



Global Compact
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**Australian
Human Rights
Commission**

2016 Australian Dialogue on Business and Human Rights

Building stakeholder engagement as a driver of
business respect for human rights

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Summary and Outcomes Document

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Overview

In October 2016, the Global Compact Network Australia (GCNA) and the Australian Human Rights Commission (AHRC) convened Australia's third national, multi-sector, multi-stakeholder dialogue on business and human rights.

The inaugural Dialogue in 2014 highlighted that the business and human rights discussion in Australia had largely moved beyond 'why' business should respect human rights, to practical questions around 'how' to do so effectively. In 2015, while momentum around business and human rights had continued to build, challenges remained. Transparency and disclosure was a key theme. Translating human rights into the business context was highlighted as a continuing challenge. Another was integrating human rights across business functions. Managing human rights in supply chains was also identified as a key area for ongoing improvement, both domestically and internationally.

The 2016 Dialogue again brought together over 100 practitioners and experts from business, government, civil society, academia and the investor community to progress business and human rights practice in Australia. The Dialogue explored current practices, challenges and opportunities based on the [UN Guiding Principles on Business and Human Rights](#) (the **UNGPs**), with a particular focus on stakeholder engagement.

Participants heard from and engaged with over 30 speakers across four key topics: corporate leadership on business and human rights, business-NGO engagement, collective action to respond to human rights issues in supply chains, human rights impact assessment, access to remedy and the potential for an Australian National Action Plan on Business and Human Rights.

The importance of corporate leadership on human rights was again emphasised this year, and a need was identified to build awareness and capacity around human rights risks and opportunities at senior levels of business. The importance of developing ethical, rights-respectful corporate cultures was also discussed – as well as the benefits to companies of embedding human rights in their businesses.

The Dialogue explored business-NGO engagement on human rights, including the ways to ensure constructive dialogue and meaningful collective action.

The challenges of addressing human rights in supply chains, both domestically and internationally, were discussed. The benefits of moving beyond auditing towards an approach focused on building long term relationships with suppliers was highlighted, as well as the positive role NGOs and other stakeholders can play in this space.

In terms of assessing human rights impacts, the identification of actual and potential risks to and impacts on people (rather than the company or project) was emphasised. The power imbalance that exists between companies and impacted people was highlighted, with participants noting that for consultations to be meaningful companies must be willing to address this. Understanding impacts on Indigenous people and migrant workers were specifically discussed.

Continuing developments in access to remedy were outlined, and opportunities for improving accountability for adverse business-related human rights impacts explored, including strengthening the Australian OECD National Contact Point.

Throughout the Dialogue, the role of investors was raised. Companies are still not seeing significant interest from investors, so the opportunity exists for the investor community to become more active on human rights. At the same time, investor representatives present encouraged companies to provide better information on their human rights performance and to help build the capacity of investors to ask the right questions.

The role of government was also discussed across the Dialogue, with participants from all sectors highlighting a desire for the Australian Government to be more active in this space. The Government has confirmed an intention to step up implementation of the UN Guiding Principles and to conduct national consultations. Participants noted that the Government needs to take the time to get this right, develop a transparent and effective process, conduct adequate consultation with all stakeholders, and pick the right issues to focus on in moving forward. There was general support for the development of a National Action Plan on Business and Human Rights, and no participants identified a reason not to develop a NAP.

Across the day, the importance of multi-stakeholder engagement and collaboration was emphasised, with key opportunities identified for business, civil society, government, investors and academics.

This Summary and Outcomes document also includes the Dialogue agenda (Annexure).

Note: This summary report outlines Dialogue highlights, in keeping with the Chatham House rule of non-attribution under which the meeting was held. This report does not necessarily represent the view of the GCNA, AHRC or any speaker or participating organisation.

The Dialogue

The business and human rights context

There have been a number of developments in the business and human rights space since the 2015 Dialogue.

