

# 2021 Australian Dialogue on Bribery and Corruption Summary Document

**Responsible business conduct through  
integrated risk management**

9-10 August 2021

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.



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## ACKNOWLEDGMENT OF COUNTRY

We acknowledge Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. We pay our respects to Elders past, present and emerging. Our vision for reconciliation is a future where all Australians are united by our shared past, present, future and humanity.

## ABOUT THE ORGANISERS

### Global Compact Network Australia

As a special initiative of the UN Secretary-General, the United Nations (UN) Global Compact is a call to companies everywhere to align their operations and strategies with Ten Principles in the areas of human rights, labour, environment and anti-corruption. Our ambition is to accelerate and scale the global collective impact of business by upholding the Ten Principles and delivering the Sustainable Development Goals (SDGs) through accountable companies and ecosystems that enable change. With more than 13,000 companies and 3,800 non-business signatories based in over 160 countries, and 69 Local Networks, the UN Global Compact is the world's largest corporate sustainability initiative – one Global Compact uniting business for a better world.

Locally, Global Compact Network Australia (GCNA) brings together signatories to the UN Global Compact, including 35 ASX 100 companies and other major corporates, non-profits and universities, to advance the private sector's contribution to sustainable development. We lead, enable and connect businesses and stakeholders to create a sustainable future by supporting businesses to act responsibly and helping them find opportunities to drive positive business outcomes.

[www.unglobalcompact.org.au](http://www.unglobalcompact.org.au)

### Allens

From playing a pioneering role in the development of legislation and regulatory frameworks in the Asia region for almost 200 years, to acting on numerous 'firsts' across a range of industry and community issues, it is in our DNA to make a difference and help shape what our world looks like.

Over this time, we've grown in scale and reach, today offering clients a global network of 40 offices in 28 locations through our global alliance with Linklaters.

We are privileged to hold some of the world's longest ongoing client relationships, stretching back more than 170 years, and we're committed to bringing our talent, expertise and insights to continue solving their toughest problems and creating ways forward to help them thrive. New and exciting market entrants sit alongside these established companies in our client base, drawn to working with us through the innovative re-packaging of our services for the growing and fast paced start-up market.

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## RESPONSIBLE BUSINESS CONDUCT THROUGH INTEGRATED RISK MANAGEMENT

Over two half-days, the Global Compact Network Australia (GCNA), in collaboration with Allens, convened 215 representatives from business, government and civil society at the annual Australian Dialogue on Bribery and Corruption (Dialogue). This year, the Dialogue was held online.

The 'hardening' of soft law – such as the [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs) – into legislative requirements like mandatory due diligence means that businesses are facing increasing expectations when it comes to responsible conduct. Global frameworks such as the [Sustainable Development Goal \(SDG\) 16](#) and [Principle 10](#) of the UN Global Compact direct businesses to work against corruption in all its forms. This is with the aim to create and maintain peaceful and inclusive societies where there is access to justice for all, and effective, accountable, and inclusive institutions. Critically, SDG16 and its targets underpin the successful achievement of the entire [2030 Agenda for Sustainable Development](#). An inherent link between SDG 16, the broader SDG agenda, Principle 10, and the other Principles of the UN Global Compact, mean that to act on corruption, businesses also need to mitigate human rights and environmental risks.

Just as businesses take stock of the impact of the COVID-19 pandemic, activism and enforcement activities are highlighting the convergence of anti-bribery and corruption, human rights sanctions, and modern slavery issues. When bribery and corruption are viewed solely through a compliance and risk management lens, their intersection with other issues (such as human rights and environmental harms, and the potential for common solutions) can be obscured. This convergence highlights the importance of businesses implementing coherent adequate procedures across a range of compliance areas.

Building on last year's exploration of the intersections between anti-bribery and corruption and human rights agendas, the 2021 Dialogue offered practical insights into implementing a holistic approach to risk.

This Summary outlines highlights from the Dialogue.

*Notes: This year's Dialogue was held under the [Chatham House Rule](#), with the exception of the keynote address. This summary does not necessarily represent the views of the GCNA, or any participating organisation.*



**“Corruption and human rights abuses go hand in hand. As example after example shows, corruption fuels human rights abuses and human rights abuses fuel corruption. Red flags for one are often red flags for the other... If we want to prevent and mitigate one, we have to prevent and mitigate the other.”**

– Jonathan Drimmer

## 1. KEYNOTE ADDRESS: CRYSTALISING ESG OBLIGATIONS – THE CONVERGENCE OF ANTI-CORRUPTION AND OTHER DUE DILIGENCE OBLIGATIONS



Jonathan Drimmer



Anita Ramasastry

**Speaker:** Jonathan Drimmer, Partner – Litigation, Paul Hastings

**Facilitator:** Anita Ramasastry, Professor of Law, University of Washington. Member, United Nations Working Group on Business and Human Rights

You can watch the keynote address [here](#).

**The keynote offered a global perspective on how environmental, social and governance (ESG) standards are informing the development of domestic legislation. As soft law norms crystallise into hard law, businesses are increasingly expected to mobilise intersections between their anti-corruption and human rights functions and cultivate an integrated approach to responsible business conduct.**

### The inextricable link between corruption and human rights

Jonathan Drimmer set the scene for the 2021 Dialogue by illustrating the extent to which anti-corruption and human rights agendas are interwoven. Although anti-corruption obligations have been entrenched within law for several decades, recent changes like the European Union's proposal to introduce mandatory human rights and environmental due diligence have thrust human rights and anti-corruption risk integration into the spotlight.

