

2020 Australian Dialogue on Bribery and Corruption Summary Document

Maintaining Integrity in Times of Crisis

21–22 October 2020

Virtual



Global Compact
Network Australia



The Ten Principles of the UN Global Compact

The Ten Principles of the United Nations Global Compact are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.



HUMAN RIGHTS

- 1 Businesses should support and respect the protection of internationally proclaimed human rights; and
- 2 make sure that they are not complicit in human rights abuses.



LABOUR

- 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- 4 the elimination of all forms of forced and compulsory labour;
- 5 the effective abolition of child labour; and
- 6 the elimination of discrimination in respect of employment and occupation.



ENVIRONMENT

- 7 Businesses should support a precautionary approach to environmental challenges;
- 8 undertake initiatives to promote greater environmental responsibility; and
- 9 encourage the development and diffusion of environmentally friendly technologies.



ANTI-CORRUPTION

- 10 Businesses should work against corruption in all its forms, including extortion and bribery.

2020 AUSTRALIAN DIALOGUE ON BRIBERY AND CORRUPTION SUMMARY DOCUMENT MAINTAINING INTEGRITY IN TIMES OF CRISIS

Over two half-days, the Global Compact Network Australia (GCNA) in partnership with Allens, convened 115 representatives from business, government and civil society at the annual Australian Dialogue on Bribery and Corruption (Dialogue). This year, for the first time, the Dialogue was held online.

Bringing together leaders and experts from a range of sectors and industries, the Dialogue focused on equipping participants with the tools to *maintain integrity in times of crisis*.

The global coronavirus (COVID-19) pandemic and accompanying economic crisis pose numerous challenges for governments, businesses, and civil society. In recognition that corruption risk, and associated human rights risks, can be heightened during times of crisis, the Dialogue explored how the integration of a risk culture and a rights-based approach can support organisations to maintain integrity beyond compliance.

Discussions on Day One explored the intersection between corruption and human rights in relation to immediate responses to crises. Conversations also examined the longer-term tasks of breaking down silos and nurturing an organisational culture that promotes ethical and responsible practices. Day One also featured the launch of the Bribery Prevention Hub; an essential tool for Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance.

Day Two included a two-part workshop that built on themes from Day One. Participants unpacked a hypothetical case study and engaged in dialogue to develop their understanding of how to connect anti-corruption and human rights compliance frameworks.

This Summary Report outlines highlights from the Dialogue.

Note: This year's Dialogue was held under the Chatham House Rule.

This summary does not necessarily represent the views of the GCNA, or any participating organisation.



1. OPENING KEYNOTE ADDRESS: GLOBAL STATE OF PLAY – FOREIGN BRIBERY RISK IN THE WAKE OF COVID-19



Anita
Ramasastry



Rachel
Nicolson

Speaker: Anita Ramasastry, Chair, United Nations (UN) Working Group on Business and Human Rights
Henry M. Jackson Professor of Law, University of Washington

Introduction: Rachel Nicolson, Director and Chair, Anti-Bribery and Corruption, Global Compact Network Australia
Partner – Disputes and Investigations, Allens

The keynote address considered the growing momentum to link the mutually reinforcing agendas of anti-corruption and human rights, and approaches to integrating their compliance frameworks.

COVID-19: Enhanced and intersecting risks

COVID-19 has caused unprecedented disruption to global economies and created conditions under which bribery and corruption can flourish. Two such conditions include a reduced capacity of compliance bodies to undertake important work and the risk of lowering responsible business standards when promoting economic stimulus. In addition to highlighting the increased risks of bribery and corruption during the global pandemic, this keynote address also revealed the intersection between bribery and corruption and human rights risks during times of crisis.

In relation to COVID-19, risks exist for both companies and people, including factory workers and consumers. The keynote address pointed to signs of corruption as potential red flags for human rights risks, highlighting the human cost of corruption and the tendency for corruption to disproportionately impact the rights of vulnerable groups.

“COVID-19 has shown us that the risk in global markets and value supply chains is not only about risk to the company, but first and foremost, it is about risk to people.”

– Professor Anita Ramasastry

The momentum to link anti-corruption and human rights agendas

The growing number of initiatives addressing the nexus between anti-corruption and human rights agendas and compliance frameworks was explored. Four notable examples include the [report](#) of the UN Working Group on Business and Human Rights to the Human Rights Council, the Organisation for Economic Cooperation and Development (OECD) and International

Organisation of Employers [guide](#) for business on connecting anti-corruption and human rights agendas, the World Economic Forum [paper](#) on ethics and integrity beyond compliance, and the Basel Governance Institute’s private-sector [roundtable initiative](#) to explore human rights and anti-corruption compliance.

Integrity beyond compliance

“Integrity beyond compliance means businesses looking at their ethics and integrity programs and commitments as a more holistic set of processes that embrace more than just anti-bribery compliance.”

– Professor Anita Ramasastry

The session emphasised a need for integrity to go beyond mere legal compliance to confront the critical ethical challenges posed by COVID-19. Professor Ramasastry encouraged business to adopt a best practice approach that draws on the [OECD Guidelines for Multinational Enterprises](#) (OECD Guidelines) and the [UN Guiding Principles for Business and Human Rights](#) (UNGPs), to develop compliance approaches that co-address corruption and human rights risks.

