy for victims of extraterritorial harms (i.e harms that occur overseas) by Australian businesses. Australian companies and financial entities have been linked to allegations of a wide range of unremedied human rights harms overseas, including worker fatalities, environmental disasters and health scandals, child and forced labour and land grabs.<sup>169</sup> For those victims where the abuse takes place overseas, the challenges can be significant. They often contend with a weak domestic legal system at home or find the relevant company is a subsidiary of a foreign multinational with insufficient resources to allow for an effective remedy.<sup>170</sup> Those who seek accountability for the conduct of Australian companies operating overseas using the Australian legal system often face various barriers, which will be explored further in the following sections.



*(i) Criminal law*

While a range of serious criminal offences under the Commonwealth Criminal Code, including slavery, human trafficking and genocide, have extraterritorial application to Australian companies, enforcement of criminal laws in transnational settings is challenging for regulators.<sup>171</sup> Prosecutions are rare, and tend not to provide victims with a remedy.<sup>172</sup> The Australian Law Reform Commission (ALRC) recently recommended that the Government consider introducing a 'failure to prevent' offence for specific extraterritorial crimes.<sup>173</sup> The ALRC also suggested that the Australian Government 'undertake a holistic and wide-ranging review of the regulatory framework applying to transnational crime and the human rights impacts of Australian businesses', and consider creating an extraterritorial crimes investigations unit.<sup>174</sup>

*(ii) Litigation*

There are limited examples of claims being brought in Australian courts against Australian companies for extraterritorial human rights breaches in the past two decades.<sup>175</sup> In Australia, while private causes of action may be framed in tort law, there is no direct cause of action for breach of human rights standards that can be used to bring a civil claim against an Australian company for extraterritorial harms.<sup>176</sup> Where affected communities or workers overseas look to bring a civil claim in Australian courts against an Australian company, significant barriers arise.

The time and resource intensive nature of extraterritorial litigation places it outside the reach of many victims and civil society organisations seeking to assist them. Australian courts may decline to hear the claim on the basis that another court, often in the country where the harm occurred, is the appropriate forum.<sup>177</sup> Corporate law principles relating to the separate legal personality and limited liability of companies mean that Australian companies tend not to be considered liable for the actions of other members of their corporate group, such as their subsidiary overseas.<sup>178</sup> A number of jurisdictions have had developments which assist in overcoming similar barriers.

**Global Snapshot**

Notably, recent landmark cases in courts in the UK, the Netherlands and Canada have demonstrated increased willingness to overcome traditional legal barriers discussed above. Courts in these jurisdictions have agreed to hear claims against parent companies in their home states regarding the actions of their subsidiaries abroad. These courts have also taken broader views of the grounds for establishing the existence of potential parent company liability for human rights and environmental harms occasioned by their subsidiaries abroad.<sup>179</sup> In parallel with these developments, the French Duty of Vigilance Law has created a pathway for large French parent companies to be sued for human rights and environmental harms caused or contributed to by their subsidiaries or established suppliers, outside of France.<sup>180</sup> Similar causes of action may be available in the EU rules for mandatory human rights due diligence, if they are introduced (see Part 3.2(b)).

### (c) The OECD National Contact Point

Australia has recently strengthened a key non-judicial grievance mechanism available to victims in Australia and overseas: the Australian OECD National Contact Point (AusNCP). The AusNCP was established in 2001 under the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines), which are a set of government-backed standards for responsible business conduct, and include standards on human rights, the environment, disclosure and taxation, among others. The OECD Guidelines require all 49 signatory states, including Australia, to establish a National Contact Point to conciliate complaints about breaches of the OECD Guidelines. The UNGPs highlight National Contact Points as key state-based, non-judicial grievance mechanisms for providing remedy to victims of business-related human rights abuses.<sup>181</sup> Crucially, complaints can be brought to the AusNCP about the conduct of businesses in Australia, or of Australian companies operating overseas.

Historically the AusNCP, which is housed in Treasury, was criticised for lacking the visibility, resources, independence and transparency necessary to effectively deal with complaints.<sup>182</sup> Following an independent review of the AusNCP in 2017, the Government enacted a range of reforms, aimed at making the AusNCP more independent and accessible, including through the appointment of an Independent Examiner and multi-stakeholder advisory board.

The AusNCP has since had an increase in complaints and there are promising signs regarding its potential usefulness as an avenue to remedy. For example, in early 2020 the AusNCP's new Independent Examiner conciliated the provision of financial compensation from ANZ, a major Australian bank, to a Cambodian farming community affected by a land grab linked to a project financed by the bank.<sup>183</sup> The AusNCP is considering a complaint alleging ongoing environmental and human rights impacts arising from pollution from a mine in Bougainville, which a company formerly majority owned by Rio Tinto used to operate. So far, following conciliation, Rio Tinto and the complainants have agreed to establish a preliminary process and a plan for a committee to progress work on the legacy impacts of the mine.<sup>184</sup> Civil society stakeholders provided feedback to the recent AusNCP Peer Review that they considered the AusNCP's effectiveness to be linked to willingness to make findings about breaches of the OECD Guidelines along with recommendations for remedy. This includes linking breaches of the OECD Guidelines to eligibility for Government support such as export credit finance or tender opportunities.



#### (d) Company and industry-based grievance mechanisms

The UNGPs also ask that businesses provide for or cooperate in remediation of human rights harms with which they are involved. This includes establishing or participating in effective operational level grievance mechanisms to identify risks, address complaints early and remediate harms they have caused or to which they have contributed. The Modern Slavery Act potentially provides impetus for the establishment of such mechanisms, by requiring businesses to report on the actions taken to assess and address their modern slavery risks including their remediation processes. The first year of modern slavery statements suggest that some companies have identified the need for and/or established a process such as a grievance mechanism to facilitate remediation for potentially impacted individuals and communities in accordance with the UNGPs. However, there is very limited information on how companies are ensuring such processes are substantive, adequate, accessible and trusted by those in need.<sup>185</sup> There is also limited evidence that Australian businesses generally (including those operating in high-risk sectors overseas) have established, participate with peers in, or have worked with their suppliers to create effective grievance mechanisms.

See the **call to action** for:

- business and investors – recommendation 1(b)
- Government – recommendation 3(f)



# 04 Conclusion

## 4.1 Business and human rights in Australia

The first decade of the UNGPs has created a shared narrative and authoritative framework for understanding the business responsibility for human rights risks and impacts. Internationally and in Australia the UNGPs are increasingly reflected (albeit sometimes slowly) in changes to business practice, industry standards, regulations and litigation. The implementation of the UNGPs is occurring in tandem with a shift in expectations regarding the role of business and investors in managing their impacts on people and the planet. For example, the 2021 Edelman Trust Barometer found 78% of Australians surveyed agreed that ‘CEOs should hold themselves accountable to the public and not just to the board of directors or stockholders’.<sup>186</sup>

As this report has highlighted, there is also a business case for acting on the UNGPs, though this should not be a precursor to their implementation. There are increasing reputational, legal and financial risks for businesses that fail to take their human rights responsibilities seriously. Businesses and investors in Australia and elsewhere are recognising that respecting human rights and the environment is key not only to maintaining their social license to operate but also for long-term value creation.

This report highlights areas of progress in government, business and investor uptake of the UNGPs. Modern slavery reporting under the Modern Slavery Act has introduced some Australian businesses to the UNGPs, and their responsibility to respect human rights throughout their value chains. While a group of leading Australian businesses are taking steps to implement the UNGPs, there is significant work to be done to socialise and mainstream the UNGPs within the Australian business and investment sectors, and to incentivise their application beyond the issue of modern slavery. Key gaps in Australia’s uptake of the UNGPs have been highlighted in this report, across a range of human rights concerns, including facilitation of access to remedy, respecting the rights of Aboriginal and Torres Strait Islander peoples and addressing climate-related human rights harms. Workers and their representatives in Australia and in the supply chains of Australian companies play a crucial but generally underutilised role in implementing UNGPs. They can provide essential information to inform human rights due diligence by monitoring and assisting in preventing conditions that lead to human rights harms.

This report also points to the pivotal role that investors can play in the implementation of the UNGPs by setting expectations about rights-respecting behaviour in the market. This role for investors will be increasingly important in the context of the rapid changes expected in society, technology, work and the climate in coming years – and their accompanying human rights impacts. For many businesses and investors, a key first step to integrating the UNGPs into their business practices and decision-making is ensuring they have access to sufficient in-house and external human rights knowledge and expertise. In addition, there is work to be done to socialise the UNGPs within Australian Government agencies, and for the Government to take steps to facilitate a more enabling environment for the uptake of the UNGPs by business via supportive, regulation, policy, and backing for industry standards and facilitating avenues for effective remedy. Similarly, the Australian Government’s application of the UNGPs in the context of businesses it owns, controls or provides substantial support and services (including export credit agencies), and its procurement activities, is an area that requires greater attention moving forward, with examination of public procurement to date limited to the issue of modern slavery.

## 4.2 A call to action

The Executive Summary outlines a call to action with recommendations for Government, businesses and investors on practical steps they can take to substantively implement the UNGPs. They are outlined below.