- **Expectations around human rights communications and transparency have continued to increase.** This has been driven in no small part by key international developments. The first statements under the UK Modern Slavery Act have been released, with many stakeholders expressing disappointment with their content, saying they are not sufficiently focused on performance. (Since the Dialogue, the Australian Government has [announced](#) it will strengthen its response to human trafficking and slavery including considering the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation.) The pilot of the [Corporate Human Rights Benchmark](#) got underway during the year and the results of the pilot are expected to be published in early 2017. International business and human rights group Shift has also established a public [UNGPs reporting database](#) of certain companies' human rights policies and processes. While these initiatives apply to a limited number of Australian companies, they are driving a number of conversations.
- **Momentum around National Action Plans on Business and Human Rights (NAPs) has been building, including in Australia.** There are now 10 countries with NAPs and around 25 other governments in the process of developing a plan. Further the Australian Government confirmed earlier this year an intention to conduct national consultations on implementation of the UNGPs, which could potentially result in a NAP. (Since the Dialogue, the Australian Government has also confirmed it is establishing a multi-stakeholder advisory group to provide expert advice and to support the consultations.) The GCNA convened [business roundtables](#) with DFAT to provide early input and civil society has also made [recommendations](#) to the Government.
- **Managing human rights risks in business relationships has continued to be a hot topic – including supply chains and government-business relationships.** The AHRC, GCNA and ACCSR launched a research [publication](#) on human rights in Australian companies' supply chains in late 2015. Responding to issues raised in relation to labour in the Australian fresh food and agriculture sector's supply chain, the AHRC convened a roundtable to begin identifying the challenges and opportunities of addressing these challenges. The AHRC also convened a [roundtable](#) on human rights and mega-sporting events the week after the 2016 Dialogue which brought business, sporting, government and civil society stakeholders together to discuss the challenges and opportunities in integrating human rights in major sporting events in Australia and the Commonwealth more broadly.
- **The human rights aspects of other issues are increasingly being understood and highlighted, such as climate change, water, sustainable development, security, privacy and taxation.** Since the 2015 Dialogue, the UN's Sustainable Development Goals (SDGs) have been launched, with business being specifically called upon to contribute to this new agenda. In Australia, a number of leading businesses have moved early to embrace the SDGs, mapping their impacts and activities against the goals, and aligning sustainability strategies with the agenda, and including SDG content in sustainability reports. Human rights are embedded in the SDG agenda and addressing business' human rights impacts will itself make a significant contribution to the SDGs. In engaging business around the SDGs, the GCNA emphasises businesses' contribution in two parts: first, doing business responsibly (including with respect for human rights) and then finding business opportunities that contribute to the agenda.
- **There is a growing focus on remedy.** Stakeholders, especially civil society, have long raised issues with the ability of victims to access effective remedies for businesses' negative human rights impacts, and there is growing international momentum to address barriers to access to remedy. This year has seen the final report from the Office for the High Commissioner for Human Rights' Accountability and Remedy Project which included Australia as a jurisdiction of focus. In a resolution welcoming the report, the UN Human Rights Council encouraged governments to review and develop a strategy for improving access to remedy. Next year's UN Annual Forum on Business and Human Rights will focus on remedy.

Central to all of these issues is the role of different stakeholders and the importance of business to proactively and constructively engage with different stakeholders to achieve meaningful change, hence the theme for this year's Dialogue.

High-level panel: corporate leadership on business and human rights

A high-level panel of senior representatives from business explored corporate leadership for human rights, and the role of other stakeholders on business and human rights issues.

Awareness and capacity remains a challenge at senior levels of business

The panel discussed the broad range of considerations facing CEOs and corporate boards, noting that the reality is that commerciality remains a key focus and that the links to human rights risk management may still not be well understood. It was noted that most companies do not set out to breach human rights, but may still not be identifying human rights issues effectively for a variety of reasons including the complexity or perceived complexity of the issue: resourcing; and lack of information about or leverage over business partners' practices (e.g. difficulties of human rights due diligence on production in Asia was discussed).

"It's not a conscious thing to breach human rights. But human rights are a long way from being at the centre of business." (Business representative)

"Human rights is compatible with commercial outcomes. Human rights is an investment in who you are and your brand." (Business representative)

The panel discussed the need for greater awareness and understanding of human rights and engagement with human rights issues at senior levels of business, as well as the strong business case that can be made for building that engagement.

Business is 'doing' human rights in relation to a number of issues, but lacks an overarching framework

Although there are awareness and capacity gaps, the panel noted that businesses are 'doing' human rights in a number of areas (Indigenous rights, gender equality, non-discrimination, health and safety), but are often not using human rights language or drawing the issues together within an overarching human rights framework.

Health and safety was specifically mentioned, noting that on this issue companies use very clear 'zero tolerance' language. However, some panellists suggested 'human rights' language is perhaps seen as too political. This did, though, highlight an opportunity for business leaders to drive change on this rather than wait for others (e.g. politicians or government) to make human rights mainstream and 'safe'. Some participants reiterated this point, arguing that senior leaders will increasingly need to understand human rights 'language' to adequately respond to risks and to build capacity for them to do so.

Operating in difficult contexts

The panel explored the challenge of operating in difficult contexts, including countries with weak governance or emerging from conflict. They considered how the decision is made within companies to either walk away from operations in such contexts or stay and try and use influence to drive change, with examples of both being discussed. Reference was made to the importance of working with employees across a range of organisational functions to ensure their views and expertise are considered in understanding actual and potential risks.

The opportunity of engaging staff and embedding human rights

The panel also discussed the challenge of embedding human rights within businesses. Even where a company has a strong commitment to and awareness of human rights, it remains difficult to embed that across large, geographically dispersed and culturally diverse operations. What works in one country does not necessarily work in another, and so companies need to change tactics to embed human rights policies to suit different locations and cultures while still meeting consistent core standards across the group.

"When you engage staff around human rights a few things will happen: performance will lift, stakeholders will get more engaged, and a return on investment starts to come in." (Business representative)

Getting it right in terms of engaging staff in respecting human rights presents a significant opportunity. The panel discussed a range of benefits including increased staff engagement and performance, better risk management, stronger stakeholder relationships and customer loyalty. Engaging employees in a discussion about what human rights means to them can assist in increasing understanding, and it can help harness a diversity of thought within the business and build respect for human rights from the bottom up.

