



## Towards an Australian National Action Plan on Business & Human Rights: Business Roundtables

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### Summary

The Global Compact Network Australia (GCNA) and Department of Foreign Affairs and Trade (DFAT) convened business roundtables in May and June 2016 to consider the development of an Australian National Action Plan on Business and Human Rights.

The Australian Government has made a voluntary commitment to undertake a national consultation on the implementation of the UN Guiding Principles on Business and Human Rights during 2016. The development of a National Action Plan is one way to further implementation of the UN Guiding Principles.

Roundtables were held in Sydney, Melbourne and Perth, with the primary aim of introducing Australian businesses to the concept of National Action Plans on Business and Human Rights. The roundtables also provided an opportunity to discuss key human rights challenges facing Australian businesses and explore initial views on potential gaps that an Australian National Action Plan could fill and the consultation process for any such plan. 80 business representatives participated from a range of sectors including retail, FMCG, food and agriculture, manufacturing, banking and finance, insurance, logistics, technology, pharmaceuticals, technology and extractives.

This summary report outlines highlights from the discussions, in keeping with the Chatham House rule of non-attribution under which the roundtables were held. This summary does not necessarily represent the GCNA's, DFAT's or any participating business' views.

### Context

#### *National Action Plans around the world*

There is growing momentum around National Action Plans (NAPs) for the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs).

To date, ten countries have launched NAPs (including the UK), and 26 others are in the process of developing one (including the US). There has been growing pressure on, and encouragement of, the Australian Government – including from other governments, NGOs, business and the broader international community – to do the same.

Traditionally, NAPs provide a way for governments to set out their expectations of business in relation to respecting human rights at home and abroad, provide clarity on the role of different government actors in supporting business and other stakeholders and as the name suggests, set out a plan for further actions which may help the government to fill any current implementation gaps regarding the UNGPs.

NAPs launched to date have included a range of both regulatory and non-regulatory measures (e.g. strengthening reporting obligations, awareness raising, developing tools and guidance, supporting corporate responsibility initiatives, government procurement commitments and supporting access to judicial and non-judicial grievance mechanisms).

#### *Australian Government perspective*

- Earlier this year, the Australian Government made a voluntary commitment to conduct national consultations on implementation of the UNGPs. (It was noted, though, that further commitments have not yet been considered by the Government.)
- At this stage, DFAT has five priority issues for consideration:
  - First, the Government's objective is that Australian companies embed human rights considerations into their core business practices so that they are better equipped to manage risk, have greater clarity about how policies and laws apply, can gain better access to stable global value chains, are competing on a level playing field, and are able to promote the 'Australian brand' as ethical, transparent and respectful of human rights wherever they operate.
  - Second, to help achieve this objective, the Government considers its core role as being to help raise awareness of business and human rights issues, to convey its expectations and policy positions, and to provide clearer direction – and, where relevant, policy and legislative certainty – to businesses on their human rights obligations.



- Third, the Government has examined other countries' experience in implementing the UNGPs, including their experience in relation to national baseline assessments, stakeholder consultations and NAPs.
- Fourth, 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.
- Fifth, 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.
- 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.
- A number of like-minded countries have developed or are developing NAPs. The Government can see good arguments for this idea, but whether a NAP is ultimately pursued has not yet been decided, and consideration will be given in the consultations as to whether a NAP is the right vehicle for driving business respect for human rights.
- In terms of process, the Government is giving consideration to undertaking a National Baseline Assessment, and to establishing a multi-stakeholder advisory group which would be anticipated to be agreed by the Foreign Minister.

## Discussion

### General

- There was general support from business representatives for the development of a NAP.
- It was considered of benefit to have a clear statement of the Australian Government's expectations of business in relation to human rights both at home and abroad. This would assist in driving internal engagement, commitment and action. It could also assist in more consistent expectations by other stakeholders which would help business to more effectively engage with these groups including NGOs and investors. A NAP could also help Australian businesses (including subsidiaries of multinationals) demonstrate that they are meeting global standards and expectations, with the ability to point to the NAP as an example of why they have already developed or may be developing policies and processes around human rights.
- Any NAP should clearly highlight the business case for respecting and supporting human rights. It is anticipated that a NAP would also strengthen the business case, by emphasising Government expectations.
- Participants noted risks associated with imposing reporting requirements on business that are not consistent with existing international / national reporting obligations and standards and which may not meet a clear information need of key stakeholders. An example given was that if Australia was to develop a requirement around supply chain transparency it should be consistent with the UK Modern Slavery Act requirements given companies may be subject to both laws. There is need for effective consultation to have a strong understanding of the type and format of information stakeholders are seeking and the impact that reporting may have on implementation including a diversion of resources.
- The Australian Government needs to be a role model in relation to business and human rights (e.g. through procurement processes) and build Australia's international reputation around human rights issues. Further, a whole of government approach is required. In addition, any NAP must be properly funded over the long term.
- In developing a NAP, the Australian Government should aim for consistency with other business and human rights initiatives and other countries' NAPs, so as not to create conflicting expectations of business.
- A NAP would need to take into account existing government initiatives (e.g. around Indigenous engagement, workplace rights) and voluntary activities being undertaken by business (including reporting), so as not to duplicate or reinvent the wheel but focus on gaps.



### **Australian domestic context**

- A range of human rights issues were identified as relevant to businesses in the domestic Australian context, including Indigenous rights, health and safety, gender equality, disability and labour rights in supply chains. However, businesses do not generally use the language of ‘human rights’ in considering these issues, particularly in the domestic context. This can pose a challenge to engaging businesses operating primarily in Australia in the ‘business and human rights’ discussion. That said, other stakeholders including NGOs and investors are using human rights language, and so Australian businesses are increasingly expected to be able to use that language as well.
- Another challenge to mainstreaming human rights in business within Australia is that the business case is not always apparent, as many investors and consumers still do not take business’ human rights policies, processes and performance into account in their decision-making. (While investors are getting more interested in human rights issues, they are generally still not asking the tough questions around human rights risk management.) Further, while there can be a negative reputational impact if something goes wrong, there is not necessarily an obvious positive financial impact for taking steps to prevent human rights abuses. This is even more the case for SMEs.
- Indigenous rights were identified as a critical human rights issue for Australia, with businesses noting Australia’s international reputation on the issue, and the significant role for government in supporting improvements in this area. The opportunity for business to have a significant positive impact on Indigenous rights, including in relation to economic empowerment, was highlighted.
- Potential opportunities for a NAP may include:
  - Contributing to greater enforcement of existing Australian legislation relating to human rights including around labour hire, privacy and occupational health and safety which may include better resourcing of investigative and enforcement mechanisms.
  - Demystifying human rights for business and converting the concept of human rights into tangible outcomes and benefits, including explaining what human rights mean for business in the domestic Australian context.
  - Exploring ways of incentivising Australian businesses, especially those operating solely in Australia, to be more proactive on human rights issues.
  - Leveraging the ASX Corporate Governance Principles and Recommendations, including elaborating expectations around what these require in terms of human rights issues (noting Recommendation 7.4, that a listed entity should disclose material exposure to economic, environmental and social sustainability risks (with reference to the UN Global Compact’s principles, including human rights) and how it manages or intends to manage those risks).
  - Empowering business to be more proactive on human rights issues through guidance, toolkits and training. For example, a simple roadmap for businesses that are new to human rights would be useful.
  - Establishing an Australian business and human rights hub (e.g. building on the GCNA’s Human Rights Leadership Group).
  - Highlighting ways that businesses can have a positive impact on human rights (in addition to preventing and addressing negative impacts), with Indigenous rights being suggested as an example, and potentially elaborating connections between the business and human rights and sustainable development agendas.
  - Raising awareness and capacity around business and human rights in the business community (including SMEs) and the broader public.

### **High risk jurisdictions**

- Australian businesses operating in jurisdictions with issues of conflict or weak governance face heightened human rights risks and particular challenges in implementing the UNGPs. This includes potential involvement in severe human rights impacts based on their scale, scope and irremediable character, impacts which the UNGPs explain should be prioritised for prevention and remediation. This is a challenge for all businesses, but can be particularly difficult for smaller Australian businesses to whom it is not always clear what their behaviour should be or the policies and processes they need to have in place to meet the requisite standard. The links between human rights and other issues, such as corruption, were also noted.



- A particular challenge raised was around security and human rights. It was noted that host governments do not always implement the Voluntary Principles on Security and Human Rights (VPs) consistently. Businesses taking proactive steps to avoid abuse (e.g. ensuring security personnel do not carry weapons) are often more of a target because they *do* uphold human rights, which in turn can put their personnel in more danger. To support businesses in respecting human rights, host governments need to be providing properly trained security forces and maintaining the rule of law. Australia joining the VPs was a positive development and there is a continuing role it could play in supporting business including by providing in-country assistance including around risk identification and guidance around liaison with host governments.
- When it comes to working in high-risk jurisdictions, businesses value dialogue and sharing knowledge and experience with other businesses, including through Global Compact networks. There are opportunities for awareness-raising within business of existing resources on business and human rights, such as those produced by the Australian Human Rights Commission, Business and Human Rights Resource Centre and UN Global Compact. They also find it useful to be able to tap into and get support from other responsible business initiatives on the ground.
- Interactions with DFAT / Australian Missions overseas were also useful for businesses in understanding local contexts and managing risks.
- It was suggested that Australia is playing 'catch up' in a few areas, including business and human rights and bribery/corruption. It is helpful to businesses if their home government sets strong ground rules and there was general agreement that a NAP could appropriately signpost the Government's expectations of Australian businesses in respecting human rights abroad. An example given was the UK legal position on facilitation payments, which many Australian businesses have incorporated into policies. However, this can cause awkward discussions where people request a facilitation payment and when refused, ask why an Australian business is following the UK legal position rather than the position of their home government which allows such payments. It was preferable to help avoid these conversations arising in the first place because people know they are dealing with an Australian business following Australian Government policy or legislation. A NAP could provide the standard that Australian businesses can point to as support for their policies in international interactions.
- There is also a need to raise the performance of those businesses 'lagging behind' whose lower performance causes challenges for businesses doing the right thing, including where they may be working together through partnerships. It would be helpful to better understand whether these businesses are lagging behind because of lack of will, capacity or a combination of the two.
- Further guidance is required for SMEs which may be operating overseas and may not be aware of their obligations in relation of human rights and/or which may not have as much capacity to put in place the requisite policies and processes to fulfil them.
- Potential opportunities for a NAP may include:
  - A clear statement of the Australian Government's expectation of businesses in relation to respecting human rights abroad, including working in high risk geographies.
  - Australian Government support to build the capacity of other governments in conflict-affected and weak governance jurisdictions to put the right frameworks in place, potentially with a focus on the Indo-Pacific region.
  - Continued support of Australian businesses operating in or entering other jurisdictions though DFAT / Australian Missions, to help businesses understand local contexts and manage risks including in relation to human rights. The Australian Government could also help Australian businesses engage with other governments, e.g. around public security.
  - Support for Global Compact networks and other responsible business initiatives in Australia and overseas, which provide platforms and 'safe spaces' for business to build their capacity to understand and manage their human rights risks. (Myanmar and PNG-based initiatives were specifically mentioned.)
  - Development of a hub to help navigate the myriad existing tools and resources available.
  - Actions to appropriately engage those business 'lagging behind'.
  - Strategies to better understand and help manage challenges facing SMEs.



## Supply chains

- Ensuring respect for human rights in supply chains remains a key challenge for businesses across sectors, and an area of increasing public and stakeholder scrutiny. Businesses continue to find it difficult to get visibility and exert influence beyond their Tier 1 suppliers. Audits are also not always effective, with some suppliers circumventing the audit process.
- Suppliers, particularly SME suppliers, are often not familiar with human rights expectations or language, and simple tools and guidance that 'translate' human rights concepts for suppliers could be useful.
- In the Australian domestic context, there are specific challenges in relation to labour hire contractors not complying with laws and regulations and concerns about insufficient resourcing for enforcement.
- In terms of leverage, it was noted that businesses do not always have the leverage that other stakeholders think that they have and there would be value in further multi-stakeholder dialogue to clarify how expectations may play out on the ground. Further, where a negative human rights impact is directly linked to an Australian business through a supply chain or other business relationship, attempts to intervene by the Australian business, particularly in overseas contexts, can sometimes be counter-productive and even worsen a situation.
- There are a large number of standards and certification schemes out there, and it can be difficult for businesses to navigate these.
- Any work including supply chain elements in a NAP should take account of existing work including the Attorney-General's Department's Supply Chains Working Group.
- Potential opportunities for a NAP may include:
  - As noted above, contributing to greater enforcement of existing Australian legislation relating to human rights, e.g. around labour hire (including in the food and agriculture sector), which may include better resourcing of investigative and enforcement mechanisms.
  - Setting a high standard by further embedding human rights in government procurement processes.
  - Introducing an accreditation system for labour hire contractors.
  - Providing additional guidance, toolkits and support, e.g. simple guidance and tools targeted to local/SME suppliers, and examples of good practice.
  - Convening and supporting multi-stakeholder dialogues, which can help businesses and NGOs understand each other's positions including around complex business relationships.

## SMEs

- SMEs are a significant part of the Australian economy, but there were concerns that they are not sufficiently engaged in the business and human rights discussion. SMEs may not have the resources to unpack their human rights responsibilities, and also often lack the capacity (e.g. time or other resources) to systematically meet their responsibilities. It was recognised, though, that there are SMEs doing good work in relation to human rights, including those that may be addressing their responsibilities but may not be using human rights language to describe their work.
- It is important that SMEs are part of the conversation, and that their capacity to understand and manage human rights issues is developed, both because of their own responsibility to respect human rights and because this is integral to ensuring respect for human rights through larger businesses' supply chains.
- Potential opportunities for a NAP may include:
  - Raising awareness of the relevance of human rights and their responsibilities among SMEs.
  - Developing specific guidance and toolkits targeted at SMEs including using or building on existing resources, such as those around workplace discrimination created by the Australian Human Rights Commission.
  - Supporting larger companies to build the human rights capacity of the SMEs in their supply chains.





### **Stakeholder relationships**

- Engagement with stakeholders including NGOs around human rights issues is incredibly valuable for businesses in understanding and mitigating human rights risks and addressing adverse impacts. However, business-NGO relationships are not always as productive as they could be with improved engagement needed on all sides. At the same time, it was noted by business that they and NGOs are fundamentally aligned in their interest in preventing adverse human rights impacts.
- There is a role for government as a bridge-builder between different stakeholder groups.
- In addition to the NGO community, investors are also a key stakeholder group.
- Government also needs to be a role model and show the value of transparent and robust multi-stakeholder engagement.
- Potential opportunities for a NAP may include:
  - Convening different stakeholders around business and human rights issues and facilitating engagement and collaboration.

### **Remedy**

- The responsibility of businesses to enable the remediation of any adverse human rights impacts which they identify that they have caused or contributed to, or to play a role in remediation for impact which are directly linked to them or their products/services, was noted.
- Various non-judicial mechanisms for addressing grievances were discussed, including the Australian Human Rights Commission and OECD National Contact Point.
- It was suggested there is often a need for shared responsibility for resolving issues, as it is often not possible for a single business to remedy systemic issues. Instead, collaboration between businesses, government, unions, NGOs and others are needed. Government can help facilitate this.
- The Australian Government could provide assistance and support to Australian businesses seeking to address negative impacts, particularly overseas, but greater clarification of the Government's role is needed.
- Potential opportunities for a NAP may include:
  - Clarifying how the Australian Government can assist businesses in addressing adverse human rights impacts, including through DFAT / Australian Missions overseas.
  - Raising awareness of the mechanisms available for resolving grievances, both overseas and in Australia.
  - Exploring with all stakeholders whether Australia's OECD National Contact Point is functioning effectively as a channel for resolving issues.
  - Convening different stakeholders and facilitating engagement and collaboration.

### **Process of developing a NAP**

- The process of developing a NAP is as important as any final document. It is important that the Government is very clear on its consultation process, and should set this out in a public document up-front. The Government also needs to put sufficient resources behind a robust consultation process.
- There was general support for the idea of a National Baseline Assessment (NBA), to ensure any NAP does not duplicate existing initiatives or do work where it is not needed, but is targeted to fill gaps. Any NBA should incorporate businesses' voluntary actions including collective and multi-stakeholder initiatives, not just legislation (e.g. UN Global Compact participation, reporting under GRI and other sustainability reporting).
- Any consultation process must involve multi-stakeholder consultations, with business noting the importance of different stakeholder groups hearing each other's views and perspectives. Single stakeholder consultations could also be valuable, as could industry/sector-specific or issues-based consultations to ensure more granular discussion. Consideration should also be given to separate sessions for SMEs as well as the best way to integrate SMEs into other discussions.



- Consideration could also be given to an online feedback mechanism.
- The process needs to include a broader discussion with business to demonstrate the potential positive impacts of a NAP, so that it is understood as something of benefit to business, and not incorrectly as just another layer of regulation, particularly for SMEs. The benefits of a NAP would need to be clearly articulated to ensure the broader business community is supportive.
- Development of a NAP could be positioned as a 'catching up' process for Australia, to meet basic international standards. It was noted that many Australian businesses that operate overseas already face higher standards and expectations in other jurisdictions.

### Next steps

- The Australian Government is considering the possibility of undertaking an NBA, and the national consultation process on implementation of the UNGPs, as committed to. Next steps will be made public in due course.
- The GCNA will keep business updated on developments, and will continue engagement and dialogue with other stakeholder groups on the issue of a potential Australian NAP.
- The GCNA and Australian Human Rights Commission will convene the third Australian Dialogue on Business and Human Rights on 28 October 2016 which will also provide an opportunity to further discuss these issues in a multi-stakeholder setting.