### *Recommendations*

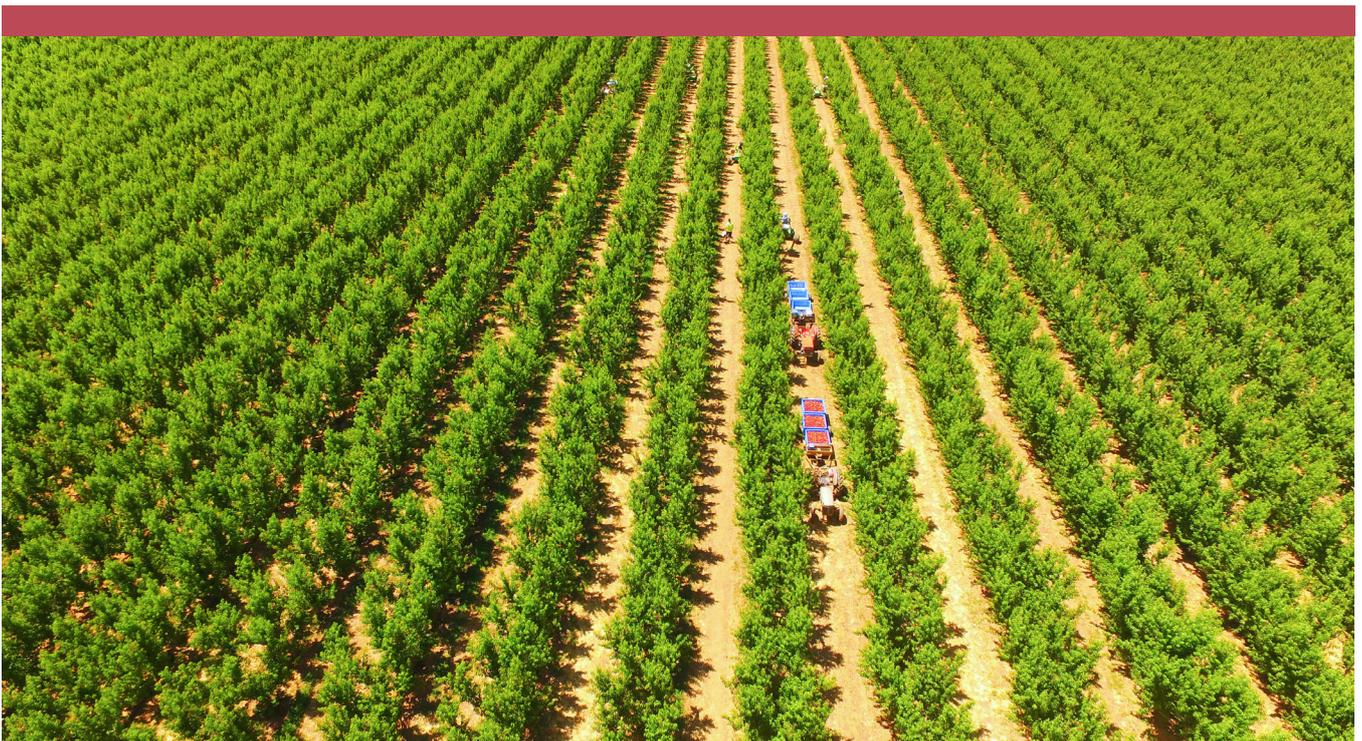
1. **Australian businesses and institutional investors** (asset owners and managers):
  - a. invest in building human rights knowledge and capacity within their business and actively consult with external experts and rights-holders in order to meaningfully implement the UNGPs
  - b. implement the UNGPs, including by:
    - i. adopting a human rights policy and carrying out human rights due diligence to identify, address and remediate human rights risks and impacts of their business activities, relationships (including their supply chains), investment activities and investees
    - ii. establishing and participating in effective grievance mechanisms, to facilitate early and effective remedies for human rights harms in their operations, global supply chains and portfolios.
  - c. embed in their human rights due diligence processes consideration and engagement with the priority issues raised in this report:
    - i. to address and remedy labour exploitation and modern slavery risks
    - ii. to identify and address adverse climate-related human rights impacts and set targets to direct their activities towards supporting a swift and just transition to a net-zero emissions economy by 2050 (in line with the Paris Agreement aim of limiting global warming to 1.5°C), ensuring any policy advocacy supports this aim, and disclosing emissions annually
    - iii. respect the rights of Aboriginal and Torres Strait Islander peoples, including ensuring meaningful adherence to the principle of free, prior and informed consent before commencing and throughout the life of a project and through supporting the Uluru Statement from the Heart.
2. **Institutional investors** (asset owners and managers) require investees to conduct human rights due diligence and work towards common, UNGP-aligned environmental, social and governance methodologies, benchmarks and metrics.
3. **Australian Government** protect human rights by ensuring businesses meet the responsibility to respect human rights in accordance with the UNGPs by:
  - a. strengthening the enforcement framework of the *Modern Slavery Act 2018* (Cth) to ensure substantive compliance with the purpose of the law, including the establishment of an Independent Anti-Slavery Commissioner and a national compensation scheme for victims
  - b. legislating for mandatory human rights due diligence by companies including the need to adhere to the principle of free, prior and informed consent
  - c. meaningfully incorporating the principle of free, prior and informed consent into the *Native Title Act 1993* (Cth)
  - d. supporting the Paris Agreement's aim of limiting global warming to 1.5°C, by formally committing to reduce economy-wide emissions to net-zero by 2050 if not earlier and to a stronger 2030 emissions reduction target, ensuring the availability of funding and policy infrastructure to support businesses to contribute to meeting those targets, and facilitating an orderly and just transition

- e. supporting mainstreaming of UNGP-aligned investment practices by setting regulations and supporting industry standards that support businesses and institutional investors to undertake human rights due diligence and standardised disclosure in line with the UNGPs
- f. developing a comprehensive legal and policy response to the human rights impacts of Australian companies here and abroad including consideration of how to lower the barriers to remedy, including the establishment of a statutory civil cause of action for serious human rights violations committed by Australian companies and subsidiary companies they control.

### 4.3 Implementation

The recommendations outlined above aim to encourage more rights-respecting business practices across the six areas considered in this report. Implementation of these recommendations will pave the way for Australia to play an important leadership role in our region on business and human rights over the next decade. However, these recommendations are only a starting point. The field of business and human rights is evolving quickly as the UNGPs take a firmer hold globally. Stakeholders are encouraged to track and take on board lessons from international developments and consider how they can inform government, business and investor practice and policy. In particular, stakeholders should draw on the outcomes of the UN Working Group on BHR's upcoming *Roadmap for the next decade* report, which will have recommendations for the implementation of the UNGPs globally in the next 10 years.<sup>187</sup>

Civil society organisations, unions and academics in Australia have already been playing a crucial role in shining a spotlight on business-related harms and influencing shifts in policy, legislation and business practice. Legal and other professional services firms may also play a significant role in the implementation of the UNGPs moving forward. These stakeholders should also be aware of their own responsibility to respect human rights as businesses under the UNGPs.



Australia is at a crossroads. There is both an immediate urgency and opportunity to implement the UNGPs in Australia in a more substantive manner. Ten years after their unanimous endorsement at the UN Human Rights Council, the UNGPs are more relevant than ever. COVID-19 has exposed the cracks in the global economy and shone a spotlight on historically high levels of inequality and the vulnerability of workers who power our global supply chains.

The disproportionate impact of COVID-19 on vulnerable workers globally has highlighted the need for stronger social safeguards and a people-centred approach to business. At the same time, the challenges of climate change pose one of the most significant threats to human rights globally. The UNGPs provide an authoritative framework for governments, businesses and investors to 'build back better' and create an inclusive and rights-respecting global economy.



# Acknowledgements

---

The Australian Human Rights Commission and Australian Human Rights Institute want to acknowledge and thank the stakeholders who contributed their time and expertise during the consultation process for this report. The views expressed in this report are those of the authors and do not necessarily reflect the views or opinions of the following consulted stakeholders.

- Keren Adams, Legal Director, Human Rights Law Centre
- Pablo Berrutti, Senior Investment Specialist – Sustainable Funds Group, Stewart Investors
- Nicolette Boele, Executive Manager, Responsible Investment Association Australasia
- Richard Boele, Partner, KPMG Banarra
- Dr Megan Brodie, Director, Human Rights & Social Impact Services, KPMG Banarra
- Jennifer Burn, Professor, UTS and Director, Anti-Slavery Australia
- Måns Carlsson, Head of ESG Research, Ausbil Investment Management
- James Cockayne, Founder, Finance Against Slavery & Trafficking
- Dr David Cooke, Chair, UN Global Compact Australia
- Ro Coroneous, Senior Manager, Risk – Supply Chain, Lendlease Corporation
- Alex Coward, Advisor, Pillar Two
- Rachel Davis, Vice President and Co-Founder, Shift
- Freya Dinshaw, Senior Lawyer, Human Rights Law Centre
- James Fitzgerald, Strategy Lead, Original Power
- Crystal Fleming, General Manager, Investor Group on Climate Change
- Dr Luke Fletcher, Executive Director, Jubilee Australia
- Kate Griffiths, Executive Manager, Public Policy and Advocacy, Australian Council of Superannuation Investors
- Tina Jelenic, Associate Director, KPMG Banarra
- Shelley Marshall, Director, RMIT Business and Human Rights Centre
- Dr Chris McGrath, Barrister, Higgins Chambers
- Laura McManus, Senior Manager Human Rights, Woolworths Group
- Clare Middlemas, International Officer, Australian Council of Trade Unions
- Brynn O'Brien, Executive Director, Australasian Centre for Corporate Responsibility
- Kylie Porter, Executive Director, Global Compact Network Australia
- Amy Quinton, Manager, Policy, Investor Group on Climate Change
- Amber Roberts, Senior Manager, PwC's Indigenous Consulting
- Corinne Schoch, Head of Programmes, Global Compact Network Australia
- Amy Sinclair, Regional Representative for Australia, New Zealand & Pacific, Business & Human Rights Resource Centre
- Jenny Stanger, Executive Manager, Anti-Slavery Task Force, Catholic Archdiocese of Sydney
- Margaret Stuart, Head of Corporate Affairs, Nestle Oceania
- Carla Unger, Research Associate, RMIT Business and Human Rights Centre
- Dr Phoebe Wynn-Pope, Head of Business and Human Rights, Corrs Chambers Westgarth
- Vanessa Zimmerman, CEO & Founder, Pillar Two

## Endnotes

- 1 Australian Government, *Universal Periodic Review – National Report of Australia UPR 2021: Annex 2 Australia's Voluntary Commitments – Second Cycle UPR 2015 – Status of Implementation*, (Report, 24 December 2020) 6 <<https://www.ag.gov.au/sites/default/files/2020-12/annex-2-upr-2021.pdf>>.
- 2 Shift Project, *UN Guiding Principles 101: A Beginner's Guide To The UN Guiding Principles On Business and Human Rights*, (Web Page) <<https://shiftproject.org/resources/ungps101/>>.
- 3 United Nations Office of the High Commissioner for Human Rights, *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc HR/Pub/11/04 (16 June 2011) <[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)> ('UNGPs').
- 4 Australian Government, *Universal Periodic Review – National Report of Australia UPR 2021: Annex 2 Australia's Voluntary Commitments – Second Cycle UPR 2015 – Status of Implementation*, (Report, 24 December 2020) 6 <<https://www.ag.gov.au/sites/default/files/2020-12/annex-2-upr-2021.pdf>>.
- 5 'The Rana Plaza Accident and its aftermath', *International Labour Organization* (Web Page) <[https://www.ilo.org/global/topics/geip/WCMS\\_614394/lang--en/index.htm](https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm)>.
- 6 Working Group on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UN Doc A/HRC/47/39 (22 April 2021) [10] <<https://undocs.org/A/HRC/47/39>>.
- 7 UNGPs, Principle 4 and Commentary.
- 8 UNGPs, Principle 6.
- 9 The Danish Institute for Human Rights, 'Countries', *National Action Plans on Business and Human Rights* (Web Page) <<https://globalnaps.org/country/>>.
- 10 Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights, *Advice on the prioritisation of issues and actions to implement the UN Guiding Principles on Business and Human Rights* (Advice, August 2017) 1 <<https://www.dfat.gov.au/sites/default/files/final-msag-priorities-paper.pdf>>.
- 11 *Transparency in Supply Chains Act 2010* (California), *Modern Slavery Act 2015* (UK), *Modern Slavery Act 2018* (NSW), *Duty of Vigilance Law 2017* (France), *Child Labour Law 2019* (Netherlands), *Corporate Due Diligence in Supply Chains 2021* (Germany), *Transparency Act 2021* (Norway), *Directive on Non-Financial Disclosures 95/2014* (EU). See also the recent suite of EU sustainability-focused legislation including the UNGP-aligned new *EU Taxonomy Regulation 2020/852* (EU).
- 12 The UNGPs are aligned with or adopted in a wide range of international soft law standards such as the UN Global Compact Principles, the OECD Guidelines for Multinational Enterprises, the Sustainable Development Goals, the Equator Principles: A financial industry benchmark for determining, assessing and managing environmental and social risk in projects (2020), the ISO 26000 Social Responsibility Guidance, the International Finance Corporation Environmental and Social Performance Standards, International Labour Organisation Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, The Hague Rules on Business and Human Rights Arbitration (December 2019) and the Corporate Human Rights Benchmark.
- 13 Working Group on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UN Doc A/HRC/47/39 (22 April 2021) [10].
- 14 United Nations Human Rights Council, *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, GA Res 26/9, UN Doc A/HRC/RES/26/9 (26 June 2014, Adopted 14 July 2014) <[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/26/9](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9)>.
- 15 The responsible business conduct areas covered by the OECD Guidelines also include, consumer interest, science and technology, competition and taxation. See Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises* (Guidelines, 2011) <[https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises\\_9789264115415-en](https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en)>.
- 16 See Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises* (Guidelines, 2011) 23 [14]. Responsible business conduct areas covered in the OECD Guidelines that are currently not subject to due diligence requirements include consumer interests, science and technology, competition and taxation.
- 17 United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 70<sup>th</sup> sess, UN Doc A/RES/70/1 (25 September 2015) Preamble <<https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>>.
- 18 Danish Institute for Human Rights, *Responsible Business Conduct as a cornerstone of the 2030 Agenda – A look at the implications* (Discussion Paper, June 2019) 4, 6-10 <<https://www.humanrights.dk/publications/responsible-business-conduct-cornerstone-2030-agenda-look-implications>>.
- 19 United Nations General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 70<sup>th</sup> sess, UN Doc 21 A/RES/70/1 (25 September 2015) [67]. See Danish Institute for Human Rights, *Responsible Business Conduct as a cornerstone of the 2030 Agenda – A look at the implications* (Discussion Paper, June 2019) 4, 6-10.
- 20 United Nations General Assembly, *Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, 73<sup>rd</sup> sess, UN Doc A/73/163 (16 July 2018) [18], [59]-[60] <[https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163)>; Office of the United Nations High Commissioner for Human Rights, *The business and human rights dimension of sustainable development: Embedding "Protect, Respect and Remedy" in SDGs implementation* (Information Note, 30 June 2017) 3-4 <[https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR\\_SDGRecommendations.pdf](https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf)>.
- 21 United Nations General Assembly, *Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, 73<sup>rd</sup> sess, UN Doc A/73/163 (16 July 2018) [59].
- 22 'The Ten Principles of the UN Global Compact', *United Nations Global Compact* (Web Page) <<https://www.unglobalcompact.org/what-is-gc/mission/principles>>.

- 23 Global Compact Network Australia, *'The UN Global Compact's impact on the global business and human rights agenda'* (Web Page, 25 February 2016) <<https://unglobalcompact.org.au/the-un-global-compacts-impact-on-the-global-business-and-human-rights-agenda/>>.
- 24 Office of the High Commissioner for Human Rights and United Nations Global Compact, *The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments* (Issue Paper, June 2014) <[https://d306pr3pise04h.cloudfront.net/docs/issues\\_doc%2Fhuman\\_rights%2FResources%2FGPs\\_GC+note.pdf](https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FResources%2FGPs_GC+note.pdf)>.
- 25 International Labour Organisation and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Report, 19 September 2017).
- 26 Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* (Report, 20 July 2021).
- 27 The Commonwealth Guidance for Reporting Entities defines the worst forms of child labour as situations where children are exploited through slavery including for sexual exploitation, engaged in hazardous work which can harm their health, safety, and morals, or are used to produce or traffic drugs. The worst forms of child labour does not mean all work undertaken by children. See Department of Home Affairs, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (2019) 75-78.
- 28 *Convention Concerning Forced Labour*, 1930 (No 29), opened for signatures 28 June 1930, CO 29 (entered into force 1 May 1932).
- 29 International Labour Organisation and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Report, 19 September 2017).
- 30 ustine Nolan and Martijn Boersma, *Addressing Modern Slavery* (UNSW Press, 2019) 10.
- 31 Sustainable Development Solutions Network, *Indicators and a monitoring framework: Launching a data revolution for the Sustainable Development Goals: Launching a data revolution for the SDGs* (Report, 12 June 2015) 57.
- 32 ustine Nolan and Martijn Boersma, *Addressing Modern Slavery* (UNSW Press, 2019) 1.
- 33 Tomoya Obokata, *Report of the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences: Impact of the coronavirus disease pandemic on contemporary forms of slavery and slavery-like practices*, UN Doc A/HRC/45/8 (4 August 2020) 12.
- 34 Fiona McGaughey, 'Australia's Modern Slavery Act and Covid-19: a get out of jail free card?' (2021) 6(2) *Journal of Modern Slavery* 216, 217.
- 35 ohn Gerard Ruggie, Special Rapporteur, *PROMOTION AND PROTECTION OF HUMAN RIGHTS: Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, UN Doc E/CN.4/2006/97 (22 February 2006) 20.
- 36 *Modern Slavery Act 2018* (Cth).
- 37 Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* (Report, 20 July 2021) 1.
- 38 Phoebe Wynn Pope and Heidi Roberts, 'Modern Slavery Reporting: how have we fared and what's next?' (2021) 80 *LSJ Online*, 80-82 <<https://lsj.com.au/articles/modern-slavery-reporting-how-have-we-fared-and-whats-next/>>.
- 39 Katie Hepworth, *Cleaning up their Act?: Modern Slavery Due Diligence in the Australian Property Sector* (Report, 15 June 2021) 2 and 4.
- 40 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* (Parliamentary Paper, December 2020) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/MagnitskyAct/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Report)>.
- 41 See for example, *Customs Amendment (Banning Good Produced by Uyghur Forced Labor) Bill 2020* (Cth) <[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEgislation/Bills\\_Search\\_Results/Result?bld=s128](https://www.aph.gov.au/Parliamentary_Business/Bills_LEgislation/Bills_Search_Results/Result?bld=s128)>.
- 42 UNGPs Principles 15(b), 17-21.
- 43 UNGPs, Principles 13, 14 and 17.
- 44 In 2011, the OECD aligned its OECD Guidelines for Multinational Enterprises with the UNGPs by specifically incorporating the notion of human rights due diligence into a new human rights chapter (Chapter IV): OECD, *OECD Guidelines for Multinational Enterprises* (Guidelines, 2011).
- 45 International Trade Union Confederation, *Towards mandatory due diligence in global supply chains* (Report, 20 February 2020) 6.
- 46 *Modern Slavery Act 2018* (Cth).
- 47 Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* (Report, 20 July 2021).
- 48 Joint Standing Committee on Foreign Affairs, Defence and Trade, *'Hidden in Plain Sight: An Inquiry into establishing a Modern Slavery Act in Australia'* (Final Report, 7 December 2017).
- 49 Australian Law Reform Commission, *Corporate Criminal Responsibility* (Final Report No 136, April 2020) <<https://www.alrc.gov.au/wp-content/uploads/2020/05/ALRC-CCR-Final-Report-websml.pdf>>.
- 50 Oliver Cushing, 'New German and Norwegian Mandatory Human Rights Due Diligence Laws', *Rights DD* (Web Page) <<https://www.rightsdd.com/posts/new-german-norwegian-mandatory-human-rights-due-diligence-laws>>.
- 51 Rachel Nicolson, Dora Banyasz, Emily Turnbull and Hamish McAvaney, 'New EU mandatory human rights and environmental due diligence regime', *AllensLinklaters* (Web Page, 1 June 2020) <<https://www.allens.com.au/insights-news/insights/2020/06/new-eu-mandatory-human-rights-and-environmental-due-diligence-regime/>>.
- 52 Jolyon Ford and Justine Nolan, 'Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit' (2020) 26(1) *Australian Journal of Human Rights* 27, 27-45.
- 53 John Braithwaite and Peter Drahos, *Global Business Regulation* (Oxford University Press, 2000).
- 54 Jose Aylwin and Johannes Rohr, *The UN Guiding Principles on Business & Human Rights and Indigenous Peoples – Progress achieved, the implementation gap and challenges for the next Decade* (Report, June 2021).
- 55 UNGPs, Principle 12 Commentary.
- 56 Global Compact Network Australia, KPMG Australia and University of Technology Sydney, *The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, November 2020) 11.
- 57 Johannes Rohr and Jose Aylwin, IWGIA Report 16 – *Business and Human Rights: Interpreting the UN Guiding Principles for Indigenous Peoples* (Report, June 2014) 44.

- 58 For more on UNDRIP's key principles, see 'Know it – United Nations Declaration on the Rights of Indigenous Peoples', *Australian Human Rights Commission* (Web Page) <<https://declaration.humanrights.gov.au/know-it>>.
- 59 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 60 Christina Hill, Serena Lillywhite and Michael Simon, *Guide to Free, Prior and Informed Consent* (Oxfam Australia, 2010), 6 and 8.
- 61 Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 331-364.
- 62 Attracta Mooney and Neil Hume, 'Rio Tinto investors demand action after Aboriginal cave destruction', *Financial Times* (online, 22 June 2020) <<https://www.ft.com/content/6db79b46-8e46-4e89-8688-97064effbc61>>; Nick Toscano, 'Investors teamed up to roast Rio over rock shelter blast, warn departures are first step' *The Sydney Morning Herald* (online, 15 September 2020) <<https://www.smh.com.au/business/companies/investors-teamed-up-to-roast-rio-over-rock-shelter-blast-warn-departures-are-first-step-20200914-p55vhl.html>>; Ben Butler, Lorena Allam and Calla Wahlquist, 'Rio Tinto CEO and senior executives resign from company after Juukan Gorge debacle', *The Guardian* (online, 11 September 2020) <<https://www.theguardian.com/business/2020/sep/11/rio-tinto-ceo-senior-executives-resign-juukan-gorge-debacle-caves>>.
- 63 Parliament of Australia, 'Parliamentary inquiry into destruction of Indigenous heritage sites' (Media Release, 18 June 2020) <[https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/About\\_the\\_House\\_News/Media\\_Releases/Parliamentary\\_inquiry\\_into\\_destruction\\_of\\_Indigenous\\_heritage\\_sites](https://www.aph.gov.au/About_Parliament/House_of_Representatives/About_the_House_News/Media_Releases/Parliamentary_inquiry_into_destruction_of_Indigenous_heritage_sites)>.
- 64 Joint Standing Committee on Northern Australia, *Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia – Interim Report* (Report, December 2020).
- 65 Joint Standing Committee on Northern Australia, *Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia – Interim Report* (Report, December 2020) 7.
- 66 See for example, RMIT University, *First Peoples and Land Justice Issues in Australia: Addressing Deficits in Corporate Accountability* (Report, 17 March 2021) 4.
- 67 Australian Human Rights Commission, *Social Justice and Native Title Report 2015* (Report, 30 November 2015) 71 <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-1>>; Australian Human Rights Commission, *Social Justice and Native Title Report 2016* (Report, 29 November 2016) 135 <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-2>>.
- 68 Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, UN Doc CERD/C/AUS.CO.18-20 (26 December 2017).
- 69 For more information on the history of the Native Title Act see Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 10 December 2020) 350.
- 70 RMIT University, *First Peoples and Land Justice Issues in Australia: Addressing Deficits in Corporate Accountability* (Report, 17 March 2021); Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 10 December 2020); Australian Law Reform Commission, *Connection to Country: Review of the Native Title Act 1993* (ALRC Report 126, June 2015); Australian Human Rights Commission, *Exposure Draft Native Title Legislation Amendment Bill 2018 – Submission to Attorney General's Department* (Submission, 31 January 2019) <<https://www.ag.gov.au/sites/default/files/2020-05/Australian-Human-Rights-Commission.PDF>>.
- 71 Victoria Tauli Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017); Australian Law Reform Commission, *Connection to Country: Review of the Native Title Act 1993 (Cth) ALRC Report 126* (Report, 2015) <<https://www.alrc.gov.au/news/alrc-recommendations-for-reform-of-the-native-title-act/>>.
- 72 Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 10 December 2020), 332; Australian Human Rights Commission, *Native Title Report 2011* (Report, 28 October 2011) 74-115 <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/native-title-report-2011>>.
- 73 Reconciliation Australia, 'Statement on Telstra's Reconciliation Action Plan' (Media Release, 30 March 2021) <<https://www.reconciliation.org.au/statement-on-telstras-reconciliation-action-plan/>>; Reconciliation Australia, 'Statement on Rio Tinto' (Media Release, 9 June 2020) <<https://www.reconciliation.org.au/statement-on-rio-tinto/>>.
- 74 For example, the Responsible Investment Association of Australasia (RIAA) has established a First Nations Peoples' Rights Working Group, see Min Wah Voon, 'The 'Long Work' Ahead – building the knowledge and capacity of investors on First Nations people's rights', *Responsible Investment Association Australia* (Blog Post, 23 June 2021) <<https://responsibleinvestment.org/long-work-ahead-building-knowledge-and-capacity-of-investors-on-first-nations-peoples-rights/>>.
- 75 Nick Toscano, 'BHP, First Nations leaders strike 'eleventh hour' heritage deal before AGM', *The Sydney Morning Herald* (online, 13 October 2020) <<https://www.smh.com.au/business/companies/bhp-first-nations-leaders-strike-eleventh-hour-heritage-deal-before-agm-20201013-p5640h.html>>.
- 76 BHP, 'Australian organisations unite to support Uluru Statement from the Heart' (News Release, 29 May 2019) <<https://www.bhp.com/media-and-insights/news-releases/2019/05/australian-organisations-unite-to-support-ularu-statement-from-the-heart/>>.
- 77 Australian Human Rights Commission, *AIATSIS Summit Keynote Address: Truth for change – Reckoning with our past and transforming our nation* (Speech, 1 June 2021) <<https://humanrights.gov.au/about/news/speeches/aiatsis-summit-keynote-address-truth-change-reckoning-our-past-and-transforming>>.
- 78 Global Compact Network Australia, KPMG Australia and University of Technology Sydney, *The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, November 2020).

- 79 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 1 <[https://www.ohchr.org/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf)>; Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis – Summary for Policymakers* (Report IPCC AR6 WGI, 2021) [A.1], [A.2.4], [A.3] <[https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf)>.
- 80 Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis – Summary for Policymakers* (Report IPCC AR6 WGI, 2021) [B.2].
- 81 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38*, (Fact Sheet, 2021) 2–29; Australian Human Rights Commission, *Human Rights & Climate Change* (2008) <<https://humanrights.gov.au/our-work/commission-general/publications/human-rights-climate-change-2008>> Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights*, 10th session, Agenda Item 2, UN Doc A/HRC/10/61 (15 January 2009); UN General Assembly, *Resolution adopted by the Human Rights Council on 12 July 2019: Human Rights and Climate Change*, (23 July 2019) UN Docs A/HRC/RES/41/21 <<https://undocs.org/A/HRC/RES/41/21> <[https://www.amnesty.org.au/wp-content/uploads/2021/01/20201127-Amnesty-International-Australia-Submission\\_Climate-Change-Bills-2.pdf](https://www.amnesty.org.au/wp-content/uploads/2021/01/20201127-Amnesty-International-Australia-Submission_Climate-Change-Bills-2.pdf)>.
- 82 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 2-29; IPCC Working Group II, 'Livelihoods and Poverty 2014,' in *Climate Change 2014: Impacts, Adaptation and Vulnerability* (Assessment Report, 2014), Ch 13, 804-809 <<https://www.ipcc.ch/report/ar5/wg2/>>; Dan Walton and Maarten van Alast, *Climate-related extreme weather events and COVID-19: A first look at the numbers of people affected by intersecting disasters* (IFRC Report, 2020) <<https://media.ifrc.org/ifrc/wp-content/uploads/2020/09/Extreme-weather-events-and-COVID-19-V4.pdf>>; UNICEF, *The Climate Crisis is a Child Rights Crisis: Introducing the Children Risk Index* (Report, August 2021) <<https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>>.
- 83 António Guterres, United Nations Secretary-General, *The Highest Aspiration: A Call to Action for Human Rights* (Speech, United Nations Human Rights Council, 24 February 2020) <[www.un.org/sg/en/content/sg/statement/2020-02-24/secretary-generals-remarks-the-un-human-rights-council-%E2%80%9Cthe-highest-aspiration-call-action-for-human-rights-delivered-scroll-down-for-all-engli](http://www.un.org/sg/en/content/sg/statement/2020-02-24/secretary-generals-remarks-the-un-human-rights-council-%E2%80%9Cthe-highest-aspiration-call-action-for-human-rights-delivered-scroll-down-for-all-engli)>.
- 84 Peter Hannam, 'Australian Weather extremes to get more extreme as climate heats: IPCC', *The Age* (online, 9 August 2021) <<https://www.theage.com.au/environment/climate-change/australian-weather-extremes-to-get-more-extreme-as-climate-heats-ipcc-20210809-p58h6h.html>>; IPCC, sixth Assessment Report, Regional factsheet – Australasia, (Factsheet, 2021) <[https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC\\_AR6\\_WGI\\_Regional\\_Fact\\_Sheet\\_Australasia.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf)>; Will Steffen, Annika Dean and Martin Rice, *Weather Gone Wild: Climate Change-Fuelled Extreme Weather in 2018* (Report, 2019); Will Steffen and Martin Rice, *Hitting Home: The compounding costs of climate inaction* (Report, 2021) 7-10 <<https://www.climatecouncil.org.au/wp-content/uploads/2021/01/hitting-home-report-v7-210122.pdf>>.
- 85 Global Compact Network Australia, *Strengthening Resilience: Acting on Climate Change and Health* (Report, 2020) <<https://unglobalcompact.org.au/wp-content/uploads/2020/07/Climate-Change-and-Health-Report.pdf>>.
- 86 Global Compact Network Australia, *Strengthening Resilience: Acting on Climate Change and Health* (Report, 2020); Australian Human Rights Commission, *Human Rights and Climate Change* (Report, 2008) <<https://humanrights.gov.au/our-work/commission-general/publications/human-rights-climate-change-2008>>; Australian Human Rights Commission, *Wiyi Yani U Thangani: Women's Voices, Securing Our Rights, Securing Our Future* (Report, 2020) 254, 340-344 <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani>>.
- 87 Kate Lyons, 'IPCC report shows' possible loss of entire countries within the century', *The Guardian* (Online, 10 August 2021) <<https://www.theguardian.com/world/2021/aug/10/ipcc-report-shows-possible-loss-of-entire-countries-within-the-century>>; Global Compact Network Australia, *Why climate change and human rights are a business issue* (Discussion Paper, January 2020) <[https://unglobalcompact.org.au/wp-content/uploads/2020/02/GCNA-Climate-HR-blog\\_v6.pdf](https://unglobalcompact.org.au/wp-content/uploads/2020/02/GCNA-Climate-HR-blog_v6.pdf)>; Kevin Bales and Benjamin K Sovacool, 'From Forests to Factories: How modern slavery deepens the crisis of climate change,' (2021) 77 (July) *Energy Research and Social Science* 102096 <<https://www.sciencedirect.com/science/article/pii/S2214629621001894>>.
- 88 See Conference of the Parties, *Report of the Conference of the Parties on Its Twenty-First Session, held in Paris from 30 November to 13 December 2015*, UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016) art. 2.
- 89 The Intergovernmental Panel on Climate Change, *Global Warming of 1.5 C: Headline Statements from the Summary for Policy Makers* (Headline Statement, October 2018) <[https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Headline-statements.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Headline-statements.pdf)>; Intergovernmental Panel on Climate Change, *Summary for Policy Makers: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (Summary for Policy Makers, 2018) [B.4.1]-[B.4.4], [B.5], [B.5.2], [B.6.1] <[https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15\\_SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf)>; World Economic Forum, 'What's the difference between 1.5 and 2 degrees of global warming?' (28 July 2021) <<https://www.weforum.org/agenda/2021/07/2c-global-warming-difference-explained/>>.
- 90 The Intergovernmental Panel on Climate Change, *Global Warming of 1.5 C: Headline Statements from the Summary for Policy Makers* (Headline Statement, October 2018) 2; The Intergovernmental Panel on Climate Change, *Summary for Policy Makers: Global Warming of 1.5°C approved by governments*, (Summary for Policy Makers, 2018).

- 91 Nick O'Malley and Peter Hannam, 'Still in the control cabin': Time running out to limit warming, IPCC says,' *Sydney Morning Herald* (Online, 9 August 2021) <<https://www.smh.com.au/environment/climate-change/still-in-the-control-cabin-time-running-out-to-limit-warming-ipcc-says-20210809-p58h9j.html>>; The Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis – Summary for Policymakers* (Report IPCC AR6 WGI, 2021) [B.1]– [B.1.3] <[https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf)>.
- 92 'Climate Ambition Alliance: Net Zero 2050', *Global Climate Action*, (Web Page) <<https://climateaction.unfccc.int/views/cooperative-initiative-details.html?id=94>>.
- 93 International Energy Agency, *Pathway to critical and formidable goal of net-zero emissions by 2050 is narrow but brings huge benefits, according to IEA special report* (Press Release, 18 May 2021) <<https://www.iea.org/news/pathway-to-critical-and-formidable-goal-of-net-zero-emissions-by-2050-is-narrow-but-brings-huge-benefits>>; International Energy Agency, *Net Zero by 2050: A roadmap for the Global Energy Sector* (Report, May 2021) 3-4, 13-25 <<https://www.iea.org/reports/net-zero-by-2050>>.
- 94 International Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector* (Report, May 2021) 28.
- 95 IHRB, *Just Transitions For All: Business, Human Rights, and Climate Change* (Report, November 2020) 34-40 <[https://www.ihrb.org/uploads/reports/Just\\_Transitions\\_For\\_All\\_-\\_Business%2C\\_Human\\_Rights%2C\\_and\\_Climate\\_Action\\_-\\_IHRB\\_Nov2020.pdf](https://www.ihrb.org/uploads/reports/Just_Transitions_For_All_-_Business%2C_Human_Rights%2C_and_Climate_Action_-_IHRB_Nov2020.pdf)>; ILO, *Guidelines on a Just transition towards environmentally sustainable economies and societies for all* (Report, 2015) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/documents/publication/wcms\\_432859.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf)>; Global Compact Network Australia, *Leaving no one behind: Planning for a Just Transition* (Discussion Paper, August 2019) <[https://unglobalcompact.org.au/wp-content/uploads/2019/08/2019.08.27\\_Just-Transition-Discussion-Paper.pdf](https://unglobalcompact.org.au/wp-content/uploads/2019/08/2019.08.27_Just-Transition-Discussion-Paper.pdf)>.
- 96 United Nations, *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 21<sup>st</sup> session, UN Doc FCCC/CP/2015/10/Add.1* (29 January 2016) (Paris Agreement Preamble) <<https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>>.
- 97 United Nations, *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, 21<sup>st</sup> session, UN Doc FCCC/CP/2015/10/Add.1* (29 January 2016) (Paris Agreement Preamble); Institute for Human Rights and Business, *Just Transitions for All: Business, Human Rights, and Climate Action* (Report, November 2020) 24-40; ILO, *Guidelines on a Just transition towards environmentally sustainable economies and societies for all* (Report, 2015); Global Compact Network Australia, *Leaving no one behind: Planning for a Just Transition* (Discussion Paper, August 2019).
- 98 International Energy Agency, *Net Zero by 2050: A roadmap for the Global Energy Sector* (Report, July 2021) 13; Sara Seck 'Climate change and the human rights responsibilities of business enterprises' in (ed), David Ismangil, Karen van der Schaaf, and Lars van Troost (ed), *Climate Change, Justice and Human Rights* (Amnesty International Netherlands) 41 <<https://www.amnesty.nl/content/uploads/2020/08/Verkenningen2020-climate-change.pdf?x55436>>.
- 99 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 36 <[https://www.ohchr.org/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf)>; United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business* (Report, 2020) <<https://www.ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>>; David R. Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/161 (15 July 2019) [71]-[72] <<https://undocs.org/en/A/74/161>>.
- 100 United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business* (Report, 2020) 3; United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 34, 36. See discussion in Sara Seck, *Business Responsibilities for Human Rights and Climate Change—A Contribution to the Work of the Study Group on Business and Human Rights of the International Law Association* (Draft Report, 25 May 2017) <<https://ssrn.com/abstract=2974768>>.
- 101 United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business* (Report, 2020) 3; United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 34, 38.
- 102 United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business* (Report, 2020) 3; United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 34, 38.
- 103 United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business* (Report, 2020) 4; United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 36; David R. Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/161 (15 July 2019) [71] <<https://undocs.org/en/A/74/161>>; Institute for Human Rights and Business, *Just Transitions for All: Business, Human Rights, and Climate Action* (Report, November 2020) 27, 28.
- 104 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 36; United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business – Key Messages* (Report, 2020) 4.
- 105 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 37; Chiara Macchi and Nadia Bernaz, 'Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks' (2021) 13(15) *Sustainability* 8391 <<https://www.mdpi.com/2071-1050/13/15/8391>>.

- 106 Margaret Wachenfeld, *Connecting the Climate Change and Business & Human Rights Agendas* (Briefing, Institute for Human Rights and Business, December 2020) 4; Investor Group for Climate Change, *Confusion to Clarity: A plan for mandatory TCFD-aligned disclosure in Australia* (Report, 2021) 11-14 <[https://igcc.org.au/wp-content/uploads/2021/06/ConfusiontoClarity\\_APlanforMandatoryTCFDalignedDisclosureinAus.pdf](https://igcc.org.au/wp-content/uploads/2021/06/ConfusiontoClarity_APlanforMandatoryTCFDalignedDisclosureinAus.pdf)>.
- 107 Intergovernmental Panel on Climate Change, *Climate Change 2021 The Physical Science Basis – Summary for Policymakers* (No IPCC AR6 WGI, 2021); Surya Deva, 'Climate Change: Looking beyond Human Rights Due Diligence?', *Nova Centre on Business, Human Rights and the Environment* (Blog Post, 7 June 2021) <<https://novabhre.novalaw.unl.pt/climate-change-looking-beyond-human-rights-due-diligence/>>; Chiara Macchi and Nadia Bernaz, 'Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks' (2021) 13(15) *Sustainability* 8391, 8399-8400; Margaret Wachenfeld, *Connecting the Climate Change and Business & Human Rights Agendas* (Briefing, Institute for Human Rights and Business, December 2020) 5-6; Halina Ward, *Just Transitions for All: Business, Human Rights, and Climate Action* (Paper, Institute for Human Rights and Business, November 2020) 29-31.
- 108 Chiara Macchi and Nadia Bernaz, 'Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks' (2021) 13(15) *Sustainability* 8391, 8399-8400; Silke Goldberg, Oliver Elgie and Dr Georgios Zampas (Herbert, Smith, Freehills), 'How Climate Change Affects Fundamental Human Rights' (2019) *Fivehundred* 46 <<https://indd.adobe.com/view/48004aaa-3a72-4f30-a3d7-df4bce093473>>.
- 109 United Nations Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38* (Fact Sheet, 2021) 36, 37; United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business – Key Messages* (Report, 2020) 4; David R. Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/161 (15 July 2019) [71]-[72]; Chiara Macchi and Nadia Bernaz, 'Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks' (2021) 13(15) *Sustainability* 8391, 8399-8400.
- 110 David R. Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/161 (15 July 2019) [71]; United Nations Office of the High Commissioner for Human Rights, *Human Rights, Climate Change and Business – Key Messages* (Report, 2020) 7.
- 111 Joana Setzer and Rebecca Byrnes, *Global Trends in Climate Change Litigation: 2020 Snapshot* (Policy Report, July 2020) 14, 18-22 <[https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation\\_2020-snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf)>; Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2021 Snapshot* (Policy Report, July 2021) 6, 11, 29-33 <[https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation\\_2021-snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf)>; Justine Bell-James and Briana Collins, 'Queensland's Human Rights Act: A New Frontier For Australian Climate Change Litigation?' (2020) 43(1) *UNSW Law Journal* 3.
- 112 Urgenda Foundation v State of Netherlands (District Court of The Hague, C/09/00456689, 24 June 2015). ClientEarth 'Climate Threatened Torres Strait Islanders Bring Human Rights Claim against Australia' (Media Release, 12 May 2019) <<https://www.clientearth.org/latest/press-office/press/climate-threatened-torres-strait-islanders-bring-human-rights-claim-against-australia/>>; Sharma by her litigation representative *Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 at [491] <[https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2021/2021fca0560?fbclid=IwAR17zXvBrYMYtiGtqLr58dMBKzW1M6n1XFqJPGnT3\\_ffzXhaGEhHNTzLU](https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2021/2021fca0560?fbclid=IwAR17zXvBrYMYtiGtqLr58dMBKzW1M6n1XFqJPGnT3_ffzXhaGEhHNTzLU)>; Heidi Asten and Anthony Crockett, 'Queensland case to focus on the human rights implications of climate change', *Herbert Smith Freehills* (Blog Post, 19 May 2020) <<https://hsfnotes.com/environmentaustralia/2020/05/19/queensland-case-to-focus-on-the-human-rights-implications-of-climate-change/>>; Elisa de Wit, Sonali Seneviratne and Huw Calford, 'Climate change litigation update', *Norton Rose Fullbright* (Blog Post, February 2020) <<https://www.nortonrosefulbright.com/en-au/knowledge/publications/0c9b154a/climate-change-litigation-update>>; Greenpeace Southeast Asia, *Petition to the Commission on Human Rights of the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change* (2015). The final decision is not yet publicly available but summary of the case can be found at Work and Climate Change Report, *Philippines Human Rights Commission delivers landmark decision, holding the Carbon Majors accountable for climate damages – Updated* (12 December 2019) <<https://workandclimatechangereport.org/2019/12/12/philippines-human-rights-commission-delivers-landmark-decision-opening-the-door-to-hold-the-carbon-majors-accountable-for-climate-damages/>>; *Milieudefensie et al v Royal Dutch Shell PLC* (District Court of The Hague, C/09/571932/HA ZA 19-379, 26 May 2021) <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>>; Macchi, Chiara and Nadia Bernaz, 'Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks' (2021) 13(15) *Sustainability* 8391.
- 113 Prime Minister of Australia, Address National Press Club Barton ACT, (Transcript, 1 February 2021) <<https://www.pm.gov.au/media/address-national-press-club-barton-act>>; 'Australia resists calls for tougher climate targets', *BBC*, (Online, 23 April 2021) <<https://www.bbc.com/news/world-australia-56854558>>; Jake Evans, 'No blank cheque' on net zero carbon emissions target, Prime Minister says, as global 'code red' issued' *ABC News* (Online, 10 August 2021) <<https://www.abc.net.au/news/2021-08-10/ipcc-scott-morrison-climate-change-net-zero-2050/100364476>>. The Paris Agreement asks that every five years signatories communicate to the UN Framework Convention on Climate Change secretariat their successive 'nationally determined contribution' outlining their climate actions, see United Nations Climate Change, *Nationally Determined Contributions (NDCs)* <<https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs>>.

- 114 Australian Government, *Australia' 2030 Emissions Reduction Target*, (2015) <<https://www.environment.gov.au/system/files/resources/f52d7587-8103-49a3-aeb6-651885fa6095/files/summary-australias-2030-emissions-reduction-target.pdf>>.
- 115 Sustainable Development Solutions Network, *Sustainable Development Report 2021: The Decade of Action for the Sustainable Development Goals* (2021) <<https://dashboards.sdgindex.org/>>. The information can be identified in the report's accompanying Excel Database available here: <<https://dashboards.sdgindex.org/downloads>>. Complete country-level data can be found in the 3rd tab "SDR2021 Data", and the scores by SDG can be found in columns WR – XH. The climate goal is in column XD. The ranking is assessed against four metrics: CO<sub>2</sub> emissions from fossil fuel combustion and cement production; CO<sub>2</sub> emission from imports; CO<sub>2</sub> emissions in fossil fuel exports and Carbon Pricing Score. See commentary, Michael Mazengarb, 'Australia Ranked Dead Last in World for Climate Action in Latest UN Report', *Renew Economy* (Web Page, 1 July 2021) <<https://reneweconomy.com.au/australia-ranked-dead-last-in-world-for-climate-action-in-latest-un-report/>>.
- 116 Jack Burck et al, *Results 2020: Climate Change Performance Index* (Report, December 2020) <[https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020-Results\\_Web\\_Version.pdf](https://newclimate.org/wp-content/uploads/2019/12/CCPI-2020-Results_Web_Version.pdf)>. This index monitors climate protection performance of 57 countries and the EU.
- 117 Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2021 Snapshot* (Policy Report, July 2021) 10; Joana Setzer and Rebecca Byrnes, *Global Trends in Climate Change Litigation: 2019 Snapshot* (Policy Report, July 2019) 8.
- 118 Nick O'Malley and Peter Hannam, 'Still in the control cabin': Time running out to limit warming, IPCC says,' *Sydney Morning Herald* (Online, 9 August 2021) <<https://www.smh.com.au/environment/climate-change/still-in-the-control-cabin-time-running-out-to-limit-warming-ipcc-says-20210809-p58h9j.html>>; The Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis – Summary for Policymakers* (Report IPCC AR6 WGI, 2021) [B.1]–[B.1.3].
- 119 Daniel Hurst, 'US, European and UK Diplomats meet to encourage Australia to ramp up climate action' *The Guardian*, (Online, 28 July 2021) <<https://www.theguardian.com/australia-news/2021/jul/28/us-european-and-uk-diplomats-meet-to-encourage-australia-to-ramp-up-climate-action>>; Daniel Hurst, 'German ambassador joins calls for Morrison government to take more ambitious climate action' *The Guardian* (Online, 22 August 2021) <<https://www.theguardian.com/australia-news/2021/aug/22/german-ambassador-joins-calls-for-morrison-government-to-take-more-ambitious-climate-action>>; Michael Slezak and Melissa Clarke, 'Australia widely criticised over emission reduction targets ahead of COP 26 climate talks', *ABC News* (Article, 20 August 2021) <<https://www.abc.net.au/news/2021-08-20/climate-change-ipcc-australia-uk-conference-glasgow/100392252>>; Richard Ferguson 'Scott Morrison faces calls to boost 2030 emissions reduction target as IPCC makes climate predictions' *The Australian* (Online, 8 August 2021) <<https://www.theaustralian.com.au/nation/scott-morrison-faces-calls-to-boost-2030-emissions-reduction-target-as-ipcc-makes-climate-predictions/news-story/659ac687190470e1e96a756ff8d34f20>>; David Adams, 'After a brutal climate report, Australian investors fear 'falling behind' without a net zero target and green disclosure rules' *Business Insider Australia* (Article, 10 August 2021) <<https://www.businessinsider.com.au/australia-climate-investors>>; Neil Griffiths, 'Key Groups call on PM to 'halve emissions by 2030' *Investor Daily*, (Article, 20 August 2021) <<https://www.investordaily.com.au/latest-news/49729-key-groups-call-on-pm-to-halve-emissions-by-2030>>; Australian Climate Roundtable, *Far-reaching climate change risks to Australia must be reduced and managed* (Statement, 28 August 2020) <[https://www.australianclimateroundtable.org.au/wp-content/uploads/2020/08/ACR\\_statement\\_on\\_climate\\_impacts-August\\_2020.pdf](https://www.australianclimateroundtable.org.au/wp-content/uploads/2020/08/ACR_statement_on_climate_impacts-August_2020.pdf)>; Mike Foley, 'Business urges government to take net zero pledge to UN climate talks' *The Sydney Morning Herald*, (2 September 2021) <<https://www.smh.com.au/politics/federal/business-urges-government-to-take-net-zero-pledge-to-un-climate-talks-20210831-p58nma.html>>.
- 120 The Intergovernmental Panel on Climate Change, *Summary for Policy Makers: Global Warming of 1.5°C approved by governments* (Summary for Policy Makers, 2018).
- 121 Investor Group on Climate Change, *Empowering Communities – How investors can support an equitable transition to net zero* (Report, July 2021) 28 <[https://igcc.org.au/wp-content/uploads/2021/07/IGCC-Investors-role-in-an-Equitable-Transition-to-net-zero-emissions\\_FINAL-150720211-copy.pdf](https://igcc.org.au/wp-content/uploads/2021/07/IGCC-Investors-role-in-an-Equitable-Transition-to-net-zero-emissions_FINAL-150720211-copy.pdf)>.
- 122 Australian Climate Roundtable, *Far-reaching climate change risks to Australia must be reduced and managed* (Statement, 28 August 2020) <[https://www.australianclimateroundtable.org.au/wp-content/uploads/2020/08/ACR\\_statement\\_on\\_climate\\_impacts-August\\_2020.pdf](https://www.australianclimateroundtable.org.au/wp-content/uploads/2020/08/ACR_statement_on_climate_impacts-August_2020.pdf)>.
- 123 See discussion in AICD and Minter Ellison, *Climate risk and governance guide* (Report, 2021) <<https://aicd.companydirectors.com.au/-/media/cd2/resources/advocacy/research/2021/pdf/climate-risk-governance-guide-a4-30pp-web.ashx>>.
- 124 Global Compact Network Australia, *Strengthening Resilience: Acting on Climate Change and Health* (Report, 2020) <<https://unglobalcompact.org.au/wp-content/uploads/2020/07/Climate-Change-and-Health-Report.pdf>>; David Adams, 'After a brutal climate report, Australian investors fear 'falling behind' without a net zero target and green disclosure rules' *Business Insider Australia* (Online, 10 August 2021); Sally Patten, 'ASX2000 companies committee to net zero targets treble in a year,' *Financial Review* (Online, 23 August 2021) <<https://www.afr.com/policy/energy-and-climate/asx200-companies-committed-to-net-zero-targets-treble-in-a-year-20210820-p58kkp>>.
- 125 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 5-9 <<https://www.ohchr.org/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>>.

- 126 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 5-9; United Nations Working Group on Business and Human Rights, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.2 (June 2021).
- 127 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 13-14.
- 128 Institutional investors can cause, contribute to or be directly linked to human rights risks and harms. See Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020), 11 <<https://www.unpri.org/human-rights-and-labour-standards/why-and-how-investors-should-act-on-human-rights/6636.article>>.
- 129 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 4-9. Due diligence does not have to be duplicated by both asset owners and managers, see OECD, *Responsible Business Conduct for Institutional Investors: Key considerations for due diligence under the OECD guidelines for multinational enterprises* (Report, 2017) 17 <<https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>>.
- 130 Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020) 7 Fn 5 <<https://www.unpri.org/download?ac=11953>>.
- 131 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 4-20; Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020) 14-16.
- 132 Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020).
- 133 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 31 [113]; Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020); OECD, *Responsible Business Conduct for Institutional Investors: Key considerations for due diligence under the OECD guidelines for multinational enterprises* (Report, 2017); Investor Alliance for Human Rights, *Investor Toolkit on Human Rights* (Report, May 2020); United Nations Human Rights Office of the High Commissioner, *Rights-respecting investment in technology companies: A B-Tech investor briefing* (Briefing, January 2021) 5 <<https://www.ohchr.org/Documents/Issues/Business/B-Tech/B-Tech-Briefing-Investment.pdf>>; Interfaith Center on Corporate Responsibility, *Investing the Rights Way: A Guide for Investors on implementing the UN Guiding Principles on Business and Human Rights* (Report, 2013) <<https://www.iccr.org/investing-rights-way-guide-investors-business-and-human-rights>>.
- 134 Australian Human Rights Commission and Ernst & Young, *Human Rights in Investment: The value of considering human rights in ESG due diligence* (Report, April 2017) 6, 12; Fiona Reynolds and John Ruggie, 'What institutional investors need to know about the 'S' in ESG' (Article, 22 October 2020) Responsible Investor <<https://www.responsible-investor.com/articles/fiona-reynolds-and-john-ruggie-what-institutional-investors-need-to-know-about-the-s-in-esg>>.
- 135 UNEP Finance Initiative and Principles for Responsible Investment, *Fiduciary Duty in the 21st Century* (Final Report, 21 October 2019) 8 <<https://www.unepfi.org/wordpress/wp-content/uploads/2019/10/Fiduciary-duty-21st-century-final-report.pdf>>; Australian Human Rights Commission and Ernst & Young, *Human Rights in Investment: The value of considering human rights in ESG due diligence* (Report, April 2017) 6, 7, 10, 15.
- 136 United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 13 <<https://undocs.org/A/HRC/47/39/Add.1>>.
- 137 Responsible Investment Association Australasia, *Responsible Investment Benchmark Report 2020 Australia* (Report, 2020) 18 <<https://responsibleinvestment.org/wp-content/uploads/2020/10/RIAA-RI-Benchmark-Report-Australia-2020.pdf>>.
- 138 Casey O'Connor and Sarah Labowitz, 'Measuring Human Rights Performance for Investors,' *NYU Stern Center for Business and Human Rights* (Report, March 2017) 8 <<https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/1489688854754/Metrics-Report-final-1.pdf>>; Australian Human Rights Commission and Ernst & Young, *Human Rights in Investment: The value of considering human rights in ESG due diligence* (Report, April 2017) 10.
- 139 Linda Zeilina and Julian Toth, *Amplifying the "S" in ESG: Investor Myth Buster* (Report, 27 May 2021) 6, 11, 12, 27-29 <<https://www.whitecase.com/sites/default/files/2021-06/amplifying-s-esg-investor-myth-buster-final.pdf>>.
- 140 John G. Ruggie and Emily K. Middleton, *Money, Millennials and Human Rights - Sustaining 'Sustainable Investing'* (Working Paper No 69, June 2018) 4-6 <[https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working\\_papers/CRI69\\_FINAL.pdf](https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working_papers/CRI69_FINAL.pdf)>; Casey O'Connor and Sarah Labowitz, *Measuring Human Rights Performance for Investors*, *NYU Stern Center for Business and Human Rights* (March 2017) 2, 20-25 <<https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/58cad912e58c6274180b58b6/1489688854754/Metrics-Report-final-1.pdf>>.
- 141 Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020) 6.
- 142 BlackRock, *Our approach to engagement with companies on their human rights impact* (Commentary, March 2021) 3 <<https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-human-rights.pdf>>. However, BlackRock's approach still prioritises *material* human rights risks to business, rather than prioritising risks to people in line with the UNGPs, see discussion in Malcolm Rogge, 'What BlackRock Gets Right