Fundamental to a holistic and integrated approach is breaking down silos between organisational teams that deal separately with corruption and human rights risk profiles. Additional measures identified include:

- Effective stakeholder engagement, particularly with people on the ground who can help identify risks;
- Third-party screenings that simultaneously detect corruption and human rights risks; and
- Elevating ethics beyond the compliance remit within a company.

It was acknowledged that implementation of OECD Guidelines and the UNGPs can support businesses to develop an integrated approach that identifies and addresses salient corruption and human rights risks and develop an ethical corporate culture.

2. SPOTLIGHT ON AUSTRALIA: HOW GLOBAL AND LOCAL TRENDS ARE IMPACTING AUSTRALIAN BUSINESSES



Rachel
Nicolson

Speaker: Rachel Nicolson, Director and Chair, Anti-Bribery and Corruption, Global Compact Network Australia
Partner – Disputes and Investigations, Allens

Heightened domestic and foreign bribery and corruption risks emerging from COVID-19, and anticipated anti-bribery law reforms offered the backdrop to this session, which identified key trends and developments impacting Australian businesses. The following section offers a snapshot of these key trends and developments.

COVID-19

Businesses that are reconfiguring their supply chains and engaging new third parties face increased exposure to foreign bribery risk. This is exacerbated in the current economic environment. Additional risks for businesses are emerging in the space of charitable donations. Companies that are supporting communities through hastily designed charities should be aware that they might unwittingly enable corruption.

Enforcement agencies and regulatory bodies have implemented key measures to support businesses, public officials, and individuals in their response to COVID-19, including the following:

- The NSW Independent Commission Against Corruption has issued [guidance](#) for public officials on managing corrupt conduct during the COVID-19 pandemic. This comes in recognition that the increase in government stimulus may present opportunities for dishonest actors to engage in corrupt and opportunistic behaviours.
- Recognising the need for a rapid and coordinated response to COVID-19 related-risks, the Commonwealth Fraud Prevention Centre and the Australian Federal Police (AFP) and have formed the [Commonwealth COVID-19 Counter Fraud Taskforce](#).
- The Australian Securities and Investments Commission (ASIC) has shifted its regulatory efforts to focus on COVID-19. ASIC is encouraging companies to engage early with regulators when planning mergers and acquisitions.
- The [Independent Broad-based Anti-corruption Commission](#) has committed to preventing and exposing police misconduct during COVID-19.

Law reform

Several proposals to reform Australia's anti-bribery and corruption laws are in various stages of development, including:

- [The Crimes Legislation Amendment \(Combating Corporate Crime\) Bill 2019](#) (CLACCC Bill) was reintroduced into the Parliament of Australia to 'remove undue impediments to the successful investigation and prosecution of foreign bribery offending'. The CLACCC Bill has not yet been passed due to a limited number of parliamentary sitting days, but may be debated in late 2020.
- The Attorney-General's Department (ADG) published its [Draft Guidance on Adequate Procedures to Prevent the Commission of Foreign Bribery](#) on 26 November 2019. This guidance sets out principles upon which anti-bribery policies and procedures should be based. The AGD is presently finalising the [Deferred Prosecution Agreement Scheme Code of Conduct](#).
- The Australian Law Reform Commission released its [final report](#) into Australia's corporate criminal responsibility regime. The report suggests an ambitious and far reaching reform agenda, with recommendations presently being considered by the AGD.
- The Attorney-General, the Honourable Christian Porter, has announced a [draft bill](#) to establish a Commonwealth Integrity Commission. Consultation on the draft bill is open until 12 February 2021.
- The Joint Standing Committee on Foreign Affairs, Defence and Trade is conducting a [parliamentary inquiry](#) into whether Australia should adopt a new sanctions regime targeting human rights abuses and grand corruption.¹ The inquiry also examines the experience of other jurisdictions, including the United States, in implementing [Magnitsky laws](#). This inquiry demonstrates the convergence of anti-corruption, anti-money laundering, business and human rights, sanctions, and other compliance issues.

¹ Grand corruption is the abuse of high-level power, which benefits a minority. It causes serious and extensive harm to society and individuals.

3. MITIGATING CORRUPTION RISK IN THE IMMEDIATE AFTERMATH OF A CRISIS

Alex
PalmerJohn
VersantvoortJustine
Nolan

Speaker: Alex Palmer, Senior Corporate Counsel and Group Manager – Legal Governance Compliance, Newcrest Mining

Speaker: John Versantvoort, Head, Office of Anticorruption and Integrity (OAI), Asian Development Bank

Facilitator: Justine Nolan, Professor, Faculty of Law, UNSW Sydney
Visiting Professorial Scholar, Stern Centre for Business and Human Rights, New York University

Crises like COVID-19 bring about heightened corruption risks for businesses. The immediate response to these crises and the measures that mitigate these risks become fundamental indicators for the success of a business's crisis management plan. In this session, panellists discussed some of the immediate responses put in place by businesses to mitigate risk, including adjustments that strengthen anti-bribery and corruption systems and promote integrity and human rights protection.

Top corruption and integrity risks in a crisis

A range of the most prevalent corruption and integrity risks during COVID-19 were identified by panellists, including:

- Heightened corruption risks can accompany an influx of financial assistance. 'Short-cuts' in decision making, transparency and accountability processes around financial assistance can lead to conditions that enable corruption;
- Conflicts of interest and fraud can result when businesses prefer close connections to take advantage of financial assistance and economic stimulus spending;
- Donations and sponsorship can be misappropriated;
- Compliance can become a secondary concern for businesses when they are struggling to survive in a crisis;
- Disruptions to supply chains enhances risks. Supply chains already pose a challenging area for businesses when mitigating corruption and integrity risks outside of a crisis. These risks can become obscured when pressures from a crisis impact due diligence and risk impact assessment processes; and
- Bypassing safeguards and expected standards can impact working conditions, remuneration and may result in extortions.

Immediate responses to risks

The session highlighted the importance of maintaining heightened integrity standards during a crisis. An example offered by speakers was the use of both initial and ongoing due diligence to identify and monitor changes in a company's risk profile, management, policies, and any adverse news on the company.

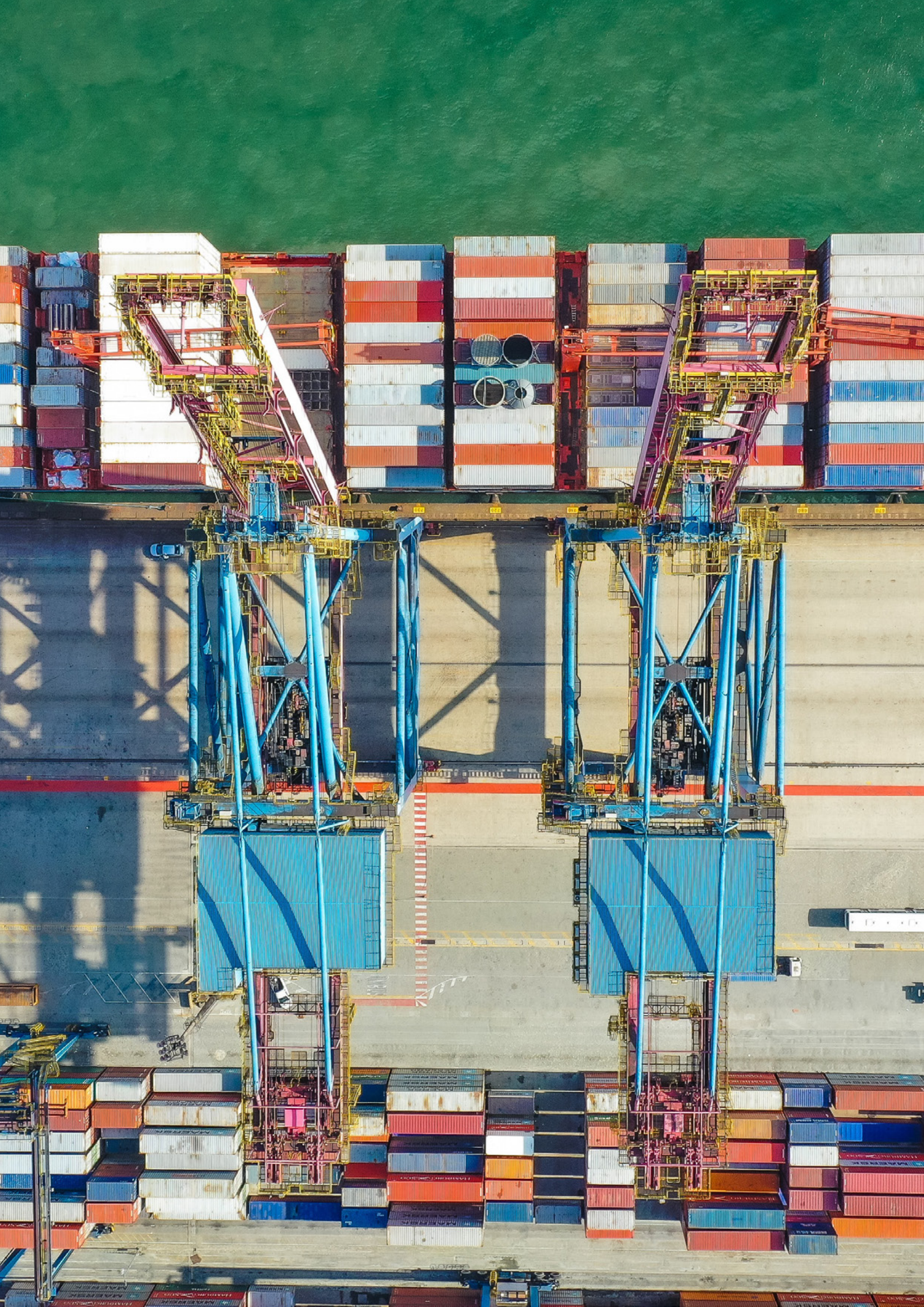
Due diligence procedures were also flagged as an important means of increasing understanding of the relative risks of suppliers. It was discussed that these procedures also place increased accountability requirements on suppliers to demonstrate they have appropriate anti-bribery and corruption and human rights processes in place. Where there are gaps that need to be addressed, capacity can be built into supply chains through education and self-assessment questionnaires.

Ensuring that culturally appropriate and accessible whistleblowing and grievance mechanisms are in place was another measure promoted by panellists as critical to the immediate response to a crisis. Such mechanisms create a means for people to speak up about potential corruption and human rights incidents, enabling businesses to investigate claims and remediate breaches.

Further adjustments to promote integrity and human rights protection

Panellists identified that COVID-19 has helped to spur on rapid digital transformations that support e-governance, which in turn, delivers greater transparency and accountability. These transformations also make anti-bribery and corruption and human rights education and training more accessible, particularly for training that no longer needs to be delivered "on the ground". This means awareness raising and capacity building can have a greater reach.

Finally, emphasised during the session was the important role that business plays in maintaining integrity in relation to both anti-bribery and corruption and human rights. Instituting a code of ethics and making a public statement of commitment are important first steps in promoting integrity and helping to spread ethical conduct in business.



4. BRIBERY PREVENTION HUB LAUNCH (DAY 1) / A LOOK INSIDE THE BRIBERY PREVENTION HUB (DAY 2)



Greg Hinds



Serena Lillywhite



Sophie McMurray



Nia Emmanouil



Corinne Schoch

Speaker: Greg Hinds, Superintendent, Crime Strategy, AFP

Speaker: Serena Lillywhite, Chief Executive Officer, Transparency International Australia

Speaker: Sophie McMurray, Business Manager for Scott Saunders (GM, Financial Crime), Westpac Group

Introduction: Nia Emmanouil, Manager of Programmes, Global Compact Network Australia

Introduction: Corinne Schoch, Head of Programmes, Global Compact Network Australia

Australian companies operating internationally are faced with a myriad of bribery and corruption laws that can sit in contrast to local customs, expectations, and competitive pressure to bribe. Knowing how to address the risks of corruption while succeeding in business internationally can be challenging, particularly for small and medium-sized enterprises (SMEs). These sessions officially launched the Bribery Prevention Network and the Bribery Prevention Hub.

Introducing the Bribery Prevention Network

The Bribery Prevention Network is a public-private partnership and multi-stakeholder initiative that brings together business, civil society, academic institutions and government with the shared goal of supporting Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance. Speakers described the origins of the Bribery Prevention Network, which emerged from a three-day design forum in May 2019, involving nearly 50 of Australia's leading experts in anti-bribery and corruption.

The Bribery Prevention Network adopts a collective action approach to promote a society free from bribery. Further aims of the Bribery Prevention Network include, to support:

- The building of fair and competitive markets;
- A reduction in supply chain and business partner risk;
- Big businesses to assist small business to manage risks as they reach into international markets; and
- Consensus building around adequate procedures as anti-bribery laws evolve.

The Bribery Prevention Network is overseen by a Steering Committee of representatives from business, government and civil society comprised of the following organisations: Australia-Africa Minerals and Energy Group (AMMEG), Allens, ANZ, the AGD, the AFP, BHP, CBA, the Global Compact Network Australia, KPMG Australia, Transparency International Australia, and Westpac. The Global Compact Network Australia is the host organisation.

Launch of the Bribery Prevention Hub

The Bribery Prevention Hub – the first major initiative of the Bribery Prevention Network – was officially launched at the Dialogue.

The Bribery Prevention Hub is a free, online tool designed to support Australian businesses, particularly SMEs, to manage bribery and corruption risks in domestic and international markets. Curated by Australia's leading antibribery experts, the Bribery Prevention Hub provides accessible, relevant, and reliable resources to help organisations develop and implement effective anti-bribery and corruption policies and compliance procedures.

Sessions included a brief on-boarding video of the Bribery Prevention Hub, which demonstrated the features of the site and showcased some of the 180 curated anti-bribery and corruption resources, which include guidance from Australian and foreign governments on foreign bribery offenses, case studies, training modules and scenarios, policy templates, videos, and other practical tools.

With evolving foreign bribery obligations facing Australian businesses, the Bribery Prevention Hub offers a crucial tool for businesses to navigate these developments and the complex risks posed by bribery and corruption.

5. STRENGTHENING CORPORATE RISK CULTURE IN THE WAKE OF CRISES



Sean Hughes



Ming Long AM



Willem Punt



Dean Mitchell

Speaker: Sean Hughes, Commissioner, ASIC

Speaker: Ming Long AM, Non-Executive Director

Speaker: Willem Punt, Bribery and Corruption Lead, ANZ

Facilitator: Dean Mitchell, Partner – Forensic, KPMG Australia

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, recent AUSTRAC enforcement actions and COVID-19 have revealed the critical importance of culture in mitigating exposure to heightened risks. In this session panellists discussed the extent to which cultural shifts have emerged over the last year and whether the emphasis on organisational culture has enabled businesses to identify and respond to corruption risks more effectively.

The value of “soft law” and social license

The global pandemic is highlighting the necessity for businesses to address their risk culture. Panellists identified the need for businesses to not only comply with “hard laws”, but to also implement self-regulatory frameworks to develop an effective risk culture. The Banking and Finance Oath and the General Insurance Code of Practice were two “soft law” instruments recommended by panellists to support good corporate conduct.

Shareholder and stakeholder standards and a social license to operate were noted as key factors driving corporate accountability and integrity measures. Companies face increasing reputational and financial risks that can undermine their integrity. The discussion pointed towards the pivotal role of culture in protecting a company from integrity risks. The disproportionately high cost of remediation – in comparison to preventative action – was also emphasised by panellists as reason to develop an ethical and responsible business culture. More broadly, the confluence of social license, soft law approaches and regulatory reform were discussed as amplifying the effects of “getting integrity wrong”.

Purpose-driven leadership

Twin deficits in leadership and risk management were highlighted as causal factors in the current high rates of remediation. Panellists drew attention to the integral links between ethical leadership and robust compliance and risk systems in strengthening corporate risk culture. For instance, the ability of controls to be effective is enhanced when the culture of an organisation promotes low-risk and ethical behaviours.

Purpose emerged as a core pillar of the discussion, with panellists highlighting a need for leaders to focus on their organisation’s purpose, and not just financial outcomes. Cultural change within the business leader community that is purpose-driven was explored against the backdrop of COVID-19 and its disproportionate impact on marginalised groups in society. Panellists drew attention to the capacity of purpose, when it anchors decision making at all levels, to support deep cultural shifts within an organisation, that can in turn, bring about social good.

Building and maintaining trust

Trust between businesses and their staff, stakeholders, and regulators emerged as another key theme from discussions. Panellists recalled instances where employee concerns were not heard, hindering the flow of information to organisational leaders, and indicating a compromised culture. Creating mechanisms to capture employee insights and grievances was discussed as a critical measure for building and maintaining trust and integrity within an organisation.

It was discussed that the Royal Commission uncovered a deep distrust among stakeholders, founded upon company misconduct. Unmet shareholder and stakeholder expectations were viewed as a real challenge facing businesses in the financial services sector and in other industries. Considering these challenges, the panel emphasised the humility of owning mistakes and the restorative effect of apology, which builds accountability and rebuilds trust.

The session highlighted the value of trustworthy and ethical corporate culture in supporting businesses to mitigate exposure to heightened risk, both during COVID-19 and in readiness for future crises.



6. CASE STUDY

This hypothetical case study formed the basis of the *Maintaining Integrity Through a Holistic Compliance Framework* workshop held on Day 2. It broadly aimed to highlight intersections between bribery and corruption and human rights incidents and offered practical insights into why it is important to develop a holistic approach to compliance.

Location

Plateaux Province, Republic of Upemba
(population: 7 million; location: West Africa)

Industry

Mining (lithium)

Key actors

- Deep Mining Limited (DM)
- DM Chief Executive Officer
- DM General Counsel
- DM Executive General Manager, Corporate Affairs
- DM Head of Business Development
- DM Health, Safety, Environment and Quality Officer
- DM Country Manager
- Plateaux Mining (PM)
- Local official: Mayor of Rwandira City, Plateaux Province
- Plateaux Province officials: Governor, Police Chief, Police Force
- Local community: Arada community
- International NGO
- Australian Federal Police

Your role

DM Deputy General Counsel

Disclaimer

This fictional case study was deliberately constructed via a collaborative process by event organisers. The fact pattern is not based on any one actual situation, nor is it intended to be. This case study cannot be reproduced without permission from the Global Compact Network Australia.

Key Facts

- Deep Mining Limited (DM) is an ASX 300-listed mid-sized company seeking to expand its operations into international markets.
- DM's Code of Conduct includes commitment statements on respecting human rights and a prohibition on bribery and corruption. DM also has separate human rights and anti-bribery and corruption policies in place. DM's policies align with the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) and the [Organisation for Economic Cooperation and](#)

[Development \(OECD\) Guidelines for Multinational Enterprises](#).

DM is also a member of the [United Nations \(UN\) Global Compact](#). While it is not a member, DM seeks to align its policies to the [International Council on Mining and Metals \(ICMM\) Mining Principles](#) which generally align with the UNGPs. The company has built its reputation on being an ethical and responsible business.

- Aligned with its strategy to diversify its product portfolio, DM recently acquired Plateaux Mining (PM). PM operates an established lithium mine and refinery in the Plateaux Province of the Republic of Upemba; a country with a high [Corruption Perception Index](#) rating. The mine produces spodumene concentrate (lithium ore mineral), which is then transported to a refinery 30 kilometres to the east. Spodumene concentrate is refined into lithium hydroxide at the refinery then shipped to China from an adjacent port.
- Prior to the acquisition, DM's Head of Business Development carried out desktop diligence on PM and did not identify any historical anti-corruption or human rights incidents based on Google News searches. Whilst the Head of Business Development undertook some due diligence on PM's environmental, social and governance (ESG) policies and processes, this was minimal and did not involve discussions with PM staff. The Head of Business Development did not involve DM's General Counsel or Health, Safety, Environment and Quality Officer in this aspect of the due diligence.
- Post-acquisition, DM appointed an Australian expat as Country Manager and posted them to the mine site to manage the integration process. This Country Manager was a mining engineer, and had significant experience managing mining projects in Australia and South America, but no previous experience working in the Republic of Upemba. In addition, the Country Manager did not undertake any cross-cultural training, and therefore was unfamiliar with local laws and customs.
- DM's Australian-based CEO had a very strong personal and professional relationship with the Country Manager and gave the Country Manager the freedom to manage the integration process as they saw fit. The Country Manager focused their efforts on identifying synergies between DM's and PM's businesses and streamlining the mine site's operations. The Country Manager was aware of DM's commitment statements on anti-corruption and human rights, and that relevant policies applied to PM, but planned to address "that compliance stuff" later in the integration process. The Country Manager was not aware that PM staff had not undertaken any anti-corruption or human rights training.
- Two months after the acquisition, local villagers from the Arada community blockaded the entrance to the refinery due to grievances that pollution from the refinery was adversely impacting the health of community members. They were frustrated and felt their concerns had gone unheard. The blockade lasted three months, effectively halting the production and export of lithium hydroxide, and impacting profits.



- The Country Manager advised the CEO that he was liaising with the local Mayor of Rwandira City to resolve the issue. The CEO advised that he was confident that the matter could be handled by in-country personnel.
- The Mayor's efforts were successful for a short time. However, fractured by the local impacts of a global health crisis, the community reformed the blockade one month later and protests escalated.
- The Country Manager advised the CEO that he was escalating the matter to the Governor of Plateaux Province to resolve the issue. Again, the CEO advised that he was confident that the matter could be handled by in-country personnel.
- The Governor ordered the Provincial Police to disband the blockade. Provincial Police used excessive force in clearing members of the Arada community from the blockade, injuring many and killing three people.
- Members of an international NGO were working in the local village at the time and took photographs of the incident. Some showed Provincial Police using vehicles branded with PM's name and logo. The images were immediately shared on social media and with traditional international media outlets, with allegations that PM had bribed public officials to intervene, and that PM was complicit in the violence and killings.
- DM's General Counsel received an early morning call from the CEO alerting them to what had transpired.

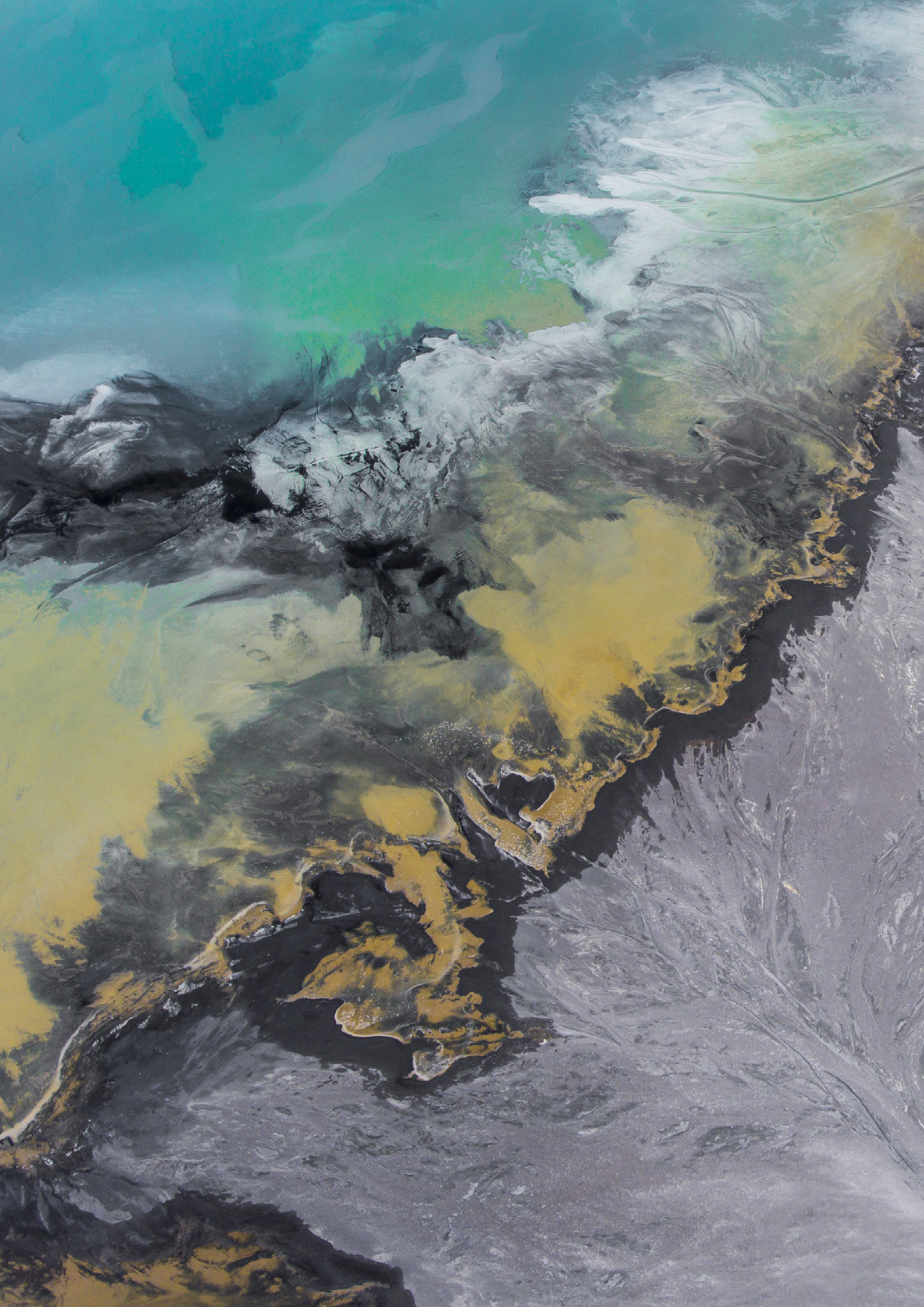
Your role

- You are the new Australian-based Deputy General Counsel of DM who was hired a week ago for your anti-corruption expertise. You are one of the General Counsel's first calls; they tell you what has happened, and say that they will coordinate an overall strategy for responding to the incident and allegations, but that you should lead the anti-corruption stream of DM's incident response.
- The General Counsel assembles a working group for an urgent meeting. The working group is comprised of the Chief Executive Officer, the Executive General Manager of Corporate Affairs, the General Counsel, the relevant Executive Regional Manager, you and another inhouse lawyer, who is leading a human rights stream. The working group is charged with identifying, scoping and prioritising key issues and actions to formulate a crisis management and response plan.

Additional Facts

- Three months have passed. DM has suffered severe commercial and reputational consequences flowing from the incident, but these were not as bad as they could have been due to an effective incident response.
- DM is aware that the AFP and the Upemba Federal Police are separately investigating the incident, but DM has limited information as to the status of those investigations.

- DM has completed an internal investigation. The investigation reached the following findings.
 - During the post-integration process, when the Country Manager asked a PM Senior Manager whether it had been difficult to obtain the permits for the mine, refinery and use of the road to transport resources, the Senior Manager smiled and said that it had been a *very* streamlined process. The Country Manager did not investigate or escalate this statement.
 - During the first blockade, when the Country Manager appealed to the local Mayor, the Mayor promised to have the blockade peacefully disbanded in exchange for his brother being employed in a "comfortable position" at the refinery and several new jobs being offered to "influential members of the community". Frustrated by the loss of profits and increasing anger of the community, the Country Manager agreed. At the time he thought to report this to the Health, Safety, Environment and Quality Officer of DM, but later decided not to.
 - A PM Manager, who was aware of the conversation between the Country Manager and local Mayor, tried to make a whistleblower complaint about the arrangement, but could not find any information about DM's whistleblower processes.
 - During the second blockade, when the Country Manager appealed to the provincial Governor, the Governor promised to order the provincial police to disband the blockade on the basis that the continued operation of the refinery was in the best economic interests of Plateaux Province as a whole. Under DM's processes, all engagements with security forces should have been via a written agreement with the police. The Country Manager was not aware of this policy and did not put one in place.
 - Subsequently, the provincial police Commissioner asked the Country Manager to make three PM vehicles available for an operation. Desperate for operations to resume, the Country Manager agreed to this arrangement. Again, he decided not to report this to the DM Health, Safety, Environment and Quality Officer.
- The investigation also reached the following compliance-related findings:
 - DM's pre-acquisition anti-corruption due diligence on PM was insufficient.
 - DM's post-acquisition integration process was insufficient and too narrowly focused.
 - DM failed to embed its compliance culture in PM, including because it failed to provide anti-corruption training to existing PM staff.
 - DM failed to ensure that adequate arrangements were in place between PM and the provincial and local police.
- The General Counsel was impressed by your work as a member of the incident response team and asks you to consider how DM can strengthen its corporate risk culture over the long-term in light of the internal investigation findings.



7. WORKSHOP PART I: MAINTAINING INTEGRITY THROUGH A HOLISTIC COMPLIANCE FRAMEWORK



Rachel
Nicolson



Vanessa
Zimmerman



Kylie
Porter

Speaker: Rachel Nicolson, Director and Chair, Anti-Bribery and Corruption, Global Compact Network Australia Partner – Disputes and Investigations, Allens

Speaker: Vanessa Zimmerman, Director and Chair, Business and Human Rights, Global Compact Network Australia

Facilitator: Kylie Porter, Executive Director, Global Compact Network Australia

An initial discussion between business and human rights and anti-bribery and corruption experts unpacked key issues emerging from the hypothetical case study. Subsequent dialogue amongst workshop participants examined the case study in consideration of the core theme, mitigating corruption in the immediate aftermath of a crisis. The following section highlights key insights from these discussions.

Respecting human rights

While on paper, the company at the centre of the hypothetical case study – Deep Mining Limited – presented a strong commitment to respecting and protecting human rights, the company did not undertake appropriate human rights due diligence from the onset, or in an ongoing manner, to meet its commitments. There were key missed opportunities to undertake pre-acquisition assessments, consult with stakeholders and local communities, track issues, and to integrate findings from assessments into internal processes. A lack of proper training was also identified as a critical gap.

Red flags that signalled the potential for human rights issues included the high Corruption Perception Index rating of the country, a lack of training by the Country Manager, small concerns and complaints not being dealt with and escalating, and police being called in to deal with community unrest.

The case study highlighted the significant risks to people, not only the company, when UN and industry standards for the protection of human rights were not effectively implemented. Discussion identified a failed expectation that the company and its subsidiary would respect all human rights through its business relationships, including with private security. The case study also demonstrated the need for legitimate remediation, as set out in the UNGPs, when incidents occur.

The nexus between corruption and human rights

Based on an acquisition scenario, the case study highlighted the potential for due diligence failures to enhance corruption and

human rights risks. Discussion on the link between corruption and human rights considered that while Deep Mining Limited may comply with laws, they would also benefit from attending to soft law and international standards, which in effect, broaden the scope of due diligence procedures.

Unpacking the case study showed just how tightly intertwined corruption and human rights incidents can be. For instance, bribery might be used to “fix a problem” or to create a business advantage, which can in turn, create flow-on impacts on human rights. On one level, these impacts might be missing out on a merits-based approach to provide goods and services or impacting the recipient of a service. On another level, it may mean the loss of life or impacts to a right to health. It was discussed that what is most consistent in different scenarios, is that those who are most marginalised are disproportionately impacted.

Immediate responses to the incident

Key measures were identified to ensure that Deep Mining Limited could respond effectively in the immediate aftermath of the incidents laid out in the case study. Among these were the clear allocation of responsibilities to executives and subject matter experts, clear internal and external communications protocols, and establishing document preservation protocols to support investigations and audits.

Discussions emphasised the value of internal investigations to understand what had occurred and to inform steps to remediate damage. Instituting an investigation plan with a clear purpose and engaging the right people – both within and outside of the company – were identified as critical steps to building integrity into the process.

Finally, participants identified the importance of communicating effectively with external stakeholders post-incident. Key stakeholders may include the Australian and relevant foreign governments, civil society groups who can support consultation with local communities, banks and insurers and investors.



8. WORKSHOP PART II: MAINTAINING INTEGRITY THROUGH A HOLISTIC COMPLIANCE FRAMEWORK



Dora Banyasz



James Campbell



Kylie Porter

Speaker: Dora Banyasz, Counsel – Disputes and Investigations, Allens
Speaker: James Campbell, Partner – Disputes and Investigations, Allens
Facilitator: Kylie Porter, Executive Director, Global Compact Network Australia

Part Two of the workshop brought together anti-bribery and corruption experts to discuss how the company at the centre of the hypothetical case study might institute long-term improvements to its compliance culture. This discussion was followed by further dialogue between workshop participants. This following section highlights key insights from both discussions.

Exposure to foreign bribery laws

A chief consideration for Deep Mining Limited, based on findings from an internal investigation, is its exposure to Australian foreign bribery laws. Discussions pointed to three key considerations in determining whether an act constitutes the bribing of a foreign public official:

- Whether there was conduct constituting a benefit given that was not legitimately due;
- Whether there was an intention to provide the benefit; and
- Whether the person giving the benefit was sufficiently senior within the organisation.

Anticipated reforms to Australia's foreign bribery laws will broaden the scope of these legal obligations. Companies may be liable even if there is bribery by an associate, in which case, they would need to prove they had adequate procedures in place to prevent bribery. In the case of Deep Mining Limited, the Country Manager could be exposed for not investigating known red flags, the need for cultural and procedural changes in the organisation.

Reviewing compliance systems

The hypothetical case of Deep Mining Limited raised the question of when a wholesale review of compliance systems should occur. While proactive reviews that address hard law and soft law standards are becoming more commonplace, the usual triggers for a compliance review are a crisis, a whistleblower within a company, and/or the acquisition of another company.

It was acknowledged that compliance reviews are increasingly covering multiple issues such as bribery, sanctions, fraud, insider trading and anti-money laundering. There was caution against compromising the depth of compliance reviews by going too broad in scope. Understanding the local operating context was identified as key to addressing this tension. Discussions highlighted that fundamental to compliance reviews is undertaking a gap analysis of the controls in place, in part, through interviews and in-country visits.

Dialogue emphasised that even when compliance reviews focus on specific subjects, holistic elements can be incorporated into a review. For instance, adopting a broader lens that looks to ethical standards and culture, working to identify the root causes of systemic issues, and addressing ineffective whistleblower mechanisms will have a wider beneficial impact than just addressing bribery. Central to achieving a holistic compliance review is going beyond a review against legal standards to look at cultures and behaviours that create compliance.



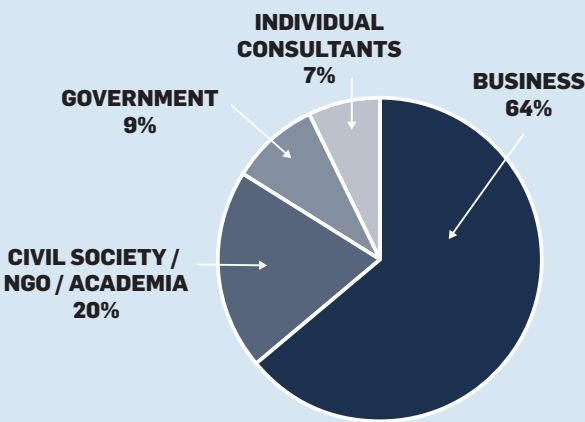
9. DIALOGUE IMPACT AND LESSONS LEARNED

The following information has been collated via the post-Dialogue anonymous feedback survey.

DIALOGUE ACHIEVEMENTS

- Reached an audience of 115 participants.
- Delivered relevant content: 100% of people thought the quality of the content was good to excellent.
- Brought together high quality and knowledgeable speakers: 100% of people thought the quality of speakers was good to excellent.
- Engaged participants in an effective online event: 100% of people thought the format of the Dialogue was good to excellent.
- Overall, 90% of people thought the Dialogue was extremely or considerably valuable.
- Overall, 10% of people thought the Dialogue was moderately valuable.

PARTICIPANT BREAKDOWN



WHAT PARTICIPANTS WOULD LIKE TO SEE AT THE 2021 DIALOGUE

- Building on this year's theme, more content on addressing corruption threats in the recovery phase of COVID-19.
- More discussion on ongoing enforcement efforts.
- Discussion of matters that require consideration when new Australian foreign bribery laws come into force, including the practical application of deferred prosecution agreements.
- More discussion on effective risk assessment practices including analysis of risks.

PARTICIPANT HIGHLIGHTS

- The expertise and quality of the speakers.
- Learning about the Bribery Prevention Hub.
- Bringing together business, civil society and government to share their perspectives.
- Discussion of the nexus between corruption and human rights.
- Practical examples from speakers and other participants on how to deal with key bribery and corruption issues.
- Links to useful resources in the chat panel.
- Valuable networking.
- Collaborating with others and the practical lessons learned in the breakout discussions during the workshop.



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