2015 Australian Dialogue on Business and Human Rights

Moving from policy to practice:
A multi-stakeholder dialogue on implementing
business-related human rights responsibilities

19 August 2015, Sydney

Summary and Outcomes Document

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Australian Dialogue on Business and Human Rights
Overview

Following the inaugural 2014 Australian Dialogue on Business and Human Rights, in August 2015, the Global Compact Network Australia and the Australian Human Rights Commission convened over 100 representatives from business, government, civil society and academia at the 2015 Australian Dialogue on Business and Human Rights (the **Dialogue**), Australia's only national, multi-sector, multi-stakeholder dialogue on the issue.

Australian businesses increasingly understand their human rights-related risks and responsibilities, with growing pressure to know and show that they respect human rights. Businesses are also realising the opportunities that positive engagement with human rights can bring in areas such as supply chain management, Indigenous engagement, diversity and inclusion and community investment. Other stakeholders including government, investors and civil society are also exploring how to support business to respect human rights at home and abroad.

The first national dialogue in 2014 highlighted movement beyond "why" business should respect human rights, to "how" to do so effectively. Key challenges identified included scaling up good practice, translating what human rights issues mean in practice, and policy coherence (avoiding a siloed approach within business and government). Key opportunities included continuing multi-stakeholder dialogue and exploring what respecting human rights means in a developed country context such as Australia.

The 2015 Dialogue again brought together 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 UN Guiding Principles on Business and Human Rights (the **UN Guiding Principles**), the authoritative global standard for businesses and other stakeholders on the "how to" of preventing and addressing adverse human rights impacts connected with business activities.

Participants heard from and engaged with 26 speakers across four key topics: leadership on business and human rights, the business responsibility to respect human rights, access to remedy, and human rights in the supply chain.

The 2015 Dialogue highlighted that momentum around business and human rights continues to build in Australia, including implementation of the UN Guiding Principles. However, challenges remain. A key theme that emerged was transparency and disclosure – in relation to impact assessments, supply chains and more general human rights performance. Translating human rights, including to what extent human rights language needs to be used by business for it to truly manage human rights risks, was highlighted again this year as an ongoing challenge. Another was integrating human rights across business functions. Managing human rights in supply chains was identified as a key area for ongoing improvement, noting that issues have arisen both in international and domestic supply chains.

While a number of Australian businesses are making significant investments in human rights, there are laggards (e.g. some have not engaged because of a lack of awareness, others because they do not face the same exposure as other companies). Therefore a further question is how to engage them in the agenda, especially if they do not have a public profile or work with other businesses that attract more scrutiny.

Participants agreed that addressing these challenges requires strong cooperation and engagement from all stakeholder groups including potentially more targeted sector-specific work. In this vein the idea of a National Action Plan (**NAP**) on business and human rights was raised as one way for the Australian Government to help clarify expectations and provide guidance to all stakeholders. Currently over 25 countries either have, or are revising or developing, NAPs. There was a strong message that Government would value hearing from business and other stakeholders around the benefits and potential scope of such a plan and both the GCNA and Commission are exploring next steps in this regard.

This Summary and Outcomes document also includes:
- Annexure A: Dialogue Agenda
- Annexure B: Business and Human Rights 2015 - A Year in Review (an overview of key developments in the global business and human rights agenda since the 2014 Dialogue, including the work of the UN Working Group on Business and Human Rights, a proposal for a binding treaty, and momentum around NAPs)

Note: This summary report outlines Dialogue highlights, in keeping with the Chatham House rule of non-attribution under which the meeting was held (except in relation to the keynote address from John Morrison, whose full remarks were published online). This report does not necessarily represent the GCNA's, Commission's or any participating organisation's views.

The Dialogue

Keynote address: 'Business and human rights – do we have the right incentives'

John Morrison, Executive Director of the Institute for Human Rights and Business in the UK, a global "think and do tank" on business and human rights, began his keynote address (full speech here) by reflecting on the recent progress that has been made in the business and human rights space. Through the increasing momentum in implementation of the UN Guiding Principles, the relationship between business and human rights is "slowly becoming a bigger part of the international policy agenda". Recent milestones include compensation being paid to the families of the victims of the Rana Plaza factory collapse in Bangladesh, China adopting more explicit human rights language relating to business conduct, and the Asian Infrastructure Investment Bank becoming more active in human rights discourse, to name a few.

The notion of a "social licence" to operate is spreading from extractive industries to all business sectors, and awareness that respecting human rights is part of acquiring and keeping that licence. The question arises as to how to mainstream human rights in business. To answer this, Morrison pointed to five trends that are key to the future business and human rights agenda:

- Aligning government policies and opening pre-competitive space for business to act responsibly: (at the time of the speech) 19 governments have undertaken or are undertaking National Action Plans on business and human rights, leading to greater policy coherence across government departments, the inclusion of business and human rights as a permanent area of policy, and encouraging a "pre-competitive space" in which businesses can work together and with other stakeholders around human rights issues. While Australia does not yet have a NAP, a question was raised as to whether one could help signal national priorities, at home and overseas, and encourage business, governments, unions and civil society to collaborate for better human rights outcomes.