- in its Newly Minted Human Rights Engagement Policy' *Harvard Law School Forum on Corporate Governance* (2021) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3833467](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3833467)>.
- 143 See 'Investors with \$5.8 Trillion Exhort Companies Scoring Zero on the CHRB to Know and Show their Human Rights Risks' *Investor Alliance for Human Rights*, (Media Release, 10 May 2021) <<https://investorsforhumanrights.org/news/investors-58-trillion-exhort-companies-scoring-zero-on-chrb-know-and-show-their-human-rights>>; 'Investors with US \$5 trillion call on governments to institute mandatory human rights due diligence measures for companies' *Investor Alliance for Human Rights* (Media Release, 21 April 2020) <<https://investorsforhumanrights.org/news/investor-case-for-mhrdd>>.
- 144 'Get involved', *Investors Against Slavery and Trafficking Asia-Pacific* (Web Page) <[http://iastr.fastinitiative.org/?page\\_id=291](http://iastr.fastinitiative.org/?page_id=291)>.
- 145 For example, the Responsible Investment Association of Australasia has established a First Nations Peoples' Rights Working Group. Nick Toscano, '\$14 trillion investor coalition puts Australia's miners on notice over Indigenous rights', *The Sydney Morning Herald* (online, 29 October 2020) <<https://www.smh.com.au/business/companies/14-trillion-investor-coalition-puts-australia-s-miners-on-notice-over-indigenous-rights-20201028-p569fe.html>>.
- 146 Quentin Digby, Timothy Stutt and Barry Wang, 'The Shareholder Rights and Activism Review: Australia', *Herbert Smith Freehills LLP* (Article, 14 October 2020) <<https://thelawreviews.co.uk/title/the-shareholder-rights-and-activism-review/australia>>; Bhkati Mirchandani, 'What you Need To Know About the 2021 Proxy Season', *Forbes* (Article, 28 June 2021) <<https://www.forbes.com/sites/bhaktimirchandani/2021/06/28/what-you-need-to-know-about-the-2021-proxy-season/?sh=9739b1e7f5e1>>.
- 147 Nick Toscano, 'Investors to turn up heat on Australia's biggest emitters', *The Sydney Morning Herald* (Article, 22 March 2021) <<https://www.smh.com.au/business/companies/investors-to-turn-up-heat-on-australia-s-biggest-emitters-20210322-p57cwk.html>>; see Australian institutional investors involvement in initiatives of Climate Action 100+ at <<https://www.climateaction100.org/>>.
- 148 Australian Sustainable Finance Initiative, *Australian Sustainable Finance Roadmap: A plan for aligning Australia's Financial system with a sustainable, resilient and prosperous future for all Australians* (Report, 2020) 60 <<https://static1.squarespace.com/static/5c982bfaa5682794a1f08aa3/t/5fdb70bfe657040d5b08594/1607317288512/Australian+Sustainable+Finance+Roadmap.pdf>>.
- 149 See discussion about the relationships between the UNGPs and the SDGs in section 2.4. United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 13; Marcel Jeucken, Shelagh Whitley, Nathan Fabian, *Investing with SDG Outcomes: A Five-Part Framework* (Report, 2020) 17-18 <<https://www.unpri.org/download?ac=10795>>.
- 150 Guidance published by the Responsible Investment Association Australasia and the Australian Council of Superannuation Investors has provided leadership to date, which is now complemented with a growing body of UNGP-aligned guidance. See 'Investors with \$5.8 Trillion Exhort Companies Scoring Zero on the CHRB to Know and Show their Human Rights Risks' *Investor Alliance for Human Rights* (Media Release, 10 May 2021) <<https://investorsforhumanrights.org/news/investors-58-trillion-exhort-companies-scoring-zero-on-chrb-know-and-show-their-human-rights>> and 'Investors with US \$5 trillion call on governments to institute mandatory human rights due diligence measures for companies' *Investor Alliance for Human Rights* (Media Release, 21 April 2020) <<https://investorsforhumanrights.org/news/investor-case-for-mhrdd>> and for example, Responsible Investment Association Australasia, *Investor Toolkit: Human rights with a focus on supply chains* (Report, 2018) Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* (Report, 20 July 2021).
- 151 EU Non-Financial Reporting Directive (NFRD) 2014/95/EU. Denielle Harrison and Charlotte Bancelhon, 'Double and dynamic: How to enhance the value of your materiality assessment', *Business for Social Responsibility* (Blog Post, 9 February 2021) <<https://www.bsr.org/en/our-insights/blog-view/double-and-dynamic-how-to-enhance-the-value-of-your-materiality-assessment>>.
- 152 Cary Springfield, 'What Is the Sustainable Finance Disclosure Regulation?', *International Banker* (Blog Post, 13 April 2021) <<https://internationalbanker.com/finance/what-is-the-sustainable-finance-disclosure-regulation/>>; David Henry Doyle, 'What Is the Impact of the EU Sustainable Finance Disclosure Regulation (SFDR)?', *S&P Global Market Intelligence* (Blog Post, 1 April 2021) <<https://www.spglobal.com/marketintelligence/en/news-insights/blog/what-is-the-impact-of-the-eu-sustainable-finance-disclosure-regulation-sfdr>>; Caroline Jury, Angela Kerek and Matthew Dunlap, 'Sustainable Finance Disclosure Regulation (SFDR): What to Expect', *Lexology* (Blog Post, 2021) <<https://www.lexology.com/library/detail.aspx?g=3db898b8-84d5-48d5-b38f-74e141000ea1>>.
- 153 Thomas Volland, Clare Burgess and Carla Lewis, 'The EU Taxonomy Regulation – a Market Standard of Human Rights Due Diligence?', *Clifford Chance* (Blog Post, 10 November 2020) <<https://www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/the-eu-taxonomy-regulation-a-market-standard-of-human-rights-due-diligence.html>>.
- 154 Regulation (EU) 2020/ 852 of the European Parliament and of the Council on establishment of a framework to facilitate sustainable investment, and amending regulation (EU) 2019/2088 [2020] OJ 198/13 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32020R0852>>.
- 155 Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020) 6.
- 156 John G. Ruggie and Emily K. Middleton, *Money, Millennials and Human Rights – Sustaining 'Sustainable Investing'* (Working paper No 69, June 2018) 4-6.
- 157 Linda Zeilina and Julian Toth, *Amplifying the "S" in ESG: Investor Myth Buster* (Report, 27 May 2021) 15 and 20. Updates to the PRI's investor and the GRI company reporting frameworks are expected to be UNGPs-aligned. Principles for Responsible Investment, *Why and How Investors Should Act on Human Rights* (Report, 22 October 2020) 18; Global Reporting Initiative, *GRI Universal Standards: GRI 101, GRI 102 and GRI 103 – Exposure Draft*

- (Draft Report, 11 June 2020) <<https://www.globalreporting.org/standards/media/2605/universal-exposure-draft.pdf>>.
- 158 See examples of benchmarking from the Corporate Human Rights Benchmark, Ranking Digital Rights, the KnowTheChain, Behind the Brands. See also the list of resources outlined in: Linda Zeilina and Julian Toth, *Amplifying the "S" in ESG: Investor Myth Buster* (Report, 27 May 2021) Annexure III; United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Taking stock of investor implementation of the Guiding Principles on Business and Human Rights*, UN Doc A/HRC/47/39/Add.1 (17 June 2021) 11 and 17. Other examples: Financial Sector Commission on Modern Slavery and Human Trafficking, *A Blueprint for Mobilizing Finance Against Slavery and Trafficking: Final Report of the Liechtenstein Initiative's Financial Sector Commission on Modern Slavery and Human Trafficking* (Final Report, September 2019) <<https://www.fastinitiative.org/wp-content/uploads/Blueprint-DIGITAL-3.pdf>>; Ana Perez Adroher, *FIDH – From Policies to Impacts: Analysing Modern Slavery Risks in Portfolio Companies* (Report, May 2021) <[www.fidh.org/IMG/pdf/from\\_policies\\_to\\_impacts\\_analysing\\_modern\\_slavery\\_risks\\_in\\_portfolio\\_companies.pdf](http://www.fidh.org/IMG/pdf/from_policies_to_impacts_analysing_modern_slavery_risks_in_portfolio_companies.pdf)>; 'The Problem with How we Measure Business Respect for Human Rights', *Shift Project* (Web Page, September 2019) <<https://shiftproject.org/resource/the-problem-with-how-we-measure-business-respect-for-human-rights-2/>>.
- 159 See *International Covenant on Civil and Political Rights*, opened for signature on 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976) art 2.3 [14]; Office of the United Nations High Commissioner for Human Rights, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework"*, UN Doc A/72/162 (18 July 2017) [13]-[17] <<https://undocs.org/A/72/162>>.
- 160 In recognition of this issue and pursuant to a mandate from the United Nations Human Rights Council, the OHCHR launched the Accountability and Remedy Project, which has included a series of reports on access to remedy for business-related human rights harms, accessible at 'OHCHR Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses', *United Nations Office of the High Commissioner for Human Rights* (Web Page) <<https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>>.
- 161 Office of the United Nations High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse: Report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/32/19 (10 May 2016) [4]-[7] <<https://undocs.org/A/HRC/32/19>>.
- 162 Business and Human Rights Resource Centre, *In the line of fire: Increased legal protection needed as attacks against business & human rights defenders mount in 2020* (Report, March 2021) <[https://media.business-humanrights.org/media/documents/HRD\\_2020\\_Snapshot\\_EN\\_v9.pdf](https://media.business-humanrights.org/media/documents/HRD_2020_Snapshot_EN_v9.pdf)>. Incidents connected to Australian companies can be found at: 'Human Rights Defenders & Civic Freedoms Programme', *Business and Human Rights Resource Centre* (Database) <<https://www.business-humanrights.org/en/from-us/human-rights-defenders-database/>>.
- 163 United Nations Office of the High Commissioner for Human Rights, *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc HR/Pub/11/04 (16 June 2011) [27]; UNGPs 25; Office of the United Nations High Commissioner for Human Rights, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework"*, UN Doc A/72/162 (18 July 2017) [61]-[64].
- 164 UNGPs, Principles 26 and 27.
- 165 Allens Linklaters, *Stocktake on Business and Human Rights in Australia* (Report, April 2017) <<https://www.dfat.gov.au/sites/default/files/stocktake-on-business-and-human-rights-in-australia.pdf>>; Australian Government, 'Right to an effective remedy: Public Sector Guidance Sheet' *Australian Government Attorney-General's Department* (Webpage) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-effective-remedy>>.
- 166 Allens Linklaters, *Stocktake on Business and Human Rights in Australia* (Report, April 2017) 27-46.
- 167 Allens Linklaters, *Stocktake on Business and Human Rights in Australia* (Stocktake, 2017) 100-103.
- 168 Law Council of Australia, *The Justice Project: Introduction and Overview* (Final Report, August 2018) 29-31, 42 <[https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20\\_%20Final%20Report%20in%20full.pdf](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20_%20Final%20Report%20in%20full.pdf)>.
- 169 Human Rights Law Centre, *Nowhere to Turn: Addressing Australian corporate abuses overseas* (Report, 1 December 2018) <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5c1aa50a8a922db8f09e5c1b/1545250097352/Nowhere+to+Turn.pdf>>; May Miller-Dawkins, Shelley Marshall, Kate Macdonald and Kristen Zornada, *Redress for Transnational Business-Related Human Rights Abuses in Australia* (Report No 3, 2016) <<https://corporateaccountabilityresearch.net/njm-report-iii-redress-in-australia>>; 'Fatal Extraction: Australian Mining in Africa', *The International Consortium of Investigative Journalists* (Web page) <<https://projects.icij.org/fatalextraction/>>.
- 170 UN OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse*, UN Doc A/HRC/32/19 (10 May 2016) [21]-[23]; Gabrielle Holly, 'Transnational Tort and Access to Remedy under the UN Guiding Principles on Business and Human Rights: *Kamasae v Commonwealth*' (2018) 19(1) *Melbourne Journal of International Law* 52, 56-58.
- 171 See discussions in Australian Law Reform Commission, *Corporate Criminal Responsibility* (Final Report 136, April 2020) 446 [10.3] and 447 [10.9] <<https://www.alrc.gov.au/wp-content/uploads/2020/05/ALRC-CCR-Final-Report-websml.pdf>>.

- 172 Australian Law Reform Commission, *Corporate Criminal Responsibility* (Final Report 136, April 2020) 446 [10.3] and 472 [10.116]. Some extraterritorial offences are subject to the 'local law defence' in the Australian Criminal Code, which provides that if conduct is not prohibited in the relevant foreign jurisdiction, there has not been an offence committed under the Australian Criminal Code. In practice this is problematic given in many countries that slavery-like conduct is not outlawed, see discussion in Australian Law Reform Commission, *Corporate Criminal Responsibility* (Final Report 136, April 2020) 475-476 [10.126] – [10.132].
- 173 Australian Law Reform Commission, *Corporate Criminal Responsibility* (Final Report 136, April 2020) 447.
- 174 Australian Law Reform Commission, *Corporate Criminal Responsibility* (Final Report 136, April 2020) 446 [10.7], 459 [10.58], 490 [10.202], 491 [10.203(i)] and 492 [10.20].
- 175 Gabrielle Holly, 'Transnational Tort and Access to Remedy under the UN Guiding Principles on Business and Human Rights: Kamasae v Commonwealth' (2018) 19(1) *Melbourne Journal of International Law* 52, 53-54; 'Federal Court finds offshore oil field operator liable in negligence for death and loss of seaweed crops in Indonesia,' *Human Rights Law Centre* (19 March 2021) <<https://www.hrlc.org.au/human-rights-case-summaries/2021/3/19/federal-court-finds-offshore-oil-field-operator-liable-in-negligence-for-death-and-loss-of-seaweed-crops-in-indonesia>>.
- 176 Gabrielle Holly, 'Transnational Tort and Access to Remedy under the UN Guiding Principles on Business and Human Rights: Kamasae v Commonwealth' (2018) 19(1) *Melbourne Journal of International Law* 52, 74.
- 177 Allens Linklaters, *Stocktake on Business and Human Rights in Australia* (Stocktake, 2017) 97.
- 178 Allens Linklaters, *Stocktake on Business and Human Rights in Australia* (Stocktake, 2017) 97-98; Marilyn Warren, 'Corporate Structures, the Veil and the Role of the Courts' (2017) 40 *Melbourne University Law Review* 657, 672-680 <[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/2369591/07-Warren-402-Post-Press.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0008/2369591/07-Warren-402-Post-Press.pdf)>.
- 179 See UK cases *Vedanta Resources PLC v Lungowe* [2019] UKSC 20; *Okpabi v Royal Dutch Shell* [2021] UKSC 3 and see also *Begum v Maran (UK) Ltd* [2021] 3 WLUK 162. See a case from the Netherlands Court of Appeal the Hague: *Milieudefensie & Others v Shell Petroleum NV & Others*, [C/09/365498/HA ZA 10-1677] [C/09/330891/HA ZA 09-0579] [C/09/337058/HA ZA 09-1581]; [C/09/365482/HA ZA 10-1665] <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2021:132>>; and a Canadian case, *Newsun Resources Ltd v Araya* [2020] SCC 5.
- 180 European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law: Frequently Asked Questions* (Report, 24 March 2017) 5 <<http://corporatejustice.org/wp-content/uploads/2021/04/french-corporate-duty-of-vigilance-law-faq-1.pdf>>.
- 181 UNGPs, Principle 25.
- 182 See Alex Newton, *Independent Review: Australian National Contact Point under the OECD Guidelines for Multinational Enterprises* (Report, June 2017) <<https://ausncp.gov.au/about/2017-review>>.
- 183 Australian National Contact Point, *Follow up statement: Regarding complaint submitted by Equitable Cambodia and Inclusive Development International on behalf of Cambodian Families* (Report, 27 February 2020) <[https://ausncp.gov.au/sites/default/files/2020-02/Complaint\\_11\\_statement.pdf](https://ausncp.gov.au/sites/default/files/2020-02/Complaint_11_statement.pdf)>.
- 184 Australian National Contact Point, *Update July 2021: Complaint by Human Rights Law Centre (on behalf of affected individuals) regarding Rio Tinto* (Updated Report, 21 July 2021) <[https://ausncp.gov.au/sites/default/files/2021-07/210721\\_update\\_statement\\_AusNCP.pdf](https://ausncp.gov.au/sites/default/files/2021-07/210721_update_statement_AusNCP.pdf)>.
- 185 Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* (Report, 20 July 2021) 43, 46, 47. See guidance on effective grievance mechanisms in Global Compact Network Australia, *Implementing Effective Modern Slavery Grievance Mechanisms: A Guidance Note for Business* (Report, March 2021) <[https://unglobalcompact.org.au/wp-content/uploads/2021/03/4261-UNGC-Grievance-Mechanisms-GUIDANCE-DOC\\_28pp-9-FA.pdf](https://unglobalcompact.org.au/wp-content/uploads/2021/03/4261-UNGC-Grievance-Mechanisms-GUIDANCE-DOC_28pp-9-FA.pdf)>.
- 186 Edelman, *Edelman Trust Barometer 2021: Country Report Trust in Australia* (Report, 2021) <[https://www.edelman.com.au/sites/g/files/aatuss381/files/2021-02/2021%20Edelman%20Trust%20Barometer%20-%20Australia%20Country%20Report%20FINAL\\_0.pdf](https://www.edelman.com.au/sites/g/files/aatuss381/files/2021-02/2021%20Edelman%20Trust%20Barometer%20-%20Australia%20Country%20Report%20FINAL_0.pdf)>.
- 187 Working Group on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UN Doc A/HRC/47/39 (22 April 2021) [10].

## Further Information

### **Australian Human Rights Commission**

Level 3, 175 Pitt Street  
SYDNEY NSW 2000

GPO Box 5218  
SYDNEY NSW 2001

Telephone: (02) 9284 9600  
Complaints Infoline: 1300 656 419  
General enquiries and publications: 1300 369 711  
TTY: 1800 620 241  
Fax: (02) 9284 9611

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

### **Australian Human Rights Institute**

Room 125, The Law Building  
UNSW Sydney NSW 2052  
Telephone: (02) 9385 1803

Email: [humanrights@unsw.edu.au](mailto:humanrights@unsw.edu.au)

Website: [www.humanrights.unsw.edu.au](http://www.humanrights.unsw.edu.au)

**Australian Human Rights Commission**  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

**Australian Human Rights Institute**  
[www.humanrights.unsw.edu.au](http://www.humanrights.unsw.edu.au)