Leadership / culture

The panel agreed that leadership on human rights must come from the top of companies. Policies do not equal culture; what is important is how people behave within the context of corporate policies and leaders can help in setting the right example. It is important for company leaders to repeat conversations about company values and keep this on the agenda in order to embed those values into companies' DNA.

Panellists noted the need for more values-driven leadership, noting that profit should not be fighting against human rights.

"We need to look at the way we recruit leaders. We also need to look at the way we remunerate them."
(Business representative)

Government has a role to play and legislation can drive change

The panel discussed the role of government in relation to business and human rights- and agreed that government has an important role to play. The UK Modern Slavery Act and UK Bribery Act were discussed with panellists noting that these had had sparked board level conversations and due diligence activities within Australian companies, leading to risks being identified and addressed which, without those laws, may not have occurred.

The challenges of legislation were noted though, in particular, that trying to legislate for culture is generally ineffective. Legislation can also drive companies to take a compliance approach which does not always result in the best outcome. That said, while legislation cannot create culture it can usefully set minimum standards.

The panel also specifically discussed directors' duties and whether the law should be changed so that these duties expressly include respect for human rights (as is currently the case in certain other jurisdictions like the UK). It was noted that the area of directors' fiduciary duties is evolving under Australian law and that change may happen without legislative change as courts look to the social conditions of the day in applying the law.

"I want to see government take a leadership position. Despite government, business will get on with it anyway such as with climate change, where business believes that if they don't act they will pay for it later. But business action will be more effective with a clear statement of expectations from government."
(Business representative)

The challenge for SMEs was also discussed, noting they often do not have the resources to undertake focused human rights work. It was noted that additional government investment in this space would be valuable.

Stakeholders can drive change

The importance of stakeholder engagement was discussed. The panel noted that collaborating with NGOs, universities and governments will be critical to effectively addressing the complex human rights issues facing business.

"Businesses, NGOs, universities and government need to combine for greater effectiveness."
(Business representative)

Panellists noted that investors do not seem particularly interested in human rights with one leader noting that various roadshows around environmental, social and governance issues had not led to any specific human rights questions from investors. However, it was considered that increased interest from investors would certainly drive more CEO focus on the issue.

Business-NGO engagement

This session provided an insight into real examples of engagement between business and civil society around human rights issues to better understand how the sectors are interacting and how effective engagement is in driving change.

NGOs engage with business both publicly and privately in relation to human rights issues, and through different modes of engagement, e.g. face to face meetings, private and public correspondence (emails, letters) and via media. "Naming and shaming" is sometimes the approach taken, but is not the only approach. The session revealed that the general preference was to resolve issues through dialogue.

"NGOs cannot ignore the private sector. Private sector policies and actions can transform lives, and if implemented badly can devastate lives."
(NGO representative)

The building of trust between a company and NGO is critical for effective engagement. It was noted that it is often a challenge when personnel change on either side, resulting in a need to build that trust all over again.

Neither NGOs nor businesses are monolithic and both need to take time to understand how the other operates and how best to work together to achieve meaningful results on the ground. Strong and constructive relationships between business and NGOs are not easy to cultivate, may entail difficult conversations around issues including access to information and both sides may face questions internally and externally about why they are choosing to engage at all.

In seeking to engage companies, NGOs often face challenges in identifying and contacting the right company representatives. They will often engage with sustainability / corporate responsibility representatives, at least initially. However, in relation to complex or serious issues, the value of engagement at different levels and with different parts of a company was discussed. In particular, NGOs are keen to see engagement with issues from the most senior levels of companies, including CEOs.

On the business side, having a corporate policy on stakeholder engagement can guide companies in their engagement with civil society, government and other stakeholders. It can also set out clear internal responsibilities, so that when NGOs approach the company, this is appropriately and efficiently directed. Companies also need to understand how stakeholders want to be engaged with, noting different communities or organisations prefer different modes of engagement.

The standing of NGOs to advocate was also discussed, where it was noted that they do not necessarily directly represent affected communities. However, they can play a role in amplifying concerns or facilitating the space for dialogue. Communities are not always equipped to navigate the corporate landscape, and NGOs can play a role in assisting with this.

The importance of access to information was discussed, with panellists agreeing on the important role NGOs can play in bringing information to businesses who might not otherwise have all the facts. In mutually sharing information, regard needs to be had to confidentiality. The sharing of confidential information may take place over time as trust is built, and the sharing of such information can demonstrate goodwill. It was also noted that it is important for NGOs to verify their information to ensure their own credibility and in order to build trust.

Companies can benefit in a range of ways from engagement with NGOs and it is important to recognise and value what the other can bring to the table in driving better human rights outcomes. In addition to informational benefits, which can help companies understand and respond to risks, it was noted that neither companies nor NGOs can address complex human rights issues alone. External engagement from NGOs can also play a big part in driving internal discussions and action. NGO–business engagement may also assist in influencing other parties including governments to more constructively engage in solutions.

A question was raised as to how NGOs manage advocating with companies with which they also have partnerships or sponsorships. Given the reputational risks NGOs can face in partnering with companies, the need for due diligence was highlighted, as well as a willingness to have difficult conversations if issues did arise.

Participation in multi-stakeholder groups (e.g. the Attorney-General Department's Supply Chains Working Group) can provide an opportunity to build relationships and understanding, and find commonality, without a particular issue being on the table.

Human Rights in Supply Chains

This session explored the management of human rights issues within supply chains with a focus on how different stakeholders are starting to interact to achieve better outcomes. A research [report](#) from the AHRC, GCNA and ACCSR launched in December 2015 showed that while more companies are talking about managing human rights in their supply chains, it is not being prioritised by most businesses.

The session discussed a range of challenges in addressing human rights in supply chains. Some companies do not see a strong business case for action. This is exacerbated by consumers demanding low prices and not changing their behaviour towards ethically-sourced products coupled with some investors showing little interest in the issue. Supply chains are also long and complex, with sustainability challenges at every tier, and it can be incredibly difficult for companies to get visibility beyond the first tier.

Despite the challenges, several speakers noted that companies have a responsibility to understand the risks in their supply chains and to address human rights impacts in line with international standards including the UNGPs.

The benefits businesses provide through their supply chains within both emerging markets and developed economies, such as job creation and economic growth, should be recognised. But so too should the adverse impacts businesses can have through unsafe or unfair work practices.

In relation to offshore supply chains, a number of specific issues were discussed including living wages. Competition to attract purchasers is fierce between developing countries as companies seek cheaper labour (e.g. some production is moving from China to Bangladesh). As countries and producers seek to maintain competitiveness, minimum wages are being held down even as living costs rise. This is exacerbated by increasing pressure to shorten lead times.

Freedom of association and the right to unionise is another key challenge in many countries of production. In some countries, there is significant violence perpetrated against labour rights activists.

Gender also remains a significant challenge with differential impacts on women and girls (e.g. sexual harassment in work places, a lack of understanding of reproductive rights) not often captured by standard supply chain audits. Instead, a gender lens must be brought to bear on supply chain due diligence and auditing.

The issue of human rights in domestic Australian supply chains was also discussed, in light of practices that emerged in 2016, particularly in certain franchises and the fresh food and agriculture sectors. In practice, many companies shape their supply chain efforts based on high risk countries and industries, and domestic Australian risks may still not be well understood. As domestic labour issues become increasingly apparent, companies are looking more closely at their Australian supply chains as well.

Having a human rights policy, supplier code of conduct or similarly published commitments and frameworks are important drivers of corporate action. However, beyond this, values and respect for human rights must be part of a company's DNA; it will not be sustainable as an 'add on' or simply as a compliance-based approach. Even companies that are more advanced in embedding human rights in business decisions face tensions between human rights obligations and commercial imperatives. Internally, engaging procurement managers is key given the importance of their role in relation to supply chains. Building human rights-related KPIs into performance metrics for relevant employees can also support change.

Supply chain audits can be a useful tool in identifying risks and issues. However, audits have their limitations. For example, audits are often done over a short period of time without workers being meaningfully involved in the process. There are also instances of inexperienced auditors and even fraudulent practices. Audits which are not conducted independently are also of limited value.

Beyond auditing, panellists discussed the importance of proactive engagement with suppliers focused on building trust and long term relationships, including beyond the first tier. This can include developing materials for and training suppliers. Longer term contracts can also support better human rights outcomes. While an engagement approach can be effective, relationships with some suppliers may still need to be terminated if they refuse to address issues.

"The more we understand our suppliers, the better we can affect change in terms of how they manage people and other issues."
(Business representative)

Partnering with NGOs can support better identification of risks and improved outcomes for companies and workers. NGOs have often been working in high risk sourcing areas over a long period, and know the communities, cultures and working environments. Accordingly, they are often in a position to provide information and insights which companies would otherwise not have access to.

Given the challenges of addressing human rights in complex supply chains, collaboration involving companies, suppliers, NGOs, unions, investors and government will be critical to driving change. A model of shared responsibility holds promise, although may risk accountability deficits unless there is a clear allocation of roles and responsibilities, as well as the building of meaningful relationships between sectors.

Assessing human rights impacts

A panel of business, government and civil society representatives explored the importance of assessing a company's or project's human rights impacts, including challenges and opportunities, -emphasising the inclusion of all relevant stakeholders in line with international standards.

UN Guiding Principle 18 provides that businesses should identify and assess actual and potential adverse human

rights impacts, drawing on internal and/or external human rights expertise, and meaningful consultation with potentially affected groups and other relevant stakeholders. Particular attention must be paid to those at a heightened risk of vulnerability. It was also noted that human rights impact assessment needs to have an ongoing component in order to identify and respond to any deterioration of conditions.

The discussion noted that challenges remain within business in understanding the difference between risk and impact assessment. A risk assessment is primarily about risks to the company or project; human rights impact assessments are about impacts on people (workers, communities etc.) – for many companies this will require a significant change in mindset though often risks to the company and risks to rights-holders will be closely linked.

Participants discussed the power imbalance between companies and vulnerable people, noting that ultimately, for consultation to be meaningful, companies need to give up some of their power to those being consulted. This may mean being willing to change business decisions in response to points raised in the consultation process. It may also relate to the process of consultation, such as providing community members a chance to raise concerns in a public setting if this is their preference even if this may have reputational concerns for the business.

“Language is important because within that is an expression of where power should sit. Human rights is focused on exposing where power sits.” (Business representative)

Language is important in this regard. While some shared a view that companies do not need to use human rights language in assessments particularly as it can cause organisations to become defensive, others emphasised that something is lost if that language is not used. Framing things in terms of human rights focuses issues on those impacted rather than the company and can ensure assessments are carried out in a rights-respecting manner. A participant noted that in this regard, a standalone human rights impact assessment (rather than incorporating human rights into broader environmental and social impact assessments) can assist. Others believed that integrated assessments could also work well provided human rights issues were meaningfully embedded.

Impact assessments in relation to Indigenous communities was specifically discussed. It was noted that Indigenous people might be looking for something quite different from the company’s core business. Accordingly, companies need to suspend their expectations and assumptions, listen, and be prepared to think outside the square. Building on the above discussion, in relation to engagement with Indigenous communities, it was noted that companies need to be genuinely open to changing their proposed approach (including not going ahead with a project) based on the outcomes of consultations undertaken. Informed consent, sufficient time, genuine engagement, building trust and long term relationships must all be embedded into the design of the impact assessment of a project and embedded in its roll out – while also managing community expectations.

The situation of migrant workers was also discussed. In certain parts of the world with significant migrant labour (such as the Gulf) there is little or no civil society or trade union activity, but significant human rights concerns exist including debt bondage, poor health and safety, poor living conditions, discrimination and passport confiscation. Companies need to ensure that if they are operating in or have supply chains in high risk locations for migrant workers that they engage adequately with worker representatives to understand systemic concerns.

From a practical perspective, the discussion explored various lessons learned in the human rights impact assessment space. Participants agreed on the importance of carrying out human rights impact assessments and consultations early, and on allowing sufficient time to build understanding and trust with communities and other impacted people. Companies needed to accept that such processes, to be genuine, might take 12 months or more and build this into their project planning. It was also noted that relationships with communities are generally built at a personal level, where staff turnover within companies could cause relationships to become shallow and not meaningful. This could potentially impact on the quality of an impact assessment and resulting management actions.

Participants also noted that it is possible to do consultations which are extensive but still poor quality. Communities can also get consultation fatigue. One challenge identified was that there are not many people qualified to undertake human rights impact assessments whether as a stand-alone exercise or integrated into other processes (such as environmental and social impact assessments).

In some situations, there can be benefits in taking a broader development approach focused on empowering local leaders and building partnerships with communities and local organisations. Provided this is done in a rights-respecting way, this can build communities’ capacity to know their rights and engage more equally with companies and government on projects that impact them.

Finally, the session explored the issue of transparency in relation to impact assessments. In particular, while human rights impact assessments tend not to be made public due to confidentiality requirements and other sensitivities (including for impacted people), there are also risks in not being transparent. Making impact assessments public (so long as this does not create risks for any impacted people) can build trust and support accountability. There may be a range of options relating to transparency, including publishing an assessment itself in whole or in part, publishing the methodology or simply publishing the fact that the assessment will be or has been done.

Addressing Human Rights Impacts: Grievance Mechanisms and Remedy

Ensuring access to effective remedy for victims of adverse business-related human rights impacts is an essential pillar of the UNGPs, but one that presents a continuing challenge for all relevant stakeholders. Key impediments noted include the prevalence of governance gaps in the existence and availability of remedies at the domestic level, cost, institutional barriers, and the fear of reprisal or harm for human rights defenders. This session explored practices and developments in access to remedy, with a particular focus on non-judicial grievance mechanisms.

International developments in the space were outlined, which highlight that remedy remains a key issue on the international business and human rights agenda. The continuing challenges around access to remedy have contributed to the push by some governments and other stakeholders for a binding international treaty on business and human rights. Other developments have included the Office of the High Commissioner for Human Rights' "Accountability and Remedy Project" report containing guidance for governments on enhancing accountability and remedy published in May 2016; and in response to that report, the UN Human Rights Council's adoption of a resolution in July 2016 encouraging governments to review the effectiveness of their domestic regimes and develop a strategy for improving access to remedy. The resolution also called on businesses to participate in good faith in judicial processes, and establish operational level grievance mechanisms to enable the early resolution of grievances.

A recent project on the effectiveness of non-judicial grievance mechanisms was discussed¹. The project identified significant limitations with a range of existing non-judicial mechanisms available in a number of countries. It found that such mechanisms are more likely to support remedy to the extent that they help provide assistance to communities to access and use them effectively; support fact-finding and investigation processes; reinforce rather than substitute for government regulation and/or civil society campaigning; develop strong connections to organisations in host country jurisdictions; and possess strong sources of leverage and legitimacy.

The Australian OECD National Contact Point² was also raised, with some participants suggesting its capacity to hear and resolve complaints should be strengthened. Some also raised concerns that the Australian NCP does not provide enough assistance to communities to access the mechanism, and that it could also benefit from more coordination with other parts of government and additional leverage. It was suggested that these issues be included in any discussions around a potential National Action Plan on Business and Human Rights.

Company operational level mechanisms were also discussed. While each situation is unique, there are commonalities as to what works and what does not work in terms of providing remedy. These included a speedy response to an issue, a commitment by the relevant company to understand the facts and impacts and conduct its own investigation if necessary, an understanding of the human rights aspects of other impacts (e.g. environmental impacts), appropriate governance structures around the mechanism, and accessibility for those impacted. An example was provided of setting up a mechanism relating to a large number of stakeholders who had suffered different impacts and sought different types of remediation, making it critically important to ensure adequate consultation with all stakeholders in creating and operating the mechanism.

The issue of NGOs representing victims in relation to a grievances was also discussed, with NGOs noting the importance of establishing exactly where the community's concerns are, rather than imposing their own agenda. NGOs can play an important role in supporting impacted communities to access legal, non-judicial and administrative mechanisms both within their local jurisdictions and internationally.

¹ Further information about the Non-Judicial Redress Mechanisms Project can be found [here](#).

² The NCP offers a platform to help stakeholders resolve complaints of non-compliance by businesses with the OECD Guidelines for Multinational Enterprises, which incorporate the UN Guiding Principles. The NCP is governmental but not judicial or legally binding, and relies on cooperative engagement by stakeholders.

Towards a National Action Plan on Business and Human Rights

Earlier this year, the Australian Government made a voluntary commitment to conduct national consultations on the implementation of the UNGPs led by the Department of Foreign Affairs and Trade (DFAT) in close collaboration with the Commonwealth Attorney-General's Department.

In May and June 2016, the GCNA and DFAT convened [business roundtables](#) to provide early input to the Government. Civil society organisations have also coordinated efforts, with the AHRC convening a civil society roundtable in May 2016 resulting in a [statement](#) containing a range of recommendations on UNGPs implementation being submitted in August 2016.

Following these early consultations, it was noted that there is general support for the development of a National Action Plan on Business and Human Rights (NAP) from business and civil society, although the Government has not yet committed to this. Rather, the Government sees several alternative ways of stepping up UNGPs implementation, and is keen to explore through consultations whether a NAP is the most effective approach. Business noted the benefits of having a clear statement of Government expectations regarding corporate behaviour at home and abroad, and that a NAP could play a role in demystifying human rights while identifying the business case for human rights.

Both civil society and business highlighted the importance of robust multi-stakeholder consultation, and noted that the process would be as important as the outcome including transparency around both. There was a suggestion that a multi-stakeholder advisory group be established.

The Government's priority issues were noted as follows:

- The Government's objective is that Australian companies embed human rights considerations into their core business practices and emphasised the business benefits of this approach. This would assist in promoting the "Australian brand" as ethical, transparent and respectful of human rights.
- The Government considers its core role as helping raise awareness of business and human rights issues, to convey its expectations and policy positions, and to provide clearer direction and legislative certainty to businesses on their human rights obligations.
- The Government has examined other countries' experience in implementing the UNGPs, including their experience in relation to national baseline assessments, stakeholder consultations and NAPs.
- The Government has commissioned a stocktake of relevant Australian laws and policies. It is not a full national baseline assessment as it does not involve a gap analysis, but it will assist the Government move into multi-stakeholder discussions.
- The Government recognises the importance of considering the impacts of work in this area on small and medium enterprises (SMEs), which may often not be as well placed as large and multinational companies to understand and address their responsibilities.
- Acknowledging that business and human rights is important in the domestic context, it is also necessary to consider how any work in this area relates to Australian businesses' overseas activities and the links between this space and the Government's economic diplomacy agenda.
- Business and human rights is already an important part of the Government's international human rights agenda, including in relation to Indigenous rights, women's empowerment, human trafficking and slavery. It's also closely linked to our multi-lateral, regional and bilateral efforts to advance human rights, including Australia's current United Nations Human Rights Council bid.

An update on the Bali Process was also provided, with the Government noting that it is developing a business forum to support the governmental work around preventing and addressing trafficking in the Asia-Pacific region.

Table discussions highlighted the following key points in relation to the Government's implementation of the UNGPs:

- The Government needs to take the time to get this right, develop a transparent process that has appropriate buy in, conduct adequate consultation with all stakeholders (including hard to reach communities and SMEs), and pick the right issues to focus on. It was suggested that the process and timeline be publicly available for review. Any process needs in-built resilience given there are no guarantees around continuity with government. The value of a national baseline assessment was also raised. One table raised the question as to who should

draft any NAP, whether that be the Government or whether there is a role for other stakeholders. (Since the Dialogue, the Australian Government has also confirmed it is establishing a multi-stakeholder advisory group to provide expert advice and support its consultations.)

- Suggested key human rights issues that a NAP could address included supply chains, modern slavery and other labour issues both domestically and internationally. It was raised whether the Government would consider an Australian equivalent to the UK Modern Slavery Act, perhaps with modifications to focus on national and transnational due diligence. (Since the Dialogue, the Australian Government has [announced](#) it will strengthen its response to human trafficking and slavery including considering the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation.)
- Other human rights issues raised included access to remedy, clarifying what effective human rights due diligence looks like, and public procurement (with a comment that incentivising good practices through this channel should be relatively straightforward). It was also noted that any NAP should align with the Sustainable Development Goals including Australian implementation of the SDGs.
- There is also still a significant need for awareness raising and capacity building on human rights within the business community which a NAP could support. The need to invest in explaining how businesses could practically use a NAP was also highlighted.
- Participants did not identify a reason *not* to have a NAP, a question that was specifically asked of each table.

Conclusions, outcomes and next steps

Since the first Dialogue in 2014, it was noted that the discussion has come a long way, with the 2016 Dialogue delving into a more significant level of detail as to how companies are specifically and practically implementing the UNGPs, as well as how other stakeholders are engaging with business to effect change.

While norms and common ground between sectors are emerging, not all conversations have moved at the same pace and many remain siloed. To drive the agenda forward, the focus needs to be on *how* not what or why, and collaboration will be critical. Without this approach, there is a risk of Australia falling behind international advances in this space despite the potential for Australia to be an international leader. Civil society participants emphasised that regulation, enforcement and accountability will be critical to realising this ambition.

Awareness of human rights issues at the CEO and Board level is higher than ever, driven in part by developments such as the UK Modern Slavery Act. However, much work remains to build awareness, capacity and comfort around human rights at senior levels of business. This includes comfort around using the language of human rights.

A challenge identified to advancing practice in the space was the emergence of an increasing number of assurance, reporting and benchmarking initiatives. While such initiatives can and do drive corporate action, the multiplicity of them is challenging from a business perspective, particularly when the expectations of these initiatives are inconsistent.

Key areas which emerged from the discussion for the GCNA, AHRC, Government and other stakeholders to consider for further action include:

- Human rights in supply chains including modern slavery and other labour issues, both domestically and internationally;
- Access to remedy, including building the capacity and effectiveness of, and awareness around, national mechanisms including the Australian OECD National Contact Point;
- Building awareness and capacity around human rights at the CEO and Board level, including through the use of human rights language and driving more effective investor engagement;
- Engaging SMEs in the discussion;
- Supporting more effective business-NGO engagement, including through multi-stakeholder fora and building each sector's understanding of the other;
- Progressing national consultations on implementation of the UNGPs, including discussions around the potential for a National Action Plan on Business and Human Rights.

The importance of continued multi-stakeholder Dialogue was highlighted, with a post-Dialogue survey identifying a desire from all stakeholder groups for the national dialogue to continue.

Annexure: Agenda

8.30am	Registration
9.00 – 9.20am	<p>Welcome to Country and Opening</p> <p>Alice Cope, Executive Manager, Global Compact Network Australia Edward Santow, Human Rights Commissioner, Australian Human Rights Commission Rachel Nicolson, Partner, Allens and Director, Global Compact Network Australia Welcome to Country: Uncle Allen Madden, Gadigal Elder</p>
9.20 – 10.50am	<p>CEO / Board Panel: Corporate Leadership on Business and Human Rights</p> <p>This discussion explored business leadership and ‘tone from the top’ on human rights including the role of corporate boards and the importance of leadership for the respect and support of human rights within the organisation. The session will also explore panellists’ views on the role of other stakeholders including civil society, government and investors in preventing and addressing adverse business-related human rights impacts and their suggestions for more effective engagement with these groups.</p> <p>David Cooke, Chairman and Managing Director, Konica Minolta Australia Ming Long, Non-Executive Director; Member of Finance & Audit Committee, University of Sydney Darrell Wade, CEO and Co-Founder, Intrepid Travel Nicola Wakefield-Evans, Non-Executive Director, Lendlease, Macquarie Group, Toll & BUPA Prof. Paul Redmond AM, Faculty of Law, University of Technology Sydney (Facilitator)</p>
10.50 – 11.15am	Morning Tea
11.15am – 12.45pm	<p>Business and NGO Engagement on Human Rights</p> <p>This session provided an insight into real examples of engagement between business and civil society around human rights issues to better understand how engagement is currently working, similarities/differences between different engagements and what needs to be improved for more effective business-civil society engagement.</p> <p>Ben Walker, Head of Sustainable Development, ANZ Bank Kelly Dent, Food, Climate and Humanitarian Manager, Oxfam Australia Margaret Stuart, Head of Corporate & External Relations, Nestlé Oceania Dr Mark Zirnsak, Director, Justice and International Mission, Synod of Victoria and Tasmania, Uniting Church Vanessa Zimmerman, Director, GCNA and Group Advisor Human Rights, Rio Tinto (Facilitator)</p>
12.45 – 1.30pm	Lunch
1.30 – 3.00pm	<p>Break Out Sessions</p> <hr/> <p>Human Rights in Supply Chains</p> <p>This session focused on the best ways to engage suppliers to better understand their risk profile, build capacity where appropriate and encourage multi-stakeholder collaboration in addition to individual company and industry wide action. It also explored the role of other stakeholders including the government, NGOs and investors.</p> <p>Måns Carlsson-Sweeny, Head of ESG Research, Ausbil Investment Management Lyrian Fleming-Parsley, Key Relationship Manager, CARE Australia Justine Nolan, Associate Professor and Deputy Director, Australian Human Rights Centre, UNSW Sonya Rand, Ethical Sourcing Manager, Coles Tom Weaver, Manager, Government and CSR, Fortescue Metals Group Leora Black, Managing Director, ACCSR (Facilitator)</p>

1.30 – 3.00pm	<p>Assessing Human Rights Impacts</p> <p>This session will explore challenges involved in meaningfully consulting with potentially affected groups as part of assessing human rights impacts including particular practices that may be used to better include at risk and vulnerable groups in key discussions. It will also explore strategies companies and other stakeholders are using to better integrate the findings of human rights impact assessments into ongoing company processes for more effective results.</p> <p>Prof. Paul Redmond, Professor of Law, University of Technology Sydney Robynne Quiggin, Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission Lucy Roberts, General Manager Sustainable Development, Glencore Jan Parsons, Director, Environmental & Technical Review, Efic Richard Boele, Partner, KPMG Banarra (Facilitator)</p>
	<p>Access to Remedy</p> <p>This session will look at the different mechanisms stakeholders are using to address business related adverse human rights impacts including the challenges of incorporating affected rights-holders into the design and functioning of relevant mechanisms. It will also include an update on recent developments relating to access to judicial and non-judicial grievance mechanisms for business related human rights harm.</p> <p>Luke Fletcher, Executive Director, Jubilee Australia James Ensor, Principal Sustainability & Public Policy, BHP Billiton Shelley Marshall, Senior Lecturer, Monash University Rachel Nicolson, Partner, Allens and Director, GCNA (Facilitator)</p>
3.00 – 3.30pm	Afternoon tea
	<p>Towards a National Action Plan on Business and Human Rights</p> <p>This session provided an update on the Australian Government's approach to implementation of the UN Guiding Principles on Business and Human Rights. It also enabled participants to share their views on what an Australian NAP could look like.</p> <p>Elizabeth Wilde, Assistant Secretary, Multilateral Division, DFAT Geoff Shaw, Assistant Secretary, People Smuggling and Human Trafficking Taskforce Rivkah Nissim, Manager, Discrimination and Research, Australian Human Rights Commission Vanessa Zimmerman, Director, GCNA and Group Advisor Human Rights, Rio Tinto</p>
3.30 – 4.45pm	<p>Closing Panel</p> <p>This panel reflected on themes and issues identified throughout the day's discussions from a variety of stakeholder groups and offer some forward-looking recommendations and ideas.</p> <p>Alison Ewings, Engagement Program Manager, Regnan Rachel Ball, Director of Advocacy, Human Rights Law Centre Elizabeth Wilde, Assistant Secretary, Multilateral Division, DFAT Catherine Hunter, Chair, GCNA and Partner, Corporate Citizenship, KPMG James Ensor, Principal Sustainability & Public Policy, BHP Billiton Vanessa Zimmerman, Director, GCNA and Group Advisor Human Rights, Rio Tinto (Facilitator)</p>
4.45 – 5.30pm	<p>Close</p> <p>Prof. Gillian Triggs, President, Australian Human Rights Commission Alice Cope, Executive Manager, Global Compact Network Australia</p>
5.30 – 6.30pm	Networking drinks

About the Global Compact Network Australia

The Global Compact Network Australia is the Australian business-led network of the United Nations Global Compact, the world's largest corporate responsibility initiative. The GCNA offers practical help to Australian companies to integrate and operationalise the principles of the UN Global Compact, in the areas of human rights, labour, the environment and anti-corruption, within their business practices and strategies. This is achieved through providing a national and international platform for dialogue, learning and influence that is inclusive, practical and leading edge.

www.unglobalcompact.org.au

About the Australian Human Rights Commission

The Australian Human Rights Commission leads the promotion and protection of human rights in Australia by making human rights values part of everyday life and language; empowering all people to understand and exercise their human rights; working with individuals, community, business and government to inspire action; and keeping government accountable to national and international human rights standards.

www.humanrights.gov.au

2016 Dialogue Advisory Group

The Global Compact Network Australia and the Australian Human Rights Commission thank the following members of the 2016 Dialogue Advisory Group for sharing their expertise and providing input into the event:

- Vanessa Zimmerman, Chair, GCNA Human Rights Leadership Group and Group Advisor Human Rights, Rio Tinto (Advisory Group Chair)
- Kate Baker, Senior Sustainability Advisor, Telstra
- Rachel Ball, Director of Advocacy, Human Rights Law Centre
- Fiona Baxter, Ethical Sourcing Manager, Coles
- Gemma Jones, Social Performance Advisor, Shell
- Justine Nolan, Associate Professor, Deputy Director - Australian Human Rights Centre, University of NSW
- Brynn O'Brien, Business and Human Rights Advisor, The Australia Institute
- Kevin Playford, Director - Human Rights and Indigenous Issues Section, DFAT
- Elaine Prior, Director and Senior Analyst, ESG, Citi
- Professor Paul Redmond, Faculty of Law, University of Technology Sydney
- Ben Walker, Head of Sustainable Development, ANZ Bank
- Elizabeth Wilde, Assistant Secretary, Multilateral Policy Division, DFAT
- Priya SaratChandran, Business Engagement and Partnerships, Australian Human Rights Commission
- Alice Cope, Executive Manager, Global Compact Network Australia

Sponsors

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