- Implementing the UN Sustainable Development Goals (*SDGs*): There is a key role for business in implementing the SDGs, and significant links between responsible business, the SDGs and respect for human rights. (For example, SDG 8 is to "[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all". There is a need to ensure these jobs meet the ILO's definition of decent work. Human rights are also central to many more of the SDGs – ending poverty and hunger, addressing inequality, ensuring healthy lives, inclusive education, gender equality, access to water, sanitation and energy, making cities safe, peace and good governance.)

- Shaping real market incentives for greater transparency: There have been various regulatory developments (particularly in the US, UK and EU) which are encouraging transparency on business and human rights and creating a more level playing field. The UN Guiding Principles Reporting Framework is another key development working to facilitate better disclosure on human rights. The Corporate Human Rights Benchmark project also seeks to drive better transparency and better performance through benchmarking the Fortune 500 companies on human rights.

- Mega-sporting events and human rights: Mega-sporting events can be seen as a microcosm for just about every business and human rights issue, from land acquisition and resettlement, to construction and infrastructure, security, supply chain to freedom of expression. There is increasing understanding of the importance of respect for human rights in relation to tendering for and delivering such events, and a growing number of human rights statements from the world's major sporting bodies. As the Commonwealth Games Federation has been an international leader in the mega-sporting industry on human rights due diligence, there are high expectations in this regard for the Gold Coast's hosting of the Games in 2018.

> "Will business and human rights ever become a truly mainstream issue in the way that discussions about health and safety, climate change or anti-corruption have? I think it might, but for that to happen we need to be honest about the real incentives and disincentives at play, and how we might scale up from where we are today." (John Morrison)

- Tracking the potential for new developments in international law: Discussions continue at the UN in relation to the potential for a binding treaty on business and human rights. While this would have significant implications for businesses at home and abroad, it is still likely to take significant time to eventuate given the complexity of the issue. In the meantime businesses and other stakeholders should be focusing on existing standards such as the UN Guiding Principles to address human rights impacts.

High-level panel: leadership on business and human rights

A high-level panel of senior representatives from business, civil society and the Australian Government explored ways in which businesses are advancing and mainstreaming human rights throughout their operations, and how stakeholders such as government and civil society can assist them in this regard. The discussion focused on the importance of leadership in creating a human rights culture, how government and civil society can engage with and support business to drive greater human rights action, and the challenges and opportunities surrounding human rights engagement from the boardrooms of Australia's largest companies to small– and medium–sized enterprises.

Momentum is building

The session highlighted that business engagement with human rights in Australia has been growing significantly in recent years including through the proliferation of human rights policies and progress in specific areas such as supply chain management and community engagement. Although momentum is building, participants agreed that there is still a great deal of work to do, and there is scope to bridge the gap between the leaders and the laggards. It was also noted that greater awareness and improvement could come from opening a pre-competitive space for business to collaborate around respecting human rights.

> "Risk is one driver. But this is also about doing what is right, and what business can do to create the nation we want to live in."
> (Business representative)

Getting human rights on the boardroom agenda

The necessity for strong organisational leadership to promote human rights within a business was explored. It was recognised that CEOs, boards and executives play a fundamental role in stimulating action on human rights and creating businesses that employees, customers and the broader community can take pride in. There was acknowledgement that there is a need for greater education of company directors on human rights issues including how the company may already be addressing adverse and positive impacts and the consequences of failing to adequately manage human rights risks. Additional guidance on how human rights responsibilities intersect with directors' duties would also be useful including what directors are permitted and required to do under existing legislation regarding human rights risk management.

The importance of partnerships, engagement and dialogue

Participants agreed on the importance of collaboration and multi-stakeholder efforts. The panel discussion explored what 'good engagement' looks like between business and civil society. Participants agreed that engagement is not a one-off incident, but must be ongoing and based on mutual respect. This applies to both business in their activities, but also civil society in their research and advocacy efforts.

> "There needs to be more of a pre-competitive space driven by legislation and investor action, and more multi-stakeholder efforts. It's not just up to CEOs. We need a partnership between business, government and broader society."
> (NGO representative)

Several participants noted that the Australian Government has an important mandate in creating a platform for discussion and in establishing minimum expectations for businesses and human rights. There was recognition that business and government need to work more closely together to continue to take the UN Guiding Principles forward. While there is currently no Australian National Action Plan (NAP), there was interest to hear from all stakeholders on what the benefits might be of exploring such a plan and a recognised desire to create greater space for consultation with both business and civil society on how to advance business and human rights in Australia.

Small– and medium–sized businesses

The relationship between SMEs and human rights was also discussed. While SMEs make up over 90% of all businesses in Australia, they are not being sufficiently engaged on human rights issues. Participants agreed that SMEs are well placed to drive better outcomes in this space, as they generally operate closer to their communities, customers and employees. A greater role for government and national human rights institutions was identified to practically engage and influence SMEs in this area. Participants suggested a sector-by-sector approach through the support of industry associations, starting with high-risk sectors, as a key strategy for achieving change.

The corporate responsibility to respect human rights

A panel of business and civil society representatives explored the practical steps and challenges in developing human rights policies and making public commitments in relation to human rights, and how companies are putting these commitments into practice including through human rights due diligence. Human rights due diligence is the process recommended by the UN Guiding Principles for business to "know and show" that they respect human rights and includes identifying and assessing impacts, integrating the findings of those assessments across relevant internal functions and processes, tracking business human rights performance and communicating on business responses.

> "Doing the right thing matters. So does peer pressure, and what our employees and other stakeholders want us to do. If NGOs want to encourage different behaviour, there would be a response."
> (Business representative)

Participants emphasised the challenge of translating global principles into local operations. It was noted that generally human rights language is not well understood at a local or project level, though in practice some of the issues are likely being addressed through various business functions. When commencing human rights due diligence, the need to understand these inter-connections is important so that business representatives can understand when an impact on a community member or other stakeholder may be a human rights impact. This includes having conversations with community and other stakeholders as early as possible in a project's timeline (and earlier than often happens). In some situations, business treats community concerns as an afterthought, which hampers their ability to respond to disputes that may arise. Having frank and productive discussions from the outset where all relevant information is presented will go a long way to assuaging concerns and forming lasting relationships. Early engagement with civil society was also recognised as being critical to a project's ongoing success.

Providing a voice to the local community was also identified as a key priority, particularly when engaging with Indigenous communities. When consulting with Indigenous communities, participants highlighted that a one-size-fits all approach will never work, as each community faces vastly divergent issues that may impact consultation. According to the speakers, consultation and engagement should be guided by the principles of free, prior and informed consent as outlined in the [Universal Declaration on the Rights of Indigenous Peoples](#), and business must be sincere and committed to the discussion. This includes providing sufficient time for effective community consideration of business offers.

Strategies for engaging senior leadership around human rights were also explored. There was agreement that, in order to achieve demonstrable change, efforts must be made to win the 'hearts and minds' of corporate leaders. One challenge lies in making leaders aware of issues at the local level. One strategy identified was to bring stories from the ground to them to show that human rights is not just an abstract or theoretical concept, or bring those leaders out to meet and engage with communities.

The issue of language was also discussed in the context of engaging senior leadership, noting that the language of human rights is not widely familiar to many in business and may need to be translated using existing terms such as those relating to communities work, health and safety human resources and environmental sustainability. At the same time any translation exercise should be done carefully so that all relevant rights are still being explored and that senior leaders are still equipped to answer direct human rights questions. The example of health and safety was specifically highlighted, noting the shift over the last 30 years to where companies are now embedding safety in their culture. This could be a helpful example from which to draw parallels and seek to replicate in relation to the broader human rights agenda.

> "Health and safety is a human rights issue. We need to take the other areas of human rights, and bring companies to the same standards, and build corporate cultures around human rights."
> (NGO representative)

In relation to human rights due diligence, the panel considered ways in which this could be incorporated into existing processes, systems and frameworks, e.g. around broader risk management. This was discussed as a means to making human rights more accessible and efficient.

The role of regulation in driving more businesses to undertake human rights due diligence was also discussed. After considering a number of international examples, including in the UK and the US, the potential benefits of legislation were acknowledged; however, regulation needs to be carefully constructed to ensure that it is meaningful and does not impact adversely on businesses that are trying to take positive steps.

Transparency was raised as an important issue, and one that businesses continue to find a major challenge. While businesses are under increasing pressure to disclose both their human rights performance generally as well as findings from specific human rights or environmental and social impact assessments, concerns are often raised that disclosure may open businesses up to reputational and financial risk, create damage to important relationships (e.g. with a host government) or create risk for stakeholders. The discussion highlighted that Australian businesses are still trying to find the balance between disclosure and other competing interests.

Addressing Human Rights Impacts: Grievance Mechanisms and Remedy

A lack of effective remedies for business-related human rights impacts has been identified for decades. Key reasons noted include the prevalence of governance gaps in the existence and availability of remedies for business at the domestic level, cost, institutional barriers, and the fear of reprisal or even harm. This session explored the current challenges facing businesses and other stakeholders in relation to remediation and concrete ideas for how these challenges might be addressed. The discussion focused on what makes an effective non-judicial grievance mechanism whether run by the government, a company or another organisation.

> "The key to appreciating grievance mechanisms is a recognition that there is a major power imbalance between rights-holders and power-holders. Businesses need to take this into account." (Civil society representative)

> "Designing the process in conjunction with the community maximises the chance that the approach is culturally appropriate." (NGO representative)

Several participants noted that a key challenge lies in translating company-wide grievance mechanisms to local operations. It was emphasised that operational-level grievance mechanisms must be designed to be inclusive, culturally appropriate and accessible to all members of the community – including women and men, young and older people and those geographically distant from the site. Involving the community in the design can help ensure this, and the criteria for effective non-judicial grievance mechanisms in the UN Guiding Principles, are an important tool to ensure that even if local mechanisms are targeted to the local context they all follow the same principles.

Particular focus was also given to the need for timely solutions. No matter how insignificant complaints may seem, listening and acting speedily goes a long way towards demonstrating a business is sincere in its efforts to respond to issues raised and create trust with stakeholders. It was recognised that if issues are left unresolved, they can escalate quickly into conflict that can result in damage to assets, project shutdowns and reputational damage.

A key challenge highlighted was the impact distance can have on establishing, monitoring and assessing grievances overseas. Australian businesses with offshore operations or supply chains can struggle to ensure effective grievance mechanisms for complaints overseas. This may be because of challenges in determining whether business partners or suppliers (particularly beyond the first tier) have effective processes, limited capacity to influence business partners to develop these if not already in place or raising awareness of the business' own processes among affected stakeholders. One suggestion offered was working with external stakeholders (e.g. NGOs) to implement the right approach on the ground and build awareness of existing mechanisms. Another suggestion was to engage with existing multi-stakeholder processes that have established, well-developed grievance mechanisms, or collaborate with others to create solutions.

> "There is no silver bullet to ensuring access to remedy. It's important to have a multi-layered approach." (Business representative)

The panel also discussed the issue of measuring the effectiveness of grievance mechanisms, and agreed that a minimal number of complaints does not always mean a lack of human rights impacts. Rather, if a mechanism is in place but no complaints are being raised, it may be a sign that the mechanism is not effective. This is why qualitative as well as quantitative indicators are so important when measuring a mechanism's effectiveness.

Participants agreed there are a number of reasons why businesses should welcome company grievance mechanisms as the first step in resolving issues (e.g. earlier awareness of issues and cost savings). There is also a need for businesses to participate in external mechanisms, both judicial and non-judicial. In particular, participants agreed there are some impacts that are so serious that they should not be handled by a company mechanism.

Some participants indicated a desire to strengthen stakeholders' awareness of the OECD National Contact Point (NCP) in Australia as well as its capacity to hear and resolve complaints. 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.

Human Rights in the Supply Chain

This session explored the management of human rights issues within supply chains. The Rana Plaza factory collapse in Bangladesh in 2013 was discussed as a turning point for consumers and businesses. However, supply chain management remains an ongoing challenge for all businesses across all sectors. Key human rights issues were often labour related but could also include other human rights issues such as those connected to security providers, land use and freedom of information and privacy.

Supply chain mapping was recognised as a fundamental tool to understand risks and ensure human rights compliance. It was noted that due to the complexity and breadth of modern day supply chains, this can involve an extensive amount of work and must be on-going. High-risk sectors and regions were identified as a good place to start which is consistent with the UN Guiding Principles' guidance around prioritisation. However, there should be discretion to catch adverse impacts in lower risk situations.

Supply chain auditing was also discussed as a widely-used tool, but one that has varying effectiveness. While auditing can help companies understand their supply chain and to some degree supplier compliance with standards or policies, in many cases, audits are not being done well and are not driving improvements in human rights outcomes.

Panellists discussed a need for businesses to move away from an audit-led, transactional approach, and towards a collaborative, relationship-focused approach. In particular, participants saw significant opportunity for businesses to actively engage with stakeholders on the ground, and to support and build the capacity of suppliers to address

> "We are ready for a post-audit world." (Business representative)

issues. Such an approach can also help uncover ways that Australian businesses may be contributing, directly or indirectly, to issues (e.g. by dictating low prices or tight timelines).

> "It's definitely complex for individual companies. But on the flipside, part of the reason wages have been kept so low is because of corporate actions. Companies have a lot of capacity to influence this." (NGO representative)

Taking a more relational approach can also help businesses better identify issues that are systemic and look at more collaborative ways to address those, rather than place the burden for tackling such issues on individual suppliers. The capacity of businesses to collectively influence was seen as an important factor in achieving change, particularly in regions with weak governance or infrastructure.

Transparency around supply chains was discussed as an ongoing challenge for business, but an area of growing importance as civil society strengthens its advocacy for this, and governments around the world legislate for greater disclosure (see Annexure B for details). Panellists highlighted the need to overcome the concern many businesses have that transparency, including in relation to supplier or factory

lists, could lead to negative publicity and also a time-drain taking resources away from managing supply chain issues in the first place. It was agreed that the move to greater transparency should be seen as an opportunity rather than a reactive response to external pressure. While suppliers may fear greater transparency, there are ways for businesses to approach this to ensure commercial confidentiality and trust. It could also help identify systemic gaps around issues such as internal procurement team and supplier training, prequalification and access to grievance mechanisms as reporting teams seek information from colleagues on how these issues are being managed.

> "Transparency around our suppliers was scary, but none of our fears were realised." (Business representative)

> "For sustained improvements to occur, we need multiple stakeholders to work together – business, government and civil society." (Academic representative)

Due to the magnitude of challenges, it was agreed that no individual business can address the human rights issues in a complex supply chain alone. For long-term improvement, collaboration must occur across all levels of business, government and civil society. The Commonwealth Attorney-General's Supply Chains Working Group was highlighted as a current multi-stakeholder initiative seeking to explore opportunities – regulatory and non-regulatory – to drive improved practices. The role of government as a significant purchaser of goods and services, and the ability to lead by example through procurement policies, was also emphasised.

Outcomes and next steps

The Dialogue highlighted that momentum around business and human rights continues to build in Australia, and continued multi-stakeholder dialogue is critical. It is vital that all stakeholder groups continue to have a forum where they can exchange ideas and frustrations and collectively help to move the dial on business and human rights practice in Australia.

A key theme that emerged during the discussion was transparency and disclosure – in relation to impact assessments, supply chains and more generally, human rights performance – and the very real dilemmas for business that need to be worked through while exploring regulatory and policy solutions. Translating human rights was highlighted again this year as an ongoing challenge, which also relates to the continuing challenge of integrating human rights across business functions. It was clear that businesses and other stakeholders want real life examples of what human rights impacts might mean in their daily operations. They would also like more guidance on when explicit human rights language should be used in key internal and external communications.

The concept of a human rights lens was also discussed - using existing operational language, for example around human resources or communities, so that entire policies and processes do not need to be reinvented, but making sure that the business' work has been explored from a human rights point of view to ensure it is managing all human rights related issues. It was suggested that a combination of the two approaches (direct human rights language and a human rights lens) may be necessary especially as external stakeholders are calling for more direct reporting about human rights performance. It may also be difficult to truly address some human rights issues without directly training employees and business partners about relevant human rights.

Managing human rights in the supply chain was identified as a key area for ongoing improvement, noting that issues have arisen both in international and domestic supply chains. On the latter guidance there was interest in whether businesses facing domestic issues are expected to go beyond legal compliance and what tools might be available to do so.

While a number of Australian businesses are making significant investments in order to know and show that they are respecting human rights, there are many businesses not yet engaged in this space, and so a further challenge is how to engage them.

As an overall comment, addressing the challenges identified will require cooperation and engagement from all stakeholder groups.

Building on these, the following actions were identified as areas that each stakeholder group could progress in 2015-16.

Business:

- Engage proactively with government on what additional support government could provide to business to help address human rights challenges and opportunities including by highlighting the pros and cons in exploring a National Action Plan on business and human rights or broader responsible business conduct.
- Focus on integrating human rights across all business functions including encouraging colleagues from other relevant functions such as legal, risk, procurement, communities and human resources to attend the Dialogue or similar discussions in the future.
- Explore ways to build awareness of the business case for human rights at senior leadership and Board levels.
- Enhance transparency around human rights-related policies, processes, impacts and performance, including in supply chains, taking particular note of overseas legal requirements.
- Participate in multi-stakeholder dialogues on business and human rights, nationally and internationally, to ensure the Australian perspective is heard and good practice is shared.
- Collaborate with civil society and ensure that conversations are genuine and underpinned by mutual respect.
- Better understand investors' needs including through discussion with individual investors and collective initiatives.
- Share experiences with peers, including through the GCNA's Human Rights Leadership Group.

Civil society:

- Contribute to ongoing discussion around a National Action Plan on Business and Human Rights for Australia.
- Continue to provide accountability for compliance with human rights standards.
- Where appropriate engage early with business before 'naming and shaming' and provide reasonable time for internal consideration and action.
- Help build the capacity of rights-holders within Australia and overseas to bring complaints to the attention of Australian companies through a variety of mechanisms.

Government:

- Support and continue to engage with existing business and human rights dialogues and platforms, including the annual Australian Dialogue on Business and Human Rights and GCNA Human Rights Leadership Group.
- Continue to explore the potential for a National Action Plan, informed by relevant stakeholders.
- Ensure government procurement policies demonstrate best practice in relation to human rights issues.

Other identified opportunities included the need for:

- Greater consideration of the importance of engaging small- and medium-sized enterprises in the business and human rights space.
- Greater engagement of businesses who are not yet aware of their responsibilities.

A post-Dialogue survey identified a desire from all stakeholder groups for the national dialogue to continue. The GCNA and Commission will look to make this an annual event to discuss progress, challenges and opportunities in addressing business impacts on human rights and track the implementation of the UN Guiding Principles in Australia.

Annexure A: Agenda

8.30am	**Registration**
9.00 – 9.30am	**Welcome to Country and Opening** Alice Cope, Executive Manager, Global Compact Network Australia Michael Rose, Chief Executive Partner, Allens Allen Madden, Board Member, Metropolitan Local Aboriginal Land Council Professor Gillian Triggs, President, Australian Human Rights Commission Catherine Hunter, Chair, Global Compact Network Australia and Head of Corporate Citizenship, KPMG
9.30 – 9.45am	**Keynote** John Morrison, Executive Director, Institute for Human Rights and Business (UK)
9.45 – 11.10am	**High-Level Panel: Leadership on Business and Human Rights** This multi-stakeholder panel discussion will consider leadership and 'tone from the top', and the importance of leadership for the respect and support of human rights. Ilana Atlas, Non-Executive Director, ANZ Bank, Westfield and Coca-Cola Amatil Greg Manning, A/g Deputy Secretary, Commonwealth Attorney-General's Department Elaine Pearson, Australia Director, Human Rights Watch John Morrison, Executive Director, Institute for Human Rights and Business Michael Rose, Chief Executive Partner, Allens (Facilitator)
11.10 – 11.30am	**Morning Tea**
11.30am – 1.00pm	**Corporate Responsibility to Respect** This panel explored the policy commitment and human rights due diligence aspects of the UN Guiding Principles on Business and Human Rights. The discussion focused on practical steps and challenges in developing human rights policies / making public commitments in relation to human rights, and how companies are practically putting these commitments into practice. Julian Farrugia, Project Director, Glencore Ruth Smithyman, Senior Manager, Community and Indigenous Affairs, Origin Katie Kiss, Senior Manager, PwC Indigenous Consulting Melissa Stewart, Senior Advisor—Trafficking in Persons, World Vision Australia Richard Boele, Partner, KPMG Banarra (Facilitator)
1.00 – 1.45pm	**Lunch**
1.45 – 3.15pm	**Addressing Human Rights Impacts: Grievance Mechanisms and Remedy** This session explored current challenges facing companies and other stakeholders in relation to remediation and concrete ideas for how these challenges might be addressed. Both judicial and non-judicial mechanisms were discussed. Janet Reark, Principal Advisor - Communities and Social Performance, Rio Tinto Margaret Stuart, Head of Corporate and External Relations, Oceania, Nestlé Serena Lilywhite, Mining Advocacy Lead, Oxfam Australia Graeme Innes AM, Former Disability Commissioner Robert Donelly, OECD National Contact Point, Commonwealth Department of Treasury Rachel Nicolson, Partner, Allens and Director, Global Compact Network Australia (Facilitator)
3.15 – 3.40pm	**Afternoon tea**

3.40 – 4.45pm	**Human Rights in the Supply Chain** This session explored the management of human rights issues in the supply chain. Jaana Quaintance-James, Ethical Sourcing Manager, David Jones Sonya Rand, Ethical Sourcing Manager, Coles Gershon Nimbalker, Advocacy Manager, Baptist World Aid Alexander Coward, Policy Officer, Commonwealth Attorney-General's Department Justine Nolan, Associate Professor, Deputy Director - Australian Human Rights Centre, University of NSW (Facilitator)
4.45 – 5.30pm	**Summary and Closing** Each stakeholder rapporteur shared their reflections on the day, and actions that their stakeholder group can take in the short and long term to progress business and human rights practice and discourse. Vanessa Zimmerman, Group Advisor Human Rights, Rio Tinto, Chair, GCNA Human Rights Leadership Group (Business Rapporteur) Rachel Ball, Human Rights Law Centre (Civil Society Rapporteur) Kevin Playford, Director - Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade (Government Rapporteur) Professor Gillian Triggs, President, Australian Human Rights Commission Catherine Hunter, Chair, Global Compact Network Australia and Head of Corporate Citizenship, KPMG John Morrison, Executive Director, Institute for Human Rights and Business (Facilitator)
5.30pm	**Close**
5.30 – 6.30pm	**Networking drinks**

Annexure B: Business and Human Rights 2015 - A Year in Review
(July 2014 – December 2015)

This paper provides an overview of the key developments in the global business and human rights agenda since the 2014 Australian Dialogue on Business and Human Rights, including the work of the UN Working Group on Business and Human Rights, a proposal for a binding treaty on business and human rights, and momentum around the development of National Action Plans.

Negotiations to develop a binding treaty on business and human rights

The 26th session of the UN Human Rights Council, held 10-27 June 2014 in Geneva, saw two resolutions relevant to business and human rights tabled for adoption by the Council:

- The first resolution was led by Ecuador and South Africa, signed by Bolivia, Cuba and Venezuela, and supported by 20 countries. The purpose of the resolution was to establish the Open-ended Intergovernmental Working Group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights (Open-Ended Inter-Governmental Working Group).

- The second resolution was led by Norway and supported by 22 countries including Australia. This resolution requested that the UN Working Group on Business and Human Rights prepare a report considering the legal and practical measures to improve access to remedy, both judicial and non-judicial, including the role of a legally binding instrument. The resolution also encourages States to take steps to implement the UN Guiding Principles on Business and Human Rights (the *UN Guiding Principles*).

The first session of the Open-Ended Inter-Governmental Working Group was dedicated to conducting constructive deliberations on the content, scope nature and form of the future international instrument. Representatives from UN member states, intergovernmental organisations, national human rights institutions and non-government organisations were in attendance. Many nation states including Australia and the US did not participate in the discussion, and the EU left the meeting during the second day of discussion.

While no concrete agreements have been made, there is wide recognition that the UN Guiding Principles would work in conjunction with (and not be contradictory to) a legally-binding treaty, and progress must continue to be made on their implementation.

During 2015, progress has also continued under the Office of the High Commissioner for Human Rights' (*OHCHR*) Accountability and Remedy Project, which aims to contribute to fairer and more effective systems of domestic law remedies. The project's six workstreams focus on domestic law tests for corporate accountability, the roles and responsibilities of interested States, overcoming financial obstacles to legal claims, criminal sanctions, civil law remedies and practices and policies of domestic prosecution bodies. The project's 25 focus jurisdictions include Australia. During 2015, a global consultation process was undertaken, and an early draft of recommendations released. The UN Human Rights Council will consider the project's final report in June 2016.

Consistent with the increasing focus on remedy and accountability, during the year, the Business and Human Rights Resource Centre launched the Corporate Legal Accountability portal, to highlight significant business and human rights-related lawsuits from around the world.

National Action Plans (NAPs) on Business and Human Rights

Since the 2014 Australian Dialogue on Business and Human Rights, momentum has grown around the development of National Action Plans (*NAPs*) on business and human rights. To date, nine countries have produced a NAP (UK, Netherlands, Italy, Denmark, Spain, Finland, Lithuania, Sweden and Norway).

A further 19 States are currently developing a NAP, or have committed to do so (including the USA and Malaysia). Finally, there are 7 States in which the national human rights institution or civil society organisations are taking steps towards developing a NAP. After developing the first NAP, the UK Government is currently conducting a review of its NAP for implementing the UNGPs.

The United Nations Working Group on Business and Human Rights (UNWG) considers the development of NAPs by States as a key means of implementing the UNGPs. The UNWG defines a NAP as "an evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles".

Discussion of NAPs was a key focus area of the Third and Fourth Annual United Nations Forums on Business and Human Rights, 1-3 December 2014 (2014 Annual Forum) and 16 – 18 November 2015 (2015 Annual Form). As part of the 2014 Forum, the UNWG released Guidance on National Action Plans on Business and Human Rights which provides recommendations on the development, implementation and update of NAPs. It was further revised for the Fourth Annual Forum. The issue of NAPs was also on the agenda at the ASEAN Next-Gen CSR Forum in February 2015.

The Australian Government has not committed itself to developing a NAP on business and human rights. The Australian Government has, however, published a National Action Plan to Combat Human Trafficking and Slavery, which focused in part on considering labour exploitation in supply chains. In 2014, the Human Rights Law Centre published a Background Paper setting out the case for an Australian NAP.

UN Annual Forum on Business and Human Rights

The 2014 Annual Forum in Geneva brought together over 2,000 participants from business, civil society, government and academia on 1-3 December 2014. The 2014 Annual Forum focussed on strengthening multi-stakeholder dialogue and engagement, discussing NAPs, exploring access to effective remedy and identifying current and good practice. The forum Summary Document provides a number of reflections and general observations on key themes, including:

- The international dialogue on business and human rights is becoming increasingly substantive, with two areas of focus, how to prevent and how to create accountability for negative corporate impacts.
- Increasingly, governments are examining their laws, policies and practices to identify gaps and developing action plans to address these gaps.
- Challenges remain around ensuring access to remedy.
- There is growing engagement by CEOs on human rights issues however gaps remain in relation to small and medium enterprises (SMEs).
- There remains a need for ongoing processes of measuring and reporting.
- Negotiations on a binding treaty should not detract from effort to implement the UNGPS.

The 2015 Annual Forum attracted even more participants than in 2014. The summary was not available at the time of writing, however the forum programme is available here. Key themes this year included National Action Plans and access to remedy.

Key initiatives and research

Sustainable Development Goals (SDGs): The role of the private sector

At the UN Conference on Sustainable Development in June 2012, States agreed to create a set of Sustainable Development Goals (**SDGs**) to follow on from the Millennium Development Goals which have a target date of December 2015. Since then, the UN has engaged in a global, multi-stakeholder process to develop the SDGs.

In August 2015, *Transforming our World: The 2030 Agenda for Sustainable Development* was released. The Agenda includes 17 SDGs with 169 associated targets and was formally endorsed by the UN General Assembly in September 2015. The SDGs framework goes beyond meeting immediate basic human needs, and aims for social, economic, environmental and governance change – and the agenda is inextricably linked to issues of human rights.

The *2030 Agenda for Sustainable Development* acknowledges the critical role of the private sector in achieving the SDGs, and expressly calls on businesses to "apply their creativity and innovation to solving sustainable development challenges." It also encourages multi-stakeholder partnerships and collaboration. The achievement of the SDGs will require partnership between all sectors.

The UN Global Compact played a key role in bringing business perspectives to the SDG negotiations, and continues to translate the SDGs for business. The Global Compact Network Australia has, in partnership with DFAT, launched the Sustainable Development Leadership Group as a platform for business and stakeholders to engage in learning, dialogue and action around sustainable development and the SDGs.

The UN Guiding Principles Reporting Framework

The UN Guiding Principles Reporting Framework, launched in February 2015, is a tool for companies to assess how they are managing risks to human rights in their operations and supply chains. The Reporting Framework consists of 31 questions which facilitate companies to report on their human rights performance.

The Reporting Framework is the first comprehensive guidance for companies to report on human rights issues, and how they respect human rights, in line with the UNGPs. The Reporting Framework was developed over two years through a global, multi-stakeholder process led by Shift, a centre of expertise on the UNGPs, and international accountancy firm Mazars.

Underlying the Reporting Framework is recognition that the responsibility of businesses goes beyond complying with local, national and international laws and regulations; it focuses on a company's human rights risks and impacts. The Reporting Framework contains questions accessible and relevant to all companies, including non-government organisations and smaller to medium enterprises who may have not yet fully engaged with these issues.

Early adopters of the Reporting Framework include Unilever (the first adopter), Ericsson, H&M, Nestlé, ABN AMRO and Newmont. Unilever released its inaugural Human Rights Report in June 2015.

The Corporate Human Rights Benchmark Project

In 2015, a group of private sector research, investment and non-governmental organisations began a worldwide consultation on the establishment of a project to rank **the top 500 global listed** companies on their human rights performance. The Corporate Human Rights Benchmark project aims to enable stakeholders to easily see and simply understand the impact individual corporations have on human rights.

During 2015, the project undertook an online consultation, with the project Steering Committee focusing on revising and improving the Benchmark's framework, methodology and indicators during the remainder of 2015. It is anticipated that amended methodology will be published in early 2016. The Benchmark will initially measure companies in the Extractive, Apparel and Food/Beverage and Agriculture sectors.

2014 Sustainability Report

In 2014, MIT Sloan Management Review in partnership with the UN Global Compact and Boston Consulting Group, conducted its sixth annual global survey of over 2,587 commercial executives, managers and practitioners. The Report makes two key findings:

1. Businesses are seeking to achieve sustainability by forming strategic initiatives that engage multiple entities to tackle increasingly complex and global sustainability issues.
2. Board engagement is key to achieving success in sustainability efforts. The survey found that an engaged board was a predictor of successful sustainability collaborations.

Overall, the 2014 Sustainability Report suggests that while corporations are increasingly powerful, they are also equally at risk and vulnerable to macro shocks such as market disturbances, social unrest and natural and manmade disasters. Corporations are slowly coming to this realisation, and understanding the need to address these risks through sustainability initiatives, which are more successful when undertaken with a collaborative approach.

Economist Intelligence Unit Report

In March 2015, the Economist Intelligence Unit launched their report, *The Road from Principles to Practice - Today's Challenges for Business in Respecting Human Rights*. The report surveyed over 850 senior corporate executives and found that although businesses recognise their role in respecting human rights, many are still learning what this means in practice. Many companies reported a lack of understanding of their responsibilities in this area and a lack of training to employees as being barriers to them embracing human rights responsibilities. Even those companies that are leading in the field cite lack of understanding as a barrier to further progress. The report also notes that a compelling business case is needed to push some companies into action.

UK Modern Slavery Act

In October 2015, the UK's *Modern Slavery Act 2015* came into effect, requiring certain companies to publish an annual "slavery and human trafficking statement" outlining steps taken to ensure that slavery and human trafficking are not taking place in their business or supply chain. The requirement covers any company operating in the UK with an annual global turnover exceeding £36 million, catching around 12,000 UK and non-UK companies (including some Australian companies that operate in the UK). The statement will have to be signed by senior leadership and be posted on the company's website including a link prominently placed on its homepage. The UK Government recently published guidance for companies on how to fulfil the transparency requirements, available here.

While the law does not force companies to take action to address issues of slavery they will be obliged to publicly disclose that they are not taking any steps if this is the case. Of course, few companies will want to announce that they are not taking steps to address trafficking and slavery, so it is expected that the transparency requirement will drive further human rights due diligence and action.

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

2015 Dialogue Advisory Group

The Global Compact Network Australia and the Australian Human Rights Commission thank the following members of the 2015 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)
- Rosemary Bissett, Head of Sustainability Governance and Risk, National Australia Bank
- Emily Howie, Director of Advocacy and Research, Human Rights Law Centre
- Armineh Mardirossian, Head of Corporate Responsibility, Woolworths
- Justine Nolan, Associate Professor, Deputy Director - Australian Human Rights Centre, University of NSW
- Kevin Playford, Director - Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade
- Elaine Prior, Director and Senior Analyst, ESG, Citi
- Professor Paul Redmond, Faculty of Law, University of Technology Sydney
- Carolin Seeger, Senior Sustainability Advisor, Telstra
- Melissa Stewart, Senior Advisor – Child Protection and Trafficking in Persons, World Vision Australia
- Rita Sully, Social Performance Manager, Shell
- Sarah McGrath, Advisor to the President, Australian Human Rights Commission
- Alice Cope, Executive Manager, Global Compact Network Australia