

Business integration of Human Rights Due Diligence in Australia: **Modern Slavery and Beyond**

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Global Compact
Network Australia

||
PILLAR TWO



Acknowledgement of Country

The UN Global Compact Network Australia and Pillar Two acknowledge the Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. We pay our respects to Elders past, present and emerging and recognise the valuable contributions Aboriginal and Torres Strait Islander peoples make towards all aspects of Australian life. Our vision for reconciliation is a future where all Australians are united by our shared past, present, future and humanity.

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UN Global Compact Network Australia

As a special initiative of the United Nations (UN) Secretary General, the 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 18,000 companies and 4,000 non-business signatories based in over 160 countries and 65 local networks, the UN Global Compact is the world’s largest corporate sustainability initiative – one Global Compact uniting business for a better world.

Locally, UN Global Compact Network Australia (UNGCNA) brings together signatories to the UN Global Compact, including over 50 listed companies, other businesses, 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

Pillar Two

Pillar Two is a specialist business and human rights advisory firm with extensive global experience supporting businesses and other organisations to identify, assess and develop effective responses to their human rights impacts, and to meaningfully engage stakeholders around their human rights approaches. Its areas of practice include human rights policy development and risk management, human rights including modern slavery reporting, stakeholder engagement, complaints handling, human rights awareness raising programmes, and government and industry engagement.

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Acronyms and Abbreviations

ASX	Australian Securities Exchange
CSDDD	Corporate Sustainability Due Diligence Directive
ESG	Environmental, Social and Governance
HRDD	Human Rights Due Diligence
EU	European Union
GRI	Global Reporting Initiative
ILO	International Labour Organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nations Office of the High Commissioner for Human Rights
UK	United Kingdom
UN	United Nations
UNGCNA	UN Global Compact Network Australia
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
US	United States of America

Foreword



Kate Dundas

Executive Director,
UN Global Compact Network Australia

Human rights are central to the United Nations. Ever since the proclamation of the Universal Declaration of Human Rights in 1948, the United Nations has worked to embed a human rights-based approach to all human development. The idea of universal, inalienable rights may be as close as we've ever got to a single global perspective - based on principles of universality, humanity, equality and non-discrimination, they represent the baseline of what we accept as the human experience, for everyone, everywhere, without distinction.

Of course, business respect for human rights is integral to the United Nations Global Compact. Since its inception, a commitment to respecting and supporting human rights and labour rights has been a core component of delivering on our UN Global Compact Ten Principles.

Within Australia, we know that many businesses have undertaken a commendable amount of work to identify, mitigate and report on their modern slavery risks in response to the Australian *Modern Slavery Act 2018*. Our participants have also volunteered time, resource, and energy into sharing this work with us through our Modern Slavery Community of Practice, human rights-based accelerator programmes and consultations sessions, and of course through our flagship annual Australian Dialogue on Business and Human Rights.

However, we know stakeholder expectations are changing. Governments and regional governance bodies around the world are now considering their approach to human rights due diligence (HRDD) expectations of companies and some have begun to mandate action through legislation. Investors also face this pressure and are challenging companies within their portfolios to align with international standards. Civil society also expects more from businesses, as observed through increased use of grievance mechanisms and other accountability channels, as well as the calls from rights-holders all around the world: *"no more about us, without us"*.

With the Australian Government now considering potential amendments to our modern slavery transparency legislation, the time is now for Australian businesses to expand their assessment of their own operations and value chain's impact beyond modern slavery to broader human rights issues. Companies can do this by aligning with the UN Guiding Principles on Business and Human Rights (UNGPs), which provide the most effective framework for business to operationalise respect for all universally recognised human rights. As more jurisdictions around the world adopt legislation based on the UNGPs, aligning with their expectations around due diligence represents the most effective and cost efficient step businesses can take to design resilience into their ESG risk management processes.

This publication represents our contribution towards this alignment. It outlines key, actionable steps for businesses to take in understanding their progress on implementing human rights due diligence, leveraging their existing modern slavery risk management integration, and assessing and addressing broader risks to people.

If you'd like to learn more, engage with like-minded participants and be part of the leading centre of excellence for business and human rights in Australia – join the UN Global Compact Network Australia. You know where to find us.

Kate Dundas



Vanessa Zimmerman

CEO, Pillar Two
Chair, Human Rights Workstream and
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The endorsement of the UNGPs by the UN Human Rights Council in 2011 catalysed a global effort by different stakeholders including businesses to use a common framework to ensure business-related human rights risks are better identified, managed and where they turn into adverse impacts, remedied.

Since then, we have seen significant momentum in the responses from those stakeholders, including governments around the world beginning to adopt new, and strengthen existing, legislation which better helps them to put in place a "smart mix of measures" to support and require businesses to respect human rights. Recent examples include the review in *Australia of the Modern Slavery Act 2018* which recommended the introduction of modern slavery due diligence requirements, the New Zealand Government's announcement that it will introduce modern slavery legislation, and the EU moving towards mandatory human rights due diligence legislation with the draft Corporate Sustainability Due Diligence Directive (CSDDD).

Even where businesses are not directly subject to these laws, stakeholders including investors, workers, civil society organisations and business partners continue to call for businesses to 'know and show' that they are respecting human rights. To meet evolving expectations, businesses should utilise the UNGPs to meet their responsibility to respect all internationally recognised human rights across their own operations and value chains.

This publication provides a timely and practical overview of the international policy and regulatory environment, external stakeholder expectations, and current business practice in Australia around human rights due diligence. It also aims to provide a roadmap for businesses seeking to undertake meaningful human rights due diligence in line with the UNGPs, including those seeking to strengthen their broader

human rights risk management in addition to the steps they are already taking to avoid and address any involvement in modern slavery. It intends to provide actionable guidance for businesses at all stages of implementing effective human rights due diligence processes to support them to respect all internationally recognised human rights.

Human rights, including freedom from modern slavery, may sometimes be thought of as issues only for large multinational companies in high-risk sectors, but this is not the case – and every company, regardless of size or sector, has a responsibility to respect human rights and a role to play. While many smaller or medium-sized businesses may not have previously been covered by an existing legislative framework, we hope these businesses will benefit from the practical examples and guidance provided in this publication as they seek to meet rising expectations.

For all Australian businesses, regardless of your size, sector and stage of implementing human rights due diligence and other key aspects of the UNGPs, we hope that this publication provides practical support to enable you to take a robust and sustainable approach to managing your human rights risks.

Vanessa Zimmerman

About This Publication

Purpose

Since the introduction of Australia's *Modern Slavery Act* (Cth) in 2018 (*Modern Slavery Act*) over 7,000 businesses have prepared and filed a modern slavery statement with the Online Register established by the Australian Government. The Act requires entities above a certain size to submit an annual modern slavery statement that describes the risks of modern slavery practices in their operations and supply chains, and actions taken to address these risks. While statements vary in detail, the mandatory nature of the reporting regime has meant that many entities in Australia have begun to focus efforts on assessing and addressing modern slavery risks in their own operations and supply chains.