As crises unfold on the global stage, the inextricable link between corruption and human rights visibly continues to harden. For example, the 2018 Mexico earthquakes saw corrupt inspectors contribute to building collapses that killed hundreds of people, and over US \$300 million was fraudulently diverted from the Honduran social security institute to fund Juan Orlando Hernández' 2013 presidential election campaign, creating widespread medical shortages and leaving thousands dead. Moreover, domestic legislators are falling into step with action being taken in other jurisdictions, exemplified by recent activity around Xinjiang, China, in terms of forced labour import bills. Fundamentally, the keynote clarified the powerful role of regulators and stakeholders in compelling businesses to treat human rights and corruption holistically “as two sides of one coin”.

### An imperfect overlap

The keynote also explored integration opportunities arising from this global convergence of due diligence obligations.

Acknowledging the limits to a holistic risk management approach, Jonathan Drimmer explained how human rights and anti-corruption are separate substantive fields that require

different expertise, procedures and remediation methods. As they also have overlapping, yet distinct, philosophical premises, he conceded businesses cannot simply combine human rights and anti-corruption processes and “call it a day”.

Nonetheless, the keynote identified numerous points of overlap such that integration makes sense. Broadly, human rights programs can draw on certain unique qualities of effective anti-corruption programs, as they are often more mature given regulatory pressures and greater board-level oversight. Similarly, anti-corruption specialists can leverage human rights training processes and grievance mechanisms to enhance compliance synergies. Joint accountability metrics and key performance indicators, shared risk assessment tools and combined sustainability reporting were identified as hallmarks of a well-integrated risk management program.

The keynote prompted businesses to be wary of corporate silos, as discrete functional units with separate oversight, processes and reporting can impede the coordination and planning essential to integration. Jonathan Drimmer also encouraged businesses to reframe the way they perceive human rights and anti-corruption risks. Traditionally, human rights risks have been viewed as the potential impact to third parties, whereas corruption risks are assessed often for their impact upon the business. However, he contended there is no reason why human rights due diligence cannot also consider business risks and stakeholder risks. Likewise, he emphasised anti-corruption due diligence should certainly consider impacts upon third parties.

### Calls to action:

- Embrace interdisciplinary collaboration. Anti-corruption and human rights specialists have much to learn from one another.
- Look to international trends and soft law norms to prepare for and keep pace with regulatory changes domestically.
- Implementing new risk and compliance systems takes time. It is essential to prepare for what is coming from a regulatory standpoint, but it is also vital to operate ethically and responsibly. Avoid waiting for the law to change – jump in.



**“Corruption is not a victimless crime. It impacts on the daily lives of individuals and communities... it rocks the very core of a healthy democracy.”**

## 2. THE INTERCONNECTEDNESS OF CORRUPTION AND HUMAN RIGHTS RISKS



James  
Anderson



Serena  
Lillywhite



Annika  
Wythes



Anita  
Ramasastry

**Speaker:** James Anderson, Lead Governance Specialist, The World Bank

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

**Speaker:** Annika Wythes, Pacific Regional Anti-Corruption Adviser, UN Office on Drugs and Crime

**Facilitator:** Anita Ramasastry, Professor of Law, University of Washington. Member, United Nations Working Group on Business and Human Rights

**The interconnectedness of corruption and human rights risks has been highlighted and exacerbated during COVID-19, with interrupted supply chains, negative economic growth, and social instability laying the groundwork for a global rise in exploitation. As businesses and institutions recognise how corruption and human rights violations fuel one another, opportunities to leverage intersecting agendas and mechanisms emerge.**

### Complementary agendas

This session explored how human rights and corruption are mutually reinforcing and therefore, must be addressed in parallel. Speakers considered how acknowledging the intersection between anti-corruption and human rights agendas can establish a valuable avenue for constructive dialogue, particularly at the global level. Interestingly, SDG 16 was identified as an 'enabler' for the 2030 Agenda because it upholds a rights-based approach to anti-corruption efforts which can concurrently target root causes of poverty. With the goal of shared prosperity, those who integrate their approach to human rights and corruption can also advance systemic accountability and improve societal participation.

**“If there are human rights violations, often there is corruption facilitating that... Human rights violations themselves can feed in and open up opportunities for corruption”**

### “Due diligence, due diligence and more due diligence”

The session also explored lessons that human rights and corruption specialists can learn from one another. Panellists identified due diligence as a 'sweet spot' for businesses to truly recognise this intersection.

Speakers agreed that corruption and human rights specialists must develop a greater understanding of how to cut across

corporate silos and undertake collaborative, rigorous due diligence. This is because integrated due diligence processes foster a stronger awareness of a country's environmental and political context. It also sheds light on how human rights violations and corruption manifest on the ground.

An example illustrating this interconnectedness was given with reference to the extractives sector, which has one of the highest rates of human rights violations and often operates in jurisdictions with high levels of corruption. As the extractives sector often relies on access to land and water, decisions made about land permits and rezoning can be prone to bribery. When local populations are resettled, human rights violations can be seen through loss of land and livelihood. Speakers also emphasised that corruption is not gender neutral – it disproportionately impacts those who are marginalised, particularly women and girls.

Integrated due diligence benefits human rights specialists because they can better understand how corruption occurs, and how corruption often ties into the abrogation of fundamental rights. Equally, corruption specialists can put a face to the offending.

### Calls to action:

- Anti-bribery specialists should recognise that corruption is not a victimless crime and seek to understand the human impact. Recognising these intersections can enhance cross-silo collaboration and drive global progress on two distinct, yet complementary agendas.
- Likewise, human rights specialists should understand how corruption fuels abuse, and that 'petty' corruption can be a slippery slope.
- Rigorous due diligence is essential. Specialists should work with public defenders, civil society, and the private sector to better understand the history of a project, its environmental impacts, and any connections to public officials.





### 3. STAKEHOLDER DEMAND FOR AN INTEGRATED RISK AND COMPLIANCE APPROACH



Jacki Johnson



David Lines



Dean Mitchell

**Speaker:** Jacki Johnson, Co-Chair, Australian Sustainable Finance Initiative. Non-Executive Director, Community First Credit Union. Co-Chair, UN Environment Programme Finance Initiative

**Speaker:** David Lines, Global Chief Compliance Officer, QBE Insurance Group

**Facilitator:** Dean Mitchell, Partner—Forensic, KPMG Australia

**This session explored how shifting stakeholder expectations around anti-corruption, human rights, and climate change serve as a pressure point for companies to treat risk through an integrated ESG lens. The progressive implementation of an ESG agenda, by key corporate stakeholders, presents myriad challenges for businesses. However, it also reveals opportunities to holistically address escalating compliance obligations.**

#### Stakeholder diversification

Speakers considered how corporate stakeholder networks are increasingly dynamic and diverse, hailing a notable shift in the way that stakeholders engage with corporate affairs. The session explored how today's companies are expected to create value for all stakeholders, not just shareholders. The discussion highlighted how stakeholder conceptions of 'value' are evolving, and progressively being linked to an ESG agenda. Speakers acknowledged that navigating the stakeholder landscape is becoming more complex, as customers, staff, suppliers, regulators, and the broader community are increasingly concerned with and affected by corporate decisions surrounding anti-corruption, human rights, and the environment.

#### Activism and the AGM

The session also highlighted the growing use of company annual general meetings (AGMs) as a vehicle to demand integrated risk and compliance management. Although integration may not be an express concern of all stakeholders, heightened ESG-related expectations are pushing companies to consider integration as the best way forward within a rapidly shifting environment. Speakers agreed that broad stakeholder engagement is a crucial element of a business's day-to-day operations and that boards are becoming more attuned to their stakeholders' concerns, irrespective of whether such concerns are sophisticated in nature. As one panellist noted, "nothing gets the interest of directors more than someone asking questions at the AGM".

#### Calls to action:

- Understanding your stakeholders is crucial. Stakeholder dynamics are increasingly complex and thus, businesses should consider stakeholder expectations as part of their decision-making processes.
- Risk and compliance frameworks should address conduct and cultural issues. Businesses ought to understand their stakeholders' expectations around culture and conduct, and how this can pose risks to the business.
- Boards need to maintain a line of sight over ESG issues and be equipped to answer stakeholders' queries on ESG, particularly at AGMs. Risk and compliance issues are no longer confined to a company's internal operations and the press.





## 4. PRACTICAL INSIGHTS INTO DEVELOPING AND IMPLEMENTING AN INTEGRATED RISK AND COMPLIANCE APPROACH



Rosemary Bissett



Cath Bozanich



Meagan Pillinger



Ben Rix



Rachel Nicolson

**Speaker:** Rosemary Bissett, Head of Sustainability, Governance and Risk, National Australia Bank

**Speaker:** Cath Bozanich, Manager of Sustainability, Fortescue Metals Group

**Speaker:** Meagan Pillinger, Corporate Governance and Compliance Manager, Fortescue Metals Group

**Speaker:** Ben Rix, Head of Anti-Bribery and Corruption, National Australia Bank

**Facilitator:** Rachel Nicolson, Anti-Bribery and Corruption Workstream Chair, GCNA.  
Partner—Disputes and Investigations, Allens

**Building on practical considerations presented within the keynote address, this session explored how companies can work effectively across traditionally siloed functions to implement statutory due diligence and enhance compliance synergies. Sustainability and compliance specialists from Fortescue Metals Group and National Australia Bank provided insight into their internal processes and demonstrated the existence of different pathways towards risk and compliance integration.**

### Reactions to an evolving risk landscape

Speakers observed that in recent years, corporate risk and compliance functions have become more responsive to shifting soft law standards and inferred principles of compliance. This trend was attributed to evolving ESG obligations and heightened stakeholder expectations in the realm of corporate accountability, transparency, and sustainability. Speakers considered how risks are both fluid and proliferating. Each agreed that corruption, climate change, human rights abuses and other ESG-related issues must be treated as material business risks, and that an integrated response is critical to effective mitigation.

### Harmonising corporate functions

Throughout the session, speakers identified junctures in their journey that revealed integration opportunities. Key examples included coordinating across functions to uplift policies and standards and undertaking third party screening and monitoring. Panellists also discussed the value of cross-functional training, which helps employees to understand where specific expertise lies across a business. Such training seeks to empower employees to respond appropriately in an incident, knowing the right questions to ask, and how to liaise between divisions.

Speakers from one company recognised integration potential when faced with the requirement to rapidly undertake a country risk assessment for a prospective offshore project. Common red flags were identified, including jurisdictions with a high corruption risk rating, and a major business transformation. The company's compliance and ESG functions understood they had to break down

silos and “get the right people in the room”. This process allowed these specialists to leverage multidisciplinary expertise across their business, whilst striving to embed best practice risk and compliance standards.

Conversely, panellists from the other company explained how it manages interconnected risk through its three-line defence model: risk is everyone's business (line 1), risk as a function that challenges and assesses line one (line 2), and audit (line 3). Its framework also encompasses mandatory compliance requirements sourced from ‘hard’ law, as well as ‘soft’ or inferred obligations, such as the Universal Declaration of Human Rights.

### Culture is key

Finally, this session acknowledged the crucial role of leadership and culture in executing integration strategies. Speakers addressed how setting the tone from the top is necessary to ensure integrity is upheld in practice – not because it is required, but because it is the right thing to do. Panellists further agreed that corporate values must be ingrained, such that suppliers, contractors and third parties acting on behalf of the business understand and appreciate this culture of integrity. Ultimately, speakers agreed that inculcating good culture will strengthen compliance and mitigate risks throughout an organisation.

### Calls to action

- Incorporating all risks within an integrated risk management framework allows companies to leverage subject matter expertise, view risks holistically and understand intersections between risk types.
- When designing training programs, build case studies that accurately reflect real-life scenarios. Often, multiple risks must be triaged and managed in a single incident.
- Educate third parties on corporate values, policies, and compliance obligations. This mitigates many indirect risks posed by associates and helps inculcate an anti-bribery culture throughout the entire organisation.





## 5. SPOTLIGHT ON CULTURE: EMBEDDING ETHICAL LEADERSHIP AND A HOLISTIC RISK AND COMPLIANCE APPROACH



Debbie Goodin  
BEC FCA MAICD



Steve  
Killelea AM



Dr Attracta  
Lagan

**Speaker:** Debbie Goodin BEC FCA MAICD, Chair, Atlas Arteria Limited. Director and Chair, Audit and Risk Committee, APA Group. Director and Chair, Audit and Risk Committee, Australian Pacific Airports Corporation

**Speaker:** Steve Killelea AM, Founder and Chairperson, Institute for Economics and Peace

**Facilitator:** Dr Attracta Lagan, Co-Principal, Managing Values Pty Ltd

**The final session of Day One explored the central role of organisational culture and ethical leadership in achieving an integrated approach to risk and compliance. Engulfed within the global ESG wave and still reeling from the fall out of the Financial Services Royal Commission, Australian companies are increasingly required to treat culture as a core business risk and instil a culture of integrity from the very top.**

### The expanding role of company directors

Panellists contextualised this session against the backdrop of recent Royal Commissions and explored the transforming role and remit of company directors. After endemic failings of culture and governance were laid bare in the 2019 Financial Services Royal Commission, speakers identified a fundamental shift in the scrutiny of corporations and expectations of stakeholders, particularly around issues of culture, accountability, and transparency. Likewise, speakers observed the growing power of stakeholders to ‘force the board’s hand’, which has brought about a material change in the boardroom. Transcending the financial management and strategy of a business, the role of company directors now includes oversight of culture and increasingly, integrated risk and compliance management.

### Enriching culture through systems-thinking

The session also explored the value of systems-thinking, particularly for companies seeking to improve their organisational culture. Systems-thinking is a holistic analytical approach which considers the interactions of a system’s constituent parts, and how those parts operate and mature within the context of larger systems. It requires a circular mindset rather than a linear one and recognises that systemic behaviour stems from the balancing and reinforcement of key moving parts.

As embedding good culture also requires a mindset shift, speakers maintained this cannot be viewed as a box-ticking exercise. Instead, leaders must look to shift intricate components within the broader corporate organism, over time. Practically, the session

identified corporate silos and the exclusive pursuit of bottom-line results as key barriers to cultural transformation. Panellists also advised leaders to stay in sync with the realities of their team, as well as external systemic forces. Those who depart from a pragmatic cultural trajectory in pursuit of idealistic goals can create a disconnect which inhibits cultural progress.

### Accountability, ethics, and behavioural science

In recognition of the critical role of ethical leadership and growing spectrum of board accountabilities, the session considered whether the character and background of executives should factor into a company’s cultural design. As risk and compliance often boil down to human behaviour, speakers acknowledged the power of behavioural science in aiding governance decisions and promoting a mindset of continuous learning. Despite initial push back when the [ASX Corporate Governance principles](#) were amended to require board oversight of culture, speakers identified material progress in the attitudes and conversations taking place in boardrooms today. Ultimately, panellists agreed that values of transparency and integrity are becoming inherent requirements of any board position.

### Calls to action

- Culture is measurable and manageable. Adopting a systems-thinking approach can reveal and predict risk and cultural deficiencies.
- Business leadership is not all about bottom line results. Pursuit of profit at the expense of integrity makes for an unsustainable organisation which will likely ‘die prematurely’.
- Looking at the character and values of executives, in addition to their capacity to do the job, can aid the shaping and improvement of corporate culture.





## 6. REFLECTIONS ON AFP AND CDDP BEST PRACTICE GUIDELINES ON SELF-REPORTING OF FOREIGN BRIBERY



Jeldee Robertson



Rachel Nicolson

**Speaker:** Jeldee Robertson, Financial Crimes Specialist, Australian Federal Police

**Facilitator:** Rachel Nicolson, Anti-Bribery and Corruption Workstream Chair, GCNA.  
Partner—Disputes and Investigations, Allens

**In 2017, the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) released a joint best practice guideline, designed to assist corporations in self-reporting foreign bribery.**

In determining whether prosecuting a self-reporting company is within the public interest, the guidelines hold relevant considerations to include a company's remediation efforts, culture, and governance framework. This session examined the application of the guidelines over the last three years, offering a regulatory perspective on how companies should respond to bribery and corruption incidents and instil a robust compliance culture.

### Australia's response to the guidelines

Broadly, the session explored a significant shift transpiring throughout the Australian private sector, as the overt encouragement and implicit expectations around foreign bribery self-reporting continue to intensify. In conversation with Rachel Nicolson, Jeldee Robertson discussed how corporations and enforcement authorities have responded to the guidelines thus far.

### Key insights

- The first referral to the CDPP has been achieved under the guidelines.
- International referrals continue to be a significant source of leads. The AFP is working productively with the International Anti-Corruption Coordination Centre (IACCC) and the International Foreign Bribery Taskforce.
- Intelligence insights from, and relationships with, the Banking Sector have improved since the Financial Services Royal Commission.
- Kleptocracy / Grand Corruption is a key focus for the Biden administration, and an area in which the AFP would like to do more.
- The absence of high-profile outcomes and published cases may be hindering the uptake of self-reporting.
- The AFP is working to make the entry and exit ramps for corporations that want to self-report and cooperate more user friendly.





## 7. CASE STUDY

**This hypothetical case study formed the basis of the Responsible business conduct through integrated risk management workshop and aimed to highlight the need for adequate procedures to prevent bribery and mitigate human rights risks. The case study and associated activities provided participants with practical insights into developing a holistic approach to compliance which addresses bribery and human rights.**

### Location

Dhaka, Bangladesh

### Industry

Fashion/Apparel

### Key actors

- Opal Clothing Ltd (OC) (Australian parent)
  - General Counsel
  - Deputy General Counsel
  - Chief Operations Officer
  - Sustainability Officer
- Opal Manufacturing (OM)  
(wholly owned Bangladeshi subsidiary)
  - Chief of Operations (Bangladesh)
- Other
  - Senior official, Department of Environment (Bangladesh)
  - Representative, anti-corruption non-government organisation (Bangladesh)
  - Third-party investigator (Bangladesh)

### Your role

Deputy General Counsel, Opal Clothing Ltd

### Disclaimer

This fictional case study was deliberately constructed via a collaborative process by event organisers. The facts are not based on any one actual situation, nor are they intended to be. This case study cannot be reproduced without permission from the GCNA.

### Key Facts

- **Opal Clothing Ltd (OC)** is an ASX 300-listed mid-sized apparel retailer that currently operates in Australia and the United Kingdom (UK). OC traditionally has sourced most of its products from China, Turkey and Vietnam.
- **OC's** Code of Conduct contains a prohibition on bribery and corruption, which is communicated to staff when they are inducted into the company.
- The company also has commitment statements on human rights, which include the [International Labour Organization's Declaration on Fundamental Principles and Rights at Work](#). It claims on its website to base its approach to human rights on the [UN Guiding Principles on Business and Human Rights](#). To date, it has produced three modern slavery reports in compliance with Australian and UK laws.
- The company's **General Counsel** has responsibility for anti-bribery and corruption compliance, and the company's **Chief Operations Officer** has responsibility for supply chain issues, including human rights issues. The company does not have a dedicated anti-bribery and corruption officer, but has a **Human Rights Officer** who reports to the **Chief Operations Officer** (and does not have a dotted reporting line to the **General Counsel**).
- **OC** has not seen a need to develop comprehensive anti-bribery and corruption compliance procedures, as it only operates in Australia and the UK, jurisdictions with low perceived levels of bribery. However, **OC** has adopted the following anti-bribery and corruption controls in response to perceived bribery and corruption risk emanating from some of its overseas suppliers.
  - The **Legal Team** conducted an anti-bribery and corruption risk assessment in relation to imports from Vietnam, however the company has not carried out an enterprise-wide anti-bribery and corruption risk assessment.
  - The **Legal Team** developed a third-party due diligence checklist for use by the **Operations Team**, and utilises a standard anti-bribery contractual term (based on one found on the internet). As there is no anti-bribery and corruption policy in place, there is low awareness of when these controls should be applied. Consequently, the **Operations Team** carry out due diligence and require anti-bribery contractual terms at their discretion, and rarely raise anti-bribery compliance issues with the **Legal Team**.
  - The company has in place a whistleblower policy and speak up hotline that align with [Australian](#) and [UK](#) whistleblower protection laws.
  - Training of staff on ABC issues and processes currently occurs on an ad-hoc basis; mostly after international bribery enforcement actions involving other companies are reported in the media.





7. CASE STUDY CONTINUED

- **OC** is looking to integrate its operations by establishing an apparel factory.
- To facilitate its strategy, **OC** successfully incorporated a wholly-owned subsidiary in Bangladesh three months ago. The subsidiary, **Opal Manufacturing (OM)**, was set up primarily to manufacture and export garments for **OC's** distribution and sale throughout Australia and the UK.
- Bangladesh is one of the world's largest garment exporters but also has a high [Corruption Perception Index](#) rating. Bangladesh has a moderate prevalence of modern slavery according to the Walk Free [Global Slavery Index](#).
- The **OM CEO** appointed an Australian expat as **Head of Operations (Bangladesh)** two months ago and tasked her with overseeing the construction of the new factory at a greenfield site on the outskirts of the city of Dhaka. The **Head of Operations** has extensive experience managing business development projects but no prior experience working in Bangladesh and is unfamiliar with its local laws and customs. Moreover, she has not undertaken any practical anti-bribery and corruption training to date, and has not received any communication from **OM's** management about the company's anti-bribery and human rights expectations or procedures.

Your task

Things are starting to move forward in Bangladesh, and the **General Counsel** has asked you to consider what procedures OC should adopt to prevent foreign bribery by **OM** and/or its associated persons.

Additional Facts

- It is six months later, and most of your recommendations have been accepted by the business and are in the process of being operationalised. However, the anti-bribery and supply chain compliance functions have not been integrated.
- In the meantime, the **Head of Operations** liaised with **Bangladeshi government officials** to obtain the necessary licenses for the new factory's construction and operation. These licenses included an Environmental Clearance License from the Department of Environment, a Factory Establishment License from the Department of Inspection for Factories and Establishments, a Trade License from the local City Corporation Office, and an Export Registration Certificate from the Ministry of Commerce.

- It proved more difficult than anticipated for the **Head of Operations** to obtain the Environmental Clearance License from the **Department of Environment**. A **senior official** in the Department recommended that the process – which had already taken over three months, delaying the project – could be expedited for an additional fee, which he stated was 'standard practice'. Based on an assumption that this was standard practice and the 'cost of doing business' in the country, the **Head of Operations** paid the additional fee of AU \$5,000 to the **senior official** in cash, using a discretionary fund to which she had access.
- Construction of the factory began shortly after. A very serious local outbreak of the COVID-19 pandemic resulted in a long lockdown, halting construction, and delaying the project significantly. The **Head of Operations** engaged with the **Department of Commerce**, and a **senior official** recommended that OM utilise a local **labour recruitment agency** that had 'special permission' to operate through the lockdown. The **Head of Operations** proceeded to engage the recruitment agency without conducting due diligence, due to the direness of the situation.
- Not long after this occurred, **OC** received a report through its speak up hotline from an anti-corruption non-government organisation (NGO) representative in Bangladesh. The **NGO representative** alleged that a payment had been made by **OM** to a senior official to obtain an environmental approval for the construction of the factory.
- As **Deputy General Counsel** for Opal Clothing Ltd, you receive notification of the report made by the NGO representative in Bangladesh. You notify the **General Counsel** who orders an investigation into the matter by a **third-party investigator** based in Bangladesh.
- The **third-party investigator** finds evidence:
  - of the payment of AU \$5,000 to the **senior official from the Department of Environment**;
  - that the local **labour recruitment agency** had no official permission to operate through the lockdown, but is partially owned by the **senior official from the Department of Commerce**; and
  - an association of bonded labour (modern slavery) with the **labour recruitment agency** which illegally recruited migrant workers from Myanmar to construct the OM factory.

Your task

The **General Counsel** has asked you to consider why OC's anti-bribery procedures and controls failed.





## 8. WORKSHOP PART ONE: EVALUATING ADEQUATE PROCEDURES AND IDENTIFYING GAPS



James Campbell



Victoria Eastwood



Jessye Freeman



Caroline Marshall



Cindy McNair



Andrew Wilcock

**Speaker/Workshop facilitator:** James Campbell, Partner – Disputes and Investigations, Allens  
**Workshop facilitator:** Victoria Eastwood, Senior Associate – Disputes and Investigations, Allens  
**Workshop facilitator:** Jessye Freeman, Senior Associate – Disputes and Investigations, Allens  
**Workshop facilitator:** Caroline Marshall, Managing Associate – Disputes and Investigations, Allens  
**Workshop facilitator:** Cindy McNair, Managing Associate – Disputes and Investigations, Allens  
**Workshop facilitator:** Andrew Wilcock, Senior Associate – Disputes and Investigations, Allens

Part one of the workshop provided an overview of ‘gold standard’ bribery prevention procedures, encouraging business participants to develop their anti-bribery and corruption programs in line with international best practice. Workshop participants were invited to consider the Dialogue’s case study and address whether adequate anti-bribery and corruption procedures were in place, given the scenario’s facts and context.

Participants were empowered to put into practice insights gained on Day One, connecting the dots as to why developing a holistic and integrated approach to anti-bribery risk and compliance is a business imperative.

### Background

The session referred to recent reforms proposed in the Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019. If passed, Australian corporations will be criminally liable for failing to prevent an associate’s bribery of a foreign public official, unless they have ‘adequate procedures’ in place designed to prevent the offending. The workshop drew heavily on themes inherent in ‘adequate’ bribery policies and procedures, as specified in draft guidance published by the Attorney General’s Department.

Throughout the workshop, facilitators emphasised that adequate procedures must adhere to two overarching principles: proportionality and effectiveness. Ultimately, procedures must be both proportionate to the risk involved and size of the relevant company and, capable of effective implementation throughout the entire enterprise, including to subsidiaries and associates.

### Key insights

Guided by facilitators from Allens, participants considered the following questions:

**Management dedication:** *Do OC’s board or senior management need to take steps to facilitate the development of procedures to prevent foreign bribery by OM and its associated persons?*

Participants agreed that OC’s board and senior management must be involved in the development of the company’s anti-bribery procedures and policies. They also identified that the board needs to ensure key accountabilities are assigned and that relevant stakeholders are involved in the development of procedures. In the context of policy design, participants highlighted senior management must critically consider how such policies will be operationalised and implemented. Upon breach of policy, participants also emphasised that there must be mandatory escalation up to the board. Given the major change in risk environment that OC was about to enter, by establishing a subsidiary in a foreign country, participants concluded the board must recognise the new risks this strategic change naturally carries and adapt procedures accordingly. The key takeaway from this discussion was that the board should be hands on, to communicate the company’s anti-bribery procedures throughout the company and set the tone from the top.





8. WORKSHOP PART ONE: EVALUATING ADEQUATE PROCEDURES AND IDENTIFYING GAPS CONTINUED

Key insights continued

**Risk assessment:** *What steps should OC take to assess bribery and corruption risk associated with OM and its associated persons?*

Drawing on learnings from Day One, participants explored how OC should consider the intersection between bribery and modern slavery risks and embed human rights considerations within the company's anti-bribery risk assessment framework. Participants discussed risks associated with the company's geographic presence and the nature of its business activities, agreeing that previous supply-related learning from other jurisdictions should be carried over to this new project. The group also placed emphasis on the need to identify control gaps, and to consider intersecting risks, including within OC's supply chain. Fundamentally, participants highlighted the importance of conducting risk assessments at an enterprise-wide level, to ensure every employee and associate receives adequate training on such risks before deployment.

**Controls:** *Pending the outcomes of any risk assessment, what anti-bribery and corruption controls is OC likely to need to develop for OM?*

Participants emphasised the importance of a risk-based approach to due diligence, particularly in relation to third party contractors. Identifying due diligence requirements will vary depending on the risk context, participants nevertheless decided that enhanced due diligence is required in OC's circumstances.

As the new project is commencing in a jurisdiction with a high corruption perception index rating and entails dealing with foreign public officials, participants agreed OC should begin developing certain controls for OM irrespective of any risk assessment outcomes. Suggested controls included central approval mechanisms for payments made in and out, stringent authorisation processes for sub-contractors and contractual clauses which mandate compliance with local laws. Participants noted that OC should build controls with a strong understanding of the local laws and culture, as for example, gift giving customs will differ between Australia and Bangladesh. Similarly, the group highlighted that conflict-of-interest controls and tender processes will require the input of local counsel, to navigate issues surrounding the personal and professional interests of OM and its associates, particularly regarding procurement activities.

**Confidential reporting and investigation:** *Will OM's whistleblower policy and channels need to be adapted to the local context?*

Discussions revolved around how OM's whistle-blower policy and channels should operate, given the local context.

Participants first addressed the accessibility of reporting processes for local employees, considering whether staff could access, for example, stable internet connection. The group also highlighted the utility of a 'speak up' anonymous hotline, identifying the nomenclature as preferable to 'speak out' because it carries less 'dobbing in' connotations. After scaffolding suitable whistle-blower channels, participants turned their minds to how local staff might understand complaints procedures in general. They identified that in Western countries, speaking up may enjoy greater acceptance than in other jurisdictions where there is a higher prevalence of corruption and wrongdoing. They also considered challenges here for OC, as the risks the board considers critical may not be viewed in the same way by local employees working in areas where bribery is endemic. Finally, participants reflected upon how gender and faith can influence a person's preparedness to speak up, suggesting that targeted workshops could be run to empower these groups to report breaches.

**Communication and training:** *What steps should OC take to communicate a zero-tolerance approach to bribery and corruption to OM staff and third parties, and what training should be rolled out?*

Participants agreed mandatory anti-bribery training should be implemented for all employees throughout OC and OM, including and especially for third parties. Consideration of factors such as the local language and cultural sensitivities were deemed fundamental for effective messaging and training, with participants highlighting the specific importance of expatriate training on the case study facts. The group viewed training initiatives as a key opportunity for OC to reaffirm the expectations of senior management and the compliance obligations of employees, and to map out the interconnectedness of the company's human rights and anti-bribery policies. Participants unanimously agreed that training should be dynamic and responsive to changes in the local context and regulatory landscape.

**Monitoring and review:** *How can OC monitor, review and continuously improve anti-bribery compliance procedures as they apply to OM?*

Finally, participants considered modern slavery risks in OC's supply chain, noting a lack of whistleblowing complaints. It was noted that a lack of whistleblowing complaints could not necessarily mean a lack of non-compliance issues. It could mean that the processes in place for whistle-blowing are not adequate. Therefore, in ensuring that procedures are continually being reviewed, companies also need to constantly review the effectiveness of complaint procedures.





## 8. WORKSHOP PART TWO: MAPPING OUT AN INCIDENT RESPONSE



James Campbell



Victoria Eastwood



Jessye Freeman



Caroline Marshall



Cindy McNair



Andrew Wilcock

**Speaker/Workshop facilitator:** James Campbell, Partner – Disputes and Investigations, Allens

**Workshop facilitator:** Victoria Eastwood, Senior Associate – Disputes and Investigations, Allens

**Workshop facilitator:** Jessye Freeman, Senior Associate – Disputes and Investigations, Allens

**Workshop facilitator:** Caroline Marshall, Managing Associate – Disputes and Investigations, Allens

**Workshop facilitator:** Cindy McNair, Managing Associate – Disputes and Investigations, Allens

**Workshop facilitator:** Andrew Wilcock, Senior Associate – Disputes and Investigations, Allens

Part two of the workshop drew on additional facts set out in the Dialogue case study, prompting participants to contemplate next steps in the event that anti-bribery procedures fail. The session mapped out a best practice incident response, addressing self-reporting obligations and the way intersecting bribery and human rights issues manifest in a crisis.

### Key insights

Participants considered the following questions:

#### **1. Why did OC's anti-bribery controls fail to prevent the payment to the senior official from the Department of Environment? How should they have functioned in the circumstances?**

Realising that OC had designed excellent controls and procedures six months ago, participants questioned why they had not been implemented. It was also evident that anti-bribery culture had not been embedded throughout the organisation. Already two major red flags, the group then examined the Head of Operations' conduct regarding the \$5,000 payment. Although she may have simply been untrained and unaware of the bribery risks, participants considered whether ulterior motives were involved. Clearly, OC's failure to implement controls provided an opportunity to make these payments undetected. Yet, the group agreed OC should investigate how she accessed the discretionary fund and, given the project had delayed, whether undue pressure was placed on her to obtain the licences quickly. This sparked a conversation about how significant incentives are often tied to the profitable and timely completion of a project, rather than success from a risk and compliance standpoint. The group agreed OC should examine the impact of employee incentives upon the efficacy of its broader anti-bribery frameworks.

Participants identified OC's controls should have functioned by:

- detecting and preventing misconduct;
- substantiating payments being made;

- periodically reviewing budgets on large projects;
- performing due diligence on the recipients of payments;
- encouraging escalation of anti-bribery concerns; and
- embedding a healthy risk culture.

#### **2. Why did OC's anti-bribery controls fail to result in scrutiny of the local labour recruitment agency? How should they have functioned in the circumstances?**

Participants determined that the failed inculcation of a healthy risk culture from OC to OM contributed to the lack of scrutiny around the local labour recruitment agency. They also noted the Head of Operations did not receive adequate training, so may not have fully appreciated the risks inherent in her dealings with third parties. While recognising it was the primary responsibility of OC to ensure she understood what those risks were, participants also agreed the Head of Operations needed to take steps to ensure she understood how to properly deal with counterparties.

The group noted that comprehensive due diligence should have been conducted to identify critical third party and counterparty risks, ideally by reputable specialists based within Bangladesh. They agreed it would have been helpful if tests were carried out to ascertain who the ultimate beneficiaries of the local recruitment agency were. Other suggested measures included standard onboarding and screening of counterparties, implementing a supplier code of conduct, preparing due diligence risk profiles, and holistically assessing interconnected human rights and bribery risks.





## 8. WORKSHOP PART TWO: MAPPING OUT AN INCIDENT RESPONSE CONTINUED

## Key insights continued

**3. How could the integration of the anti-bribery and supply chain compliance functions have assisted in the circumstances?**

In discussing OC's siloed anti-bribery and supply chain compliance functions, participants drew on learnings from Day One to illustrate the benefits of integrated risk and compliance management. The group determined a siloed approach had failed to accommodate the interconnected nature of anti-bribery and human rights risks, and a holistic approach could have revealed more red flags, earlier. A holistic perspective helps companies evaluate risk in the broader business context, and participants thought this could have pushed OC to promote an anti-bribery awareness throughout the organisation, via communication and training programs.

Participants also recognised a holistic approach must be properly operationalised. The group identified problems where there is a 'vertical' rift between the conceptual and practical implementation of compliance functions, as this can obstruct cascading accountability and undermine a healthy risk culture. They also recognised problems with a 'horizontal' disconnect, where certain business functions do not fully grasp the interconnectedness of human rights and bribery risks. Major red flags might have been captured through supply chain due diligence, or in the finance department's reconciliation of bank statements, if the entire organisation had been trained on key intersections. Participants concluded OC must inculcate a holistic approach to bribery and modern slavery across the board, to maximise the benefits of compliance integration.

**4. Assuming that the failure to prevent foreign bribery offence is in effect at the relevant time, what factors are likely to be relevant to an assessment of whether OC can invoke the 'adequate procedures' defence?**

Based on the Attorney General's draft guidance, participants agreed OC would unlikely prove it had adequate procedures in place designed to prevent the foreign bribery of its associates. Building on discussions in Part One of the Workshop, the group explored a range of issues likely to factor into a court's assessment. Broadly, the group identified that OC designed anti-bribery procedures that were proportionate to OM's high-risk profile, however, failed to operationalise the controls. Moreover, the foreign bribery stemmed from a single point of failure – inadequate training and supervision of the Head of Operations, one of the most important executives within OM. With deficiencies evident under each fundamental element of 'adequate procedures', participants agreed this boiled down to the lack of probity OC had given towards understanding their risk landscape and taking proper steps to mitigate it.

**5. Should OC self-report to Australian law enforcement agencies in the circumstances?**

Participants decided even where there is no legal obligation to self-report, it can often be in a company's best interests to do so. They outlined the potential benefits of self-reporting, such as mitigating reputational harm through negative press, and obtaining more favourable treatment by enforcement authorities. Ultimately, self-reporting was viewed as the right thing to do, as it demonstrates a strong stance against misconduct and upholds values of transparency and integrity. Participants acknowledged there was a counterargument, as even if OC self-reported, cooperated with authorities and conducted a full investigation, they may still be prosecuted. Nevertheless, the group concluded self-reporting would allow OC to clearly convey the action it takes to remedy or address the incident and perhaps avoid protracted legal issues down the track. Participants also noted that OC should not just self-report to Australian law enforcement agencies, but also foreign regulators where relevant. All agreed that OC should seek specialist advice before self-reporting.

**6. Should OC engage with any other stakeholders in the circumstances?**

Finally, participants discussed the imperative for OC to identify and engage with key stakeholders affected by the incident or potential regulatory investigation. Illustrating the importance of a sophisticated and integrated stakeholder engagement strategy, the group agreed OC should not just look to its traditional stakeholders, but also those within the broader community. Participants anticipated issues to arise out of OC's interactions with law enforcement agencies and the media and identified the importance of robust communications protocols. They also agreed OC should carefully consider their engagement with local law authorities, given this incident implicated local senior officials. Conversations revolved around the delicate balance OC must strike, between protecting its own interests throughout the investigation and upholding its social responsibility to the victim migrant workers. Ultimately, participants agreed OC should engage with both the whistleblower NGO and other modern slavery focused NGOs on the ground, to properly address the exploitation it had contributed to.





# DIALOGUE IMPACT AND LESSONS LEARNED

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

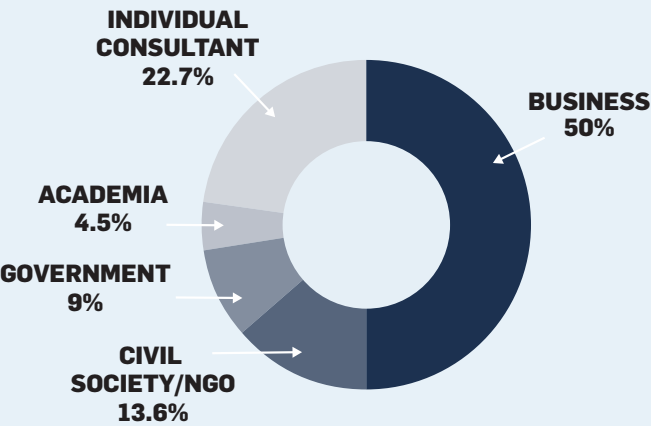
## DIALOGUE ACHIEVEMENTS

- Reached an audience of 215 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: 94% of people thought the format of the Dialogue was good to excellent.
- Overall, 93% of people thought the Dialogue was extremely or considerably valuable.

## PARTICIPANT HIGHLIGHTS

- The expertise of speakers and value of insights provided.
- The noticeable enthusiasm of speakers to make a difference.
- Learning about interconnected risks – each driving or being driven by the other.
- The opportunity for informal benchmarking in approach and some 'over the horizon' views.

## PARTICIPANT BREAKDOWN



## WHAT PARTICIPANTS WOULD LIKE TO SEE AT THE 2022 DIALOGUE

- Continue with the multi-level approach – speakers from macro, meso and micro institutions.
- More 'over the horizon' discussion.
- International developments. Practitioners/ directors living the compliance.



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