Progress in Australia made by business toward assessing and addressing broader adverse human rights impacts in line with the UN Guiding Principles on Business and Human Rights (UNGPs) is less clear. The UNGPs are the authoritative global source of practical guidance for businesses seeking to assess and address any adverse human rights impacts associated with their own activities and business relationships. They support businesses to 'know and show' that they meet the responsibility to respect all internationally recognised human rights. Some companies in Australia have begun to expand their modern slavery risk management processes to include broader human rights risk management and have adopted various voluntary reporting formats. However, there is still much work to be done to advance these activities across all sectors and companies.

This publication seeks to support Australian businesses to align their activities to assess and address adverse human rights impacts with which they may be involved with in line with the UNGPs, with tailored advice for businesses at different stages of implementation.

This publication was funded by the Australian Government through the National Community Crime Prevention Program: Modern Slavery Grant opportunity. The views expressed in this publication are the authors' alone and are not necessarily the views of the Australian Government.

Approach

The findings and guidance in this publication have been informed by desktop research, a literature review, consultations held with various stakeholders across business including the investor community, civil society and academia, and interviews held with UNGCNA participants and investor representatives.

Desktop research included reviewing the evolution of global legal, regulatory and industry standards related to business and human rights. UNGCNA participants were also surveyed and interviewed about their experiences in identifying, assessing, managing and mitigating human rights risks to people within their respective operations and value chains, including exploring the potential for elements of their modern slavery risk management approach to be expanded to address broader human rights risk management.

How to use this report

Throughout our research and supporting consultations, it was identified that many Australian businesses have undertaken a significant amount of work towards assessing and addressing the risk of modern slavery in their operations and supply chains. This publication has been designed to provide practical examples of actions that businesses can take to expand their focus to assess and address broader human rights impacts in addition to modern slavery in line with the UNGPs.

Nothing in this report suggests that modern slavery is not a severe risk to people working within the operations and value chains of Australian businesses. Rather, this report encourages businesses to adopt a broader view of the range of human rights impacts with which they may be involved. While all elements of the corporate responsibility to respect human rights are crucially important, including developing a policy commitment and putting in place effective remediation processes, this publication focuses primarily on human rights due diligence (HRDD) as one of the key areas of evolving stakeholder expectations.

The publication is structured into the following three sections:

Part One provides an overview of the evolving global, regional and local business and human rights legislative and policy landscape, as well as an overview of the increasing stakeholder expectations in relation to the corporate responsibility to respect human rights.

Part Two contains observations drawn from a review of public human rights-related disclosures by ASX50 companies and a series of multi-stakeholder consultations on the integration of respect for human rights into broader business risk management processes. It provides insights into approaches taken by Australian businesses in using human rights due diligence concepts in the UNGPs to integrate respect for human rights into management processes.

Part Three provides a roadmap for Australian businesses to expand their focus beyond modern slavery to also undertake broader human rights due diligence activities. It has been designed to provide actionable guidance for businesses at different stages of implementation of the UNGPs, from those that are beginning to establish their modern slavery risk management processes to those that have a more advanced human rights risk management programme in place.

Part One: The Evolving Business and Human Rights Landscape

Part One:
The Evolving Business and Human Rights Landscape

Since the endorsement of the UNGPs¹ by the United Nations Human Rights Council in 2011, governments around the world have increasingly started to incorporate the expectations set out in the UNGPs into domestic law and policies, with examples including the Australian *Modern Slavery Act* and supporting guidance. This section contains an overview of the evolving business and human rights landscape at both the international level and the domestic level in Australia to help businesses to understand how policy and regulatory expectations around human rights due diligence are evolving at home and abroad.

Over time, legislative standards have begun to evolve to better align with the expectations in the UNGPs. For example, a number of European States have introduced a legislative requirement for businesses to conduct human rights due diligence, the European Union (EU) is moving towards EU-wide mandatory human rights due diligence requirements with the draft Corporate Sustainability Due Diligence Directive (CSDDD), and Australia's recent review of the *Modern Slavery Act* recommended the introduction of due diligence requirements relating to modern slavery.^{2,3}

As these regimes evolve, Australian businesses will be increasingly expected to show they are meaningfully implementing the corporate responsibility to respect human rights across their operations and value chains, including through undertaking human rights due diligence. Throughout this process, the UNGPs will remain the critical, authoritative source of practical guidance for addressing and preventing adverse human rights impacts associated with business activities.

The UN Guiding Principles on Business and Human Rights

Based on three interconnected pillars known as the 'protect, respect and remedy' framework, the UNGPs outline the expectations that:⁴

- > States have a **duty to protect** against human rights abuses by third parties, including business enterprises;
- > All businesses have a **responsibility to respect** human rights; and
- > There should be **access to remedy** for victims of business-related human rights abuses.

While the UNGPs are not legally binding on States or businesses, they are being increasingly integrated into domestic and regional legislative and policy instruments. This reflects the growing recognition of their significance in shaping corporate responsibility including human rights due diligence expectations worldwide.

What are human rights?

Human rights are the inherent rights that we all have simply by virtue of being human. They are universal, inalienable, and apply to all people without discrimination regardless of their nationality, sex, national or ethnic origin, colour, religion, language, or any other status.

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, established the fundamental rights to be universally protected. Its 30 articles alongside the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provided the basis for subsequent human rights conventions and treaties. These three documents collectively are known as the International Bill of Rights.^{5,6,7} Further, the ILO Declaration on Fundamental Principles and Rights at Work includes eight fundamental conventions covering subjects considered to be fundamental principles and rights at work.⁸

Why are human rights relevant to businesses?

The UNGPs outline the expectation that businesses have a responsibility to respect all internationally recognised human rights.⁹ This is understood, at a minimum, as including the rights outlined in the International Bill of Rights and ILO Declaration on Fundamental Principles and Rights at Work.

¹ Office of the High Commissioner for Human Rights (OHCHR) (2011) *United Nations Guiding Principles on Business and Human Rights*. Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (Last accessed 19 June 2023).

² European Parliament (2023) *Draft Corporate Sustainability Due Diligence Directive*. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.html (Last accessed 19 June 2023).

³ Professor John McMillan AO (2023) *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*. Available at: <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF> (Last accessed 16 June 2023).

⁴ OHCHR (2011). Op Cit.

⁵ United Nations General Assembly (1948) *The Universal Declaration of Human Rights*. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last accessed 19 June 2023).

⁶ OHCHR (1966). *International Covenant on Civil and Political Rights*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/instruments-international-covenant-civil-and-political-rights> (Last accessed 19 June 2023).

⁷ OHCHR (1966) *International Covenant on Economic, Social and Cultural Rights*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (Last accessed 19 June 2023).

⁸ International Labour Organization (ILO) (1998) *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*. Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/normativeinstrument/wcms_716594.pdf (Last accessed 19 June 2023).

⁹ OHCHR (2011). Op Cit.

The corporate responsibility to respect human rights

The UNGPs expect that all businesses, regardless of their size, sector, location, ownership and structure, respect human rights. This means that they should:

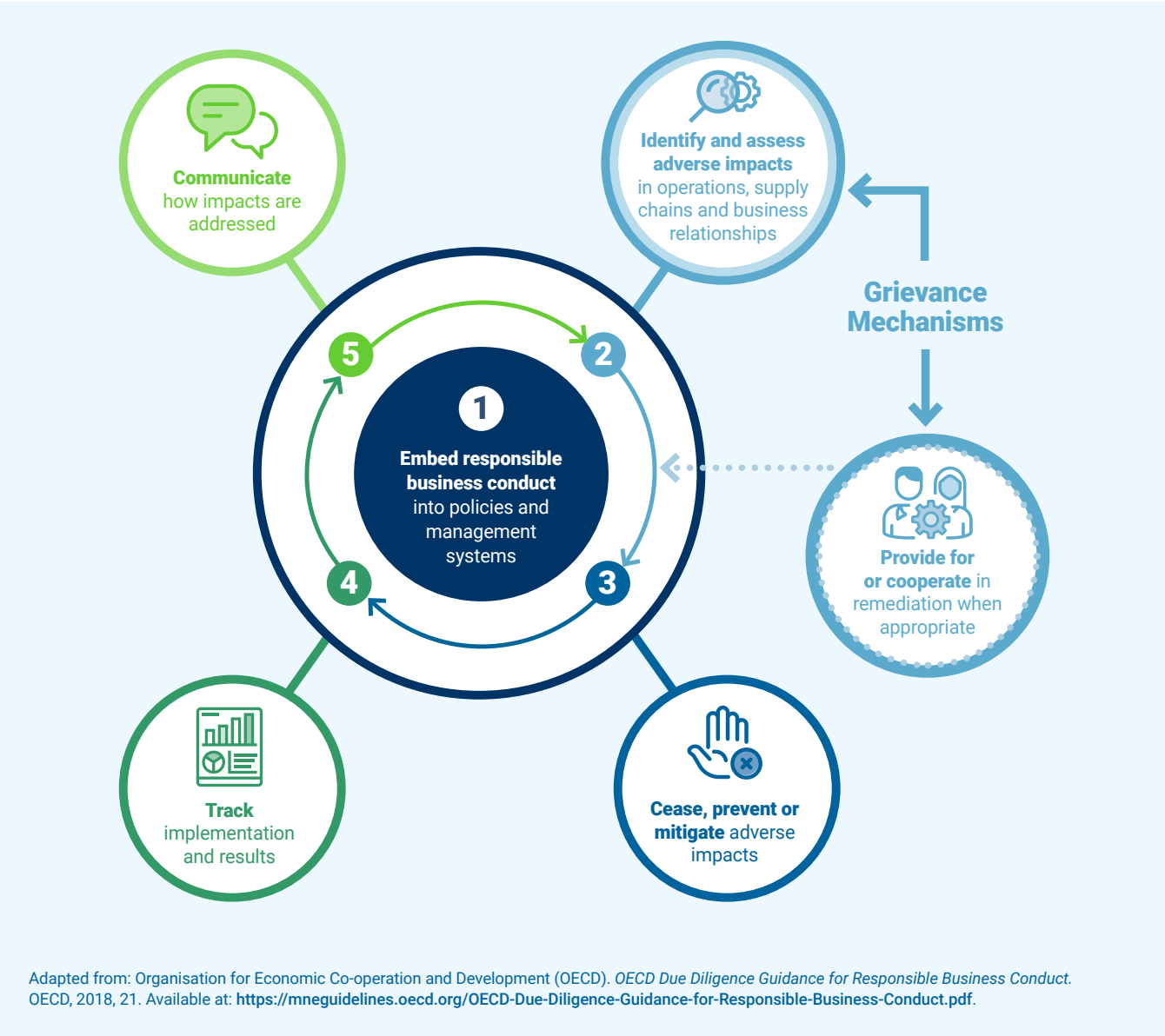
- > Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and
- > Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

There are three elements in the corporate responsibility to respect human rights. First, the UNGPs expect that businesses express their commitment to respect human rights through a policy statement. Second, businesses should carry out human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts (see Figure 1). This process involves assessing both actual and potential human rights impacts.

Then, based on these assessments, integrating an ability to respond to the impacts within the business as well as acting appropriately upon the findings, tracking responses, and communicating how the impacts are addressed. Finally, businesses must provide for or cooperate in the remediation of adverse human rights impacts that they have caused or contributed to.

The UNGPs expect that businesses use what is often called the "continuum of involvement" to determine how they respond to potential or actual human impacts that they identify. Where the business has caused or may cause an adverse human rights impact, it should take all necessary steps to cease or prevent the impact, and provide for or cooperate in its remediation. Where a business contributes or may contribute to a human rights impact, it should take necessary steps to stop or prevent its contribution and use any leverage it has to mitigate any remaining impact to the greatest extent possible.

Figure 1: Human Rights Risk Due Diligence ecosystem



Adapted from: Organisation for Economic Co-operation and Development (OECD). *OECD Due Diligence Guidance for Responsible Business Conduct*. OECD, 2018, 21. Available at: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

In a situation where businesses are directly linked to an adverse human rights impact through a business relationship, the responsibility to respect human rights does not require that the business itself provide for remediation, though it may take a role in doing so. In these situations, the UNGPs outline a number of factors that determine the appropriate action of the business, including how crucial the relationship is, the severity of the abuse, and whether terminating the relationship would have adverse human rights consequences itself. Where a business has leverage to prevent or mitigate the adverse human rights impact it is directly linked to, it should exercise it.

Other key international standards

As the global authoritative standard, the expectations set out in the UNGPs are also reflected in other key international standards to varying degrees – including in the **UN Global Compact Ten Principles**,¹⁰ the **Equator Principles**,¹¹ the **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct**,¹² the **International Labour Organization's (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**,¹³ **International Finance Corporation (IFC) Performance Standards**,¹⁴ and the **GRI Standards**¹⁵ (see Figure 2).

Figure 2: Key International Standards that Reference the UNGPs



¹⁰ United Nations Global Compact (2000) *The Ten Principles of the UN Global Compact*. Available at: <https://unglobalcompact.org/what-is-gc/mission/principles> (Last accessed 19 June 2023).
¹¹ The Equator Principles (2020) *Equator Principles EP4 July 2020*. Available at: <https://equator-principles.com/> (Last accessed 19 June 2023).
¹² Organisation for Economic Co-operation and Development (OECD) (2023) *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. Available at: <http://mneguidelines.oecd.org/mneguidelines/> (Last accessed 19 June 2023).
¹³ International Labour Organization (ILO) (2022) *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_emp/-emp_ent/-multi/documents/publication/wcms_094386.pdf (Last accessed 19 June 2023). Note: The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct were recently updated and are generally seen as incorporating key elements of the responsibility to respect human rights as well as providing a roadmap for responsible business conduct in other areas.
¹⁴ International Finance Corporation (IFC) (2012) *Environmental and Social Performance Standards*. Available at: <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards> (Last accessed 19 June 2023).
¹⁵ Global Reporting Initiative (GRI) (2022) *GRI Standards*. Available at: <https://www.globalreporting.org/how-to-use-the-gri-standards/gri-standards-english-language/> (Last accessed 19 June 2023).

Evolving global regulatory landscape

Since the endorsement of the UNGPs in 2011, there has been an increase in governments globally explicitly seeking to use legislation to reinforce the expectation that businesses respect human rights. This includes laws focused on modern slavery and in some cases broader human rights reporting, as well as mandatory human rights due diligence laws. These regimes have typically been developed alongside existing specific thematic legislation relevant to business and human rights, such as workplace health and safety, cultural heritage protections and privacy laws.

Reporting legislation

Several jurisdictions have introduced modern slavery or broader human rights reporting regimes in recent years. These laws typically focus on creating a legal obligation for entities to report on actions they have taken in relation to specific human rights issues, such as modern slavery. Examples include *California's Transparency in Supply Chains Act 2011*,¹⁶ the UK's *Modern Slavery Act 2015*,¹⁷ Australia's *Modern Slavery Act 2018*,¹⁸ Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* that comes into force in January 2024,¹⁹ and proposed modern slavery reporting legislation in New Zealand.²⁰ Additionally, the EU has introduced the *Corporate Sustainability Reporting Directive* which also encourages corporate transparency on sustainability issues.

These reporting regimes differ in focus and scope, but generally require companies to publicly report on their actions to assess and address specific types of adverse impacts on human rights, such as modern slavery. These laws focus on reporting and do not directly require companies to take specific risk management actions, such as implementing human rights due diligence. However, the *Modern Slavery Act* is expected to evolve in this manner, with the Australian Government's statutory review recommending the introduction of a requirement that companies have a modern slavery due diligence system in place (see further information below). Companies that do not undertake human rights due diligence may find it difficult to fully address mandatory or recommended criteria for the content of reporting set out in these laws. For example, the Australian, UK and Canadian legislation all expect or require companies to report on how they assess the effectiveness or of the effectiveness of their response (noting that tracking effectiveness is a key element of human rights due diligence).

What does the Australian Modern Slavery Act require?

The *Modern Slavery Act* requires companies with an annual consolidated revenue of AUD 100 million or more to submit an annual modern slavery statement. This modern slavery statement must meet a set of mandatory criteria, including clearly identifying each reporting entity and describing their structure, operations, and supply chains. The statement must also describe the risks of modern slavery practices in the operations and supply chains of each reporting entity, and any entities that they own or control. Additionally, the statement must describe reporting entities' actions to assess and address those risks, including due diligence and remediation processes, and then explain how the reporting entities evaluate the effectiveness of these actions.

There are currently no penalty provisions in the *Modern Slavery Act*, however their introduction has been recommended as part of the recent review of the Act and the Government has separately committed to establishing a penalty scheme. The modern slavery statements must be approved by the full board and signed by a director and are published on a central register maintained by the Australian Government.^{21 22}

In May 2023, a report was tabled in Parliament, providing 30 recommendations to strengthen the *Modern Slavery Act* as part of the Australian Government's first statutory review of the operation and compliance of the *Modern Slavery Act* over the three years since its commencement. More detail on the report and recommendations can be found below.

¹⁶ State of California (2010) *California Transparency in Supply Chains Act*. Available at: <https://oag.ca.gov/SB657> (Last accessed 19 June 2023).
¹⁷ Government of the United Kingdom (2015) *Modern Slavery Act*. Available at: <https://www.legislation.gov.uk/ukpga/2015/30/enacted>. (Last accessed 19 June 2023).
¹⁸ Australian Government (2018) *Modern Slavery Act 2018 (Cth)*. Available at: <https://www.legislation.gov.au/Details/C2018A00153> (Last accessed 19 June 2023).
¹⁹ Parliament of Canada (2023) *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*. Available at <https://www.parl.ca/legisinfo/en/bill/44-1/s-211> (Last accessed 19 June 2023).
²⁰ New Zealand Foreign Affairs and Trade (2023) *Combating modern slavery*. Available at: <https://www.mfat.govt.nz/en/trade/nz-trade-policy/combating-modern-slavery> (Last accessed 19 June 2023).
²¹ Australian Government (2018). Op Cit.
²² Attorney General's Department (AGD) (2023) *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities*. Available at: https://modernslaveryregister.gov.au/resources/Commonwealth_Modern_Slavery_Act_Guidance_for_Reporting_Entities.pdf (Last accessed 19 June 2023).

Mandatory human rights due diligence

By contrast to reporting frameworks, another legislative model focuses on introducing mandatory human rights due diligence obligations into domestic law. Some of these regimes focus on specific issues. For example, the US Dodd-Frank Act section 1502²³ and the EU *Conflict Minerals Regulation*²⁴ require the reporting of steps taken to ensure that minerals and metals are responsibly sourced. Other laws focus more broadly on all internationally recognised human rights, such as France’s *Duty of Vigilance Law 2017*,²⁵ Norway’s *Transparency Act 2022*,²⁶ Germany’s *Act on Corporate Due Diligence Obligations in Supply Chains 2023*,²⁷ and the draft CSDDD that is currently under consideration in the EU. Commentators disagree on how closely these regimes align with the UNGPs, but most refer to key concepts from the UNGPs in their text or guidance materials.

Mandatory Due Diligence

While the specific requirements vary, mandatory due diligence legislation typically requires businesses to carry out human rights due diligence throughout their operations and value chain to identify and address adverse human rights impacts in which they are involved. In some cases, these regimes also combine requirements around human rights due diligence with obligations related to broader ESG issues such as environmental protection and anti-corruption.

A number of these mandatory human rights due diligence laws include public enforcement powers or provide for a civil cause of action. Some allow for both public enforcement and civil liability, including the French *Duty of Vigilance Law 2017* and the draft CSDDD. For example, the French law requires that relevant companies publish a ‘vigilance plan’ that establishes effective measures to identify risks and prevent severe impacts on human rights. In the case of non-compliance, a court can order the company to meet their obligations under the law within three months. After this period, the business could be subject to a fine of up to €10 million. The law also allows harmed individuals to bring a civil

lawsuit to seek damages resulting from a business’ failure to comply with its obligations where compliance would have prevented the harm.

Import restrictions

Another legislative mechanism that is being implemented by some States is the use of import controls to restrict goods from entering a market if there are reasonable grounds to suspect that they may be linked to certain adverse labour rights impacts, such as forced labour. The US was the first country to actively enforce this type of measure with amendments to the *Tariff Act of 1930* to allow US customs officials to issue Withhold Release Orders that impound goods at the border that are suspected of being produced using forced labour.²⁸ More recently, the US expanded its approach through the *Uyghur Forced Labour Prevention Act*,²⁹ which specifically covers imports from the Xinjiang region in China and creates a rebuttable presumption that these imports have been produced using forced labour.³⁰

Alongside this, in January 2020, the US, Canada and Mexico committed to banning imports of goods produced by forced labour as part of the US-Mexico-Canada Free Trade Agreement. Following this, Canada introduced amendments to its *Customs Tariff* to prohibit the importation of goods manufactured or mined with forced labour. In 2023, the *Customs Tariff* was amended further to prohibit the importation of goods manufactured or mined with child labour.³¹ In 2021, the Australian Senate voted to pass the *Customs Amendment (Banning Goods Produced by Forced Labour) Bill* prohibiting the importation of any goods made by forced labour into Australia. However, this Bill was not considered by the House of Representatives and therefore has not become a law in Australia.³² In September 2022, the European Commission published a proposal for a regulation to ban the import of any products deemed to have been made with forced labour from entering the EU market.³³

²³ U.S. Securities and Exchange Commission (2017) Disclosing the Use of Conflict Minerals; Fact Sheet. Available at: <https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html> (Last accessed, 19 June).

²⁴ EU Conflict Minerals Regulation (2017). *Regulation 2017/821*. Available at: https://policy.trade.ec.europa.eu/development-and-sustainability/conflict-minerals-regulation_en (Last accessed 18 June 2023).

²⁵ France Law No. 2017-399 (2017). *Duty of Vigilance of Parent and Instructing Companies*.

²⁶ Government of Norway (2022) *Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions*. Available at: <https://lovdata.no/dokument/NLE/lov/2021-06-18-99> (Last accessed 19 June 2023).

²⁷ Federal Government of Germany (2021) *The Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten)*. Available at: <https://www.bgb1.de/xaver/bgb1/> (Last accessed 19 June 2023).

²⁸ *Tariff Act of 1930* (19 U.S.C. §1307). For further details, see U.S. Customs and Border Protection (2023) *Forced labor*. Available at: <https://www.cbp.gov/trade/forced-labor> (Last accessed 19 June 2023).

²⁹ *Uyghur Forced Labor Prevention Act* (2021). For further details, see U.S. Customs and Border Protection (2023) *Uyghur Forced Labor Prevention Act*. Available at: <https://www.cbp.gov/trade/forced-labor/UFLPA> (Last accessed 19 June 2023).

³⁰ Ibid.

³¹ Government of Canada (2023) *Customs Tariff* (S.C. 1997). Available at: <https://laws-lois.justice.gc.ca/eng/acts/C-54.011/index.html> (Last accessed 19 June 2023).

³² *Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021* (Cth) (2021). Available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1307 (Last accessed 3 August 2023).

³³ European Commission, *Commission Moves to Ban Products Made with Forced Labour on the EU Market* (2022). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5415 (Last accessed 16 June 2023).

Increasing expectations in Australia
Evolving legislative landscape

Alongside these global developments, Australia’s legislative landscape has also evolved to incorporate a range of human rights-related obligations for businesses in line with their responsibility to respect human rights. In some cases, this legislation implicitly supports the responsibility to respect human rights, such as laws in relation to occupational health and safety and discrimination in the workplace. In other cases, this alignment is explicit. For example, the concept of due diligence is already included in the *Modern Slavery Act* as part of mandatory reporting criteria that require businesses to describe the actions taken to assess and address modern slavery risks, including “due diligence and remediation processes”.³⁴ It is also covered in more detail in the Australian Government guidance, which states that “[d]ue diligence and remediation are key concepts in the [UNGP]s and are part of an effective response to modern slavery.”³⁵ Further, the guidance also states that the due diligence process in the UNGPs “is important because it helps [businesses] to understand [their] modern slavery risks and the actions [they] need to prevent and mitigate them.”³⁶

Moreover, while the current legislation requires companies to report on actions taken to assess and address risks, the recent Australian Government commissioned independent review of the *Modern Slavery Act* recommended that the Act be amended to require companies to have a ‘modern slavery due diligence system in place’, and to describe their activities in accordance with this system.³⁷

What is the Australian Government review of the
Modern Slavery Act?

In March 2022, the Australian Government announced the first statutory review of the operation and compliance of the *Modern Slavery Act* over the three years since its commencement. In May 2023, the report by independent reviewer Professor John McMillan AO was tabled in Parliament, providing 30 recommendations to strengthen the *Modern Slavery Act* and related policy frameworks, including government guidance material. Key recommendations include:

- > Introduction of a requirement that companies have a modern slavery due diligence system in place
- > Lowering the reporting threshold to AUD 50 million
- > Imposing penalties for non-compliance
- > Amending the mandatory reporting criteria to include new requirements, such as reporting on modern slavery incidents or risks identified during the reporting year, grievance and complaint mechanisms available to staff members and others, and demonstrating internal and external consultation undertaken on modern slavery risk management

³⁴ Australian Government (2018). Op Cit.

³⁵ Attorney-General’s Department, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (2023). Op Cit.

³⁶ Ibid.

³⁷ Professor John McMillan AO (2023) *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*. 33. Available at: <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF> (Last accessed 16 June 2023).

Increasing expectations related to broader human rights issues

While modern slavery has been a regulatory focus for Australia to date, global developments are also shaping Australian businesses' operating environments, with increasing expectations that they at the least ensure their modern slavery risk management activities properly encompass all process elements of human rights due diligence, and that they also expand their human rights due diligence activities beyond modern slavery to other human rights impacts.

This increase in expectations is also reflected in various reports published in Australia. Since the introduction of the *Modern Slavery Act* in 2018, several reports have been released by NGOs, academics and other commentators recommending that the legislation be strengthened, and in particular, that it should incorporate requirements for businesses to undertake due diligence relating to their modern slavery risks. For example, the 2022 report titled **'Broken Promises: Two Years of Corporate Reporting Under Australia's Modern Slavery Act'** recommended that the *Modern Slavery Act* be amended³⁸:

"[...] to include a specific duty to prevent modern slavery, which requires companies to undertake human rights due diligence to identify and assess salient risks in their operations and supply chains that give rise to modern slavery and to take steps to mitigate and address them".

Similarly, in its submission to the consultation process on the review of the *Modern Slavery Act*, Walk Free highlighted that the Government should:³⁹

"[...] Introduce a positive obligation to conduct due diligence with respect to modern slavery. This would increase the effectiveness of the Act and align with emerging global standards on mHRDD."

Some stakeholders have also called for broader mandatory human rights due diligence obligations moving beyond modern slavery. For example, in its submission to the consultation on the review of the *Modern Slavery Act*, the Law Council of Australia stated:⁴⁰

"[...] While the UNGPs envisage business conducting 'human rights due diligence', the Modern Slavery Act is focused on a relatively narrow subset of entities and issues. The Law Council considers it would be beneficial for the Australian Government to take a holistic approach to addressing issues of human rights due diligence by corporate entities more generally."

More broadly, Australian companies are also likely to be impacted by evolving expectations from other external stakeholders, such as investors and business customers, who may increasingly expect companies to expand their human rights due diligence activities beyond modern slavery. For example, in 2021, members of the Investor Alliance for Human Rights sent a statement to 106 companies that scored zero on human rights due diligence indicators in the 2020 Corporate Human Rights Benchmark Report, and in 2022, investors managing USD 30 trillion in assets joined the UN Principles for Responsible Investment Advance initiative for collective action on human rights and social issues, demonstrating their commitment to responsible investment practices.

In the Australian context, both the Australian Council of Superannuation Investors (ACSI) and the Responsible Investment Association Australasia (RIAA) made submissions to the review of the *Modern Slavery Act* recommending the introduction of a due diligence requirement.⁴¹ ACSI also recommended '[h]armonisation of the *Modern Slavery Act* with international jurisdictions while ensuring that this does not weaken [its] standards'.⁴²

³⁸ Freya Dinshaw et al (2022) Broken Promises: Two Years of Corporate Reporting under Australia's Modern Slavery Act. Available at: https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6375ce29c0dad25a4841722f/1668664881220/HRLC_Broken_Promises_2022_11_17.pdf (Last accessed 28 June 2023).

³⁹ Walk Free (2022) Walk Free submission in response to the Issues Paper published to support the three-year statutory review of the Modern Slavery Act 2018. Available at: https://consultations.ag.gov.au/crime/modern-slavery-act-review/consultation/published_select_respondent (Last accessed 28 June 2023).

⁴⁰ Law Council of Australia (2022) Review of Australia's Modern Slavery Act 2018. Available at: https://consultations.ag.gov.au/crime/modern-slavery-act-review/consultation/published_select_respondent (Last accessed 28 June 2023).

⁴¹ Responsible Investment Association Australasia (2022) Submission: Review of Australia's *Modern Slavery Act 2018*. Available at: <https://responsibleinvestment.org/wp-content/uploads/2022/11/20221122-RIAA-Submission-Modern-Slavery-Act-review.pdf> (Last accessed 3 August 2023).

⁴² Australian Council of Superannuation Investors (2022) *Submission to the Review of the Modern Slavery Act*. Available at: <https://acsi.org.au/wp-content/uploads/2022/11/ACSI-submission-Modern-Slavery-Act-FINAL-SIGNED.pdf>. (Last accessed 3 August 2023).

Part Two: Current state-of-play on integrating respect for human rights in Australian businesses

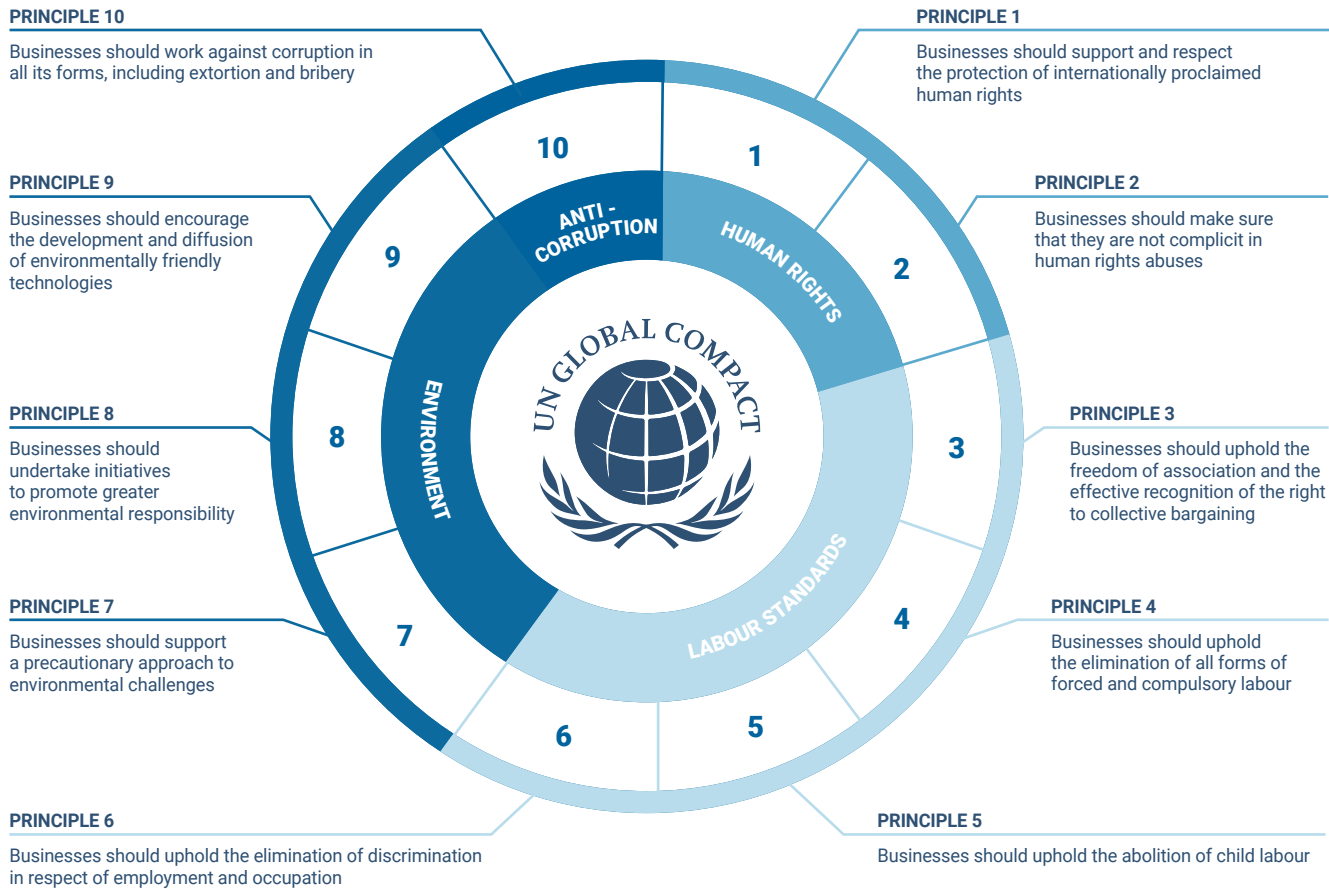
Part Two:
Current state-of-play on integrating respect for human rights in Australian businesses

This section contains observations drawn from a review of public human rights-related disclosures by Australian companies and a series of multi-stakeholder consultations on the integration of respect for human rights into broader business risk management processes. The purpose of this section is to provide insights into approaches taken by Australian businesses in using human rights due diligence concepts in the UNGPs to integrate respect for human rights into management processes.

While there is much progress that still needs to be made, the development of the UNGPs in 2011 was a catalyst in seeing more businesses globally undertake efforts to assess and address adverse human rights impacts with which they may be involved. In Australia, the introduction of the Modern Slavery Act was a formative milestone for Australian businesses' responses to the specific human rights issue of modern slavery. The recent review of the Act highlighted that it has led to a foundational change in business understanding of how modern slavery risks must be addressed, including

leading to the establishment of numerous governance, risk management, supplier engagement and remediation processes.⁴³

The introduction of the Modern Slavery Act is likely to have directed a significant amount of Australian companies' due diligence focus towards modern slavery. However, many companies have identified that their potential human rights impacts are much broader than modern slavery, and have aligned with or adopted voluntary commitments and standards that support a broader approach. For instance, as of June 2023, over 270 Australian businesses have committed to aligning their operations and strategies with the UN Global Compact Ten Principles through their participation in the UN Global Compact. The Ten Principles are derived from a number of international standards, including the Universal Declaration of Human Rights and the International Labour Organization Declaration on Fundamental Principles and Rights at Work. Importantly, they expect businesses to support and respect the protection of all internationally recognised human rights, including modern slavery.



⁴³ Professor John McMillan AO (2023) Report of the statutory review of the Modern Slavery Act 2018 (Cth). 33. Available at: <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF> (Last accessed 16 June 2023).

In light of the legislative and policy developments noted above, this section explores approaches Australian businesses report they are taking to assess and address their impact on internationally recognised human rights beyond freedom from modern slavery. It is based on an analysis of ASX50 disclosures and multi-stakeholder consultations with Australia-based participants of the United Nations Global Compact.

Review of ASX50 reporting on human rights

To assess the current reporting on human rights, and specifically human rights due diligence steps, in Australia, the authors undertook a high-level review of the 50 largest companies listed on the Australian Securities Exchange (the ASX) as at the March 2023 quarterly indexation. The review sought to understand how these companies were using human rights due diligence concepts to shape their human rights actions and disclosures in two key areas. Firstly, it assessed whether companies were going beyond a focus on modern slavery to also take action on broader human rights risk management, with a focus on human rights due diligence activities. It then looked at whether companies are using human rights due diligence concepts to describe their actions taken to assess and address modern slavery. This assessment highlights the progress that is being made by Australian companies in the use of human rights due diligence concepts to manage their modern slavery risks, which may be transferable to other areas of human rights risk management.

Companies were assessed using 10 indicators by reviewing publicly available external disclosures, including modern slavery statements, sustainability and ESG reports, annual reports, and company webpages. Each indicator was scored using criteria on a three-tiered scale (yes, partially, and no), with yes indicating the company fully met the criteria based on available information. The findings were quality controlled through an internal blind spot check process. This involved having an internal assessor randomly review companies already assessed, without prior knowledge of the findings, to enable a more robust assessment. While this snapshot provides a view of the approaches taken by the largest companies in Australia, the ASX50 is concentrated across certain sectors, such as finance and mining, and is not representative of the scope of activity in the broader business community.

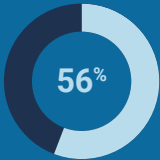
Expansion of public disclosures beyond modern slavery risk management to broader human rights

The review highlighted that some Australian companies have begun to expand the framing of external disclosures beyond modern slavery to include consideration of broader human rights issues. This broadening of the framing of disclosures is an encouraging trend. However, the review also highlighted that there are a number of key areas for improvement in integrating respect for human rights beyond modern slavery. For example, only 38% of companies reviewed report on human rights impacts with which they may be involved beyond those included in the definition of modern slavery, and only 22% of the companies reviewed have undertaken a salient human rights issues assessment (see Part 3 for more detail on salient human rights issues assessments).

Integration of human rights due diligence into modern slavery reporting

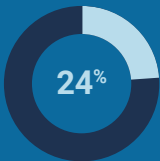
The review also highlighted that a number of companies are integrating more human rights due diligence language into their modern slavery reporting. For example, 48% of the companies reference the continuum involvement from the UNGPs. However, there is also room for improvement in this area, with only 8% of companies utilising the continuum to highlight any expected action in relation to identified human rights risks, including modern slavery risks.

Public policy commitment to respect all internationally recognised human rights



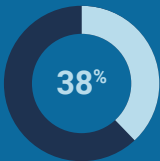
Finding: 56% of analysed companies have made a public commitment to respect “all internationally recognised human rights”, while a further 20% have made a ‘partial’ commitment, such as to “relevant human rights” or “human rights standards”. These commitments are typically through a standalone human rights policy statement or webpage. While all companies reviewed have published a modern slavery statement, 24% had not made any form of public commitment to respecting human rights.

Assessment of salient human rights issues



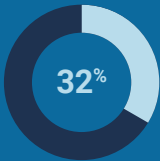
Finding: 24% of the companies reported that they have conducted a form of assessment to identify human rights issues that they consider most salient in their value chain.⁴⁴ Out of 12 companies that publicly reported their salient human rights issues, all included broader human rights issues, not just modern slavery.

Reporting on human rights impacts beyond modern slavery



Finding: 38% of analysed companies provided details on human rights impacts with which they may be involved beyond those included in the definition of modern slavery. Of these, some companies have established external web pages detailing examples of relevant human rights potentially impacted through their operations and value chains, as well as corresponding action plans and indicators.

Inclusion of ‘human rights’ as a material topic in ESG focussed materiality assessments



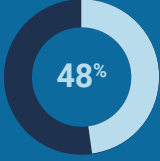
Finding: 32% of analysed companies referred to “human rights” as a material sustainability topic as part of their reporting in alignment with the Global Reporting Initiative Universal Standards.⁴⁵ Almost half refer to a human rights-related topic (such as engagement with First Nations communities, or respect for privacy and customer data). 20% of companies either do not appear to assess materiality or do not identify any human rights-related issue as one of their material topics.

Establishment of cross-functional working group focusing on human rights beyond modern slavery



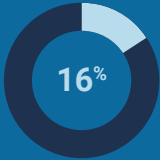
Finding: While most companies reported on the establishment of a cross-functional modern slavery ‘working group’ (or equivalent), only 22% reported that they have established a working group that covers broader human rights issues, such as labour rights beyond modern slavery or First Nations’ rights.

Use of the UNGPs continuum of involvement in modern slavery statements



Finding: 48% of the companies reference the continuum of involvement in their modern slavery reporting. However, only 8% utilise it to highlight any expected action in relation to any identified human rights risks (including modern slavery).

Reporting on modern slavery risks relating to the downstream value chain, including customers and end-users



Finding: 16% of companies report on modern slavery risks relating to their downstream value chain in line with the UNGPs’ expectation that businesses focus on their whole value chain.

⁴⁴ Organisations reporting in alignment with the Global Reporting Initiative (GRI) standards are required to determine their material topics. The GRI recently updated its Universal Standards to clarify that it is not “up for debate” as to whether or not human rights standards should be deemed material, and further that “human rights are the essential linking pin for the entire thinking on ESG.”

⁴⁵ Definition of salient human rights provided by Shift Project and Mazars LLP (2015) UN Guiding Principles Reporting Framework. Available at: https://www.ungpreporting.org/wp-content/uploads/UNGPREportingFramework_2017.pdf. (Last accessed 3 August 2023).

Note: Many companies use the term “salient” in their reporting on these processes. For those that did not use the term “salient”, sufficient detail was provided on the process that it was clear these companies had undertaken some form of process to identify the human rights at risk of the most severe negative impact through their activities and business relationships – in essence, their salient issues.

Observations from multi-stakeholder consultations with Australian participants of the UN Global Compact

Recognising that communicating performance is only one element of the human rights due diligence process and that public disclosures alone cannot provide a holistic picture, the review findings were tested through a series of multi-stakeholder consultations with Australia-based participants of the UN Global Compact. These discussions were later supported by one-on-one interviews with a number of selected participants.

The Modern Slavery Act has provided a foundation for companies to also take action on broader human rights risk management

During our discussions, participants highlighted that the introduction of the *Modern Slavery Act* was a key factor in introducing human rights language, including human rights due diligence concepts, within the business. There was consensus that the requirement to publicly report on modern slavery has driven growing internal ‘buy-in’ in relation to broader human rights risk management, allowing human rights practitioners to expand some conversations with colleagues to consider human rights risks beyond modern slavery. However, it was noted that there are still challenges related to gaining traction internally in developing cohesive human rights due diligence frameworks that go beyond modern slavery risks.



Some businesses have begun to expand their focus through the establishment of working groups focused on broader human rights risk management

Some participants noted that the internal mechanisms including working groups and supplier engagement tools established to address modern slavery could be expanded in scope to address broader human rights impacts. Many participants also identified that focusing on related forms of labour exploitation (such as poor working conditions and excessive working hours) was a natural next step beyond the focus on modern slavery and that this in turn increased their visibility of modern slavery risks. For example, if a business identified that some of its suppliers had allegations of labour exploitation, this could be indicative that forms of modern slavery might also be occurring.

In relation to working groups in particular, it was noted that there is not a ‘one-size-fits-all’ approach to establishing working groups, with some companies finding it beneficial to establish different standalone working groups to address specific human rights issues, such as workplace health and safety or First Nations’ rights, in place of extending their modern slavery working group to human rights working groups more broadly.

An opportunity to recentre on the UNGPs human rights due diligence approach

Many participants also highlighted that a significant amount of human rights-related work had been undertaken by different areas of their business, often without using ‘human rights’ as the framing. For example, some participants made reference to work conducted within corporate affairs or human resources to set and measure against gender equality targets, or work that had been undertaken by community engagement teams to engage with First Nations rights-holders and broader stakeholder groups.

In some cases, the participants also noted that there was a risk of pushback if these existing issues were reframed using human rights language as there may be an impression that existing approaches were being disregarded without a clear added benefit. The participants highlighted this risk could be addressed with awareness-raising, but that progress might still be slow.

Many social impact-related activities, such as engagement with First Nations rights-holders or social and economic development in communities, are an integral part of maintaining a social licence to operate. However, many participants were unsure as to whether the approach taken would align with the UNGPs expectation to prioritise an assessment of risk-to-people or to assess and address adverse rights impacts (emphasis added). Applying a rights-based lens to all human rights-related issues can be an important exercise in aligning company responses to areas where impacts on people are most severe.

Part Three: How Australian businesses can use the UNGPs to guide their actions to meet evolving expectations

Part Three:

How Australian businesses can use the UNGPs to guide their actions to meet evolving expectations

This section provides practical guidance for businesses to support their human rights due diligence activities. It takes into account progress made by businesses in Australia, evolving stakeholder expectations and the practical realities of establishing meaningful human rights due diligence processes.

As outlined above, all businesses are expected to follow the UNGPs wherever they operate. Regardless of whether specific human rights due diligence legislation is introduced in Australia, there will be strengthening expectations for Australian companies to conduct robust human rights due diligence and be able to show that they are doing so. As highlighted above, global developments are shaping the expectations of external stakeholders, especially where a business has relationships, partners, or investors with exposure to human rights due diligence regulation in overseas markets. Businesses will also be expected to continue to improve their due diligence processes, including through engagement with rights-holders and broader stakeholder groups. This will also help ensure that the business approach remains resilient to change in the evolving regulatory and risk landscape.

Making a policy commitment

While this section focuses on the human rights due diligence process steps, it is important to acknowledge the foundational importance of making a policy commitment to support businesses in operationalising human rights due diligence and other key aspects of the responsibility to respect human rights.

In line with UNGP expectations, the first step for many businesses in respect for human rights is to make a public commitment to respect all internationally recognised human rights. Within Australia, our review found that only 56% of ASX50 companies have done so.

Making a policy commitment is a crucial step as it signals to internal and external stakeholders that the business understands its responsibility to respect human rights. It is also a way for businesses to raise awareness internally and support human rights due diligence activities, such as risk assessments and training. A policy commitment can also support businesses when engaging with business partners including suppliers, joint venture partners and customers, by setting expectations of conduct for those partners. Additionally, it can provide opportunities for dialogue with other external stakeholders, such as governments, civil society, community members, value chain workers and investors.

Key components of human rights due diligence in the UNGPs

This section provides an overview of the key steps within the human rights due diligence process in the UNGPs with clear actions that businesses can take to operationalise this process. It has been designed to provide an outline of initial actions for businesses at the earlier stages of implementing human rights due diligence, such as those which have begun with a focus on modern slavery but have not yet expanded to broader human rights, as well as more comprehensive actions for businesses that are more advanced in the implementation process for broader human rights issues and seeking to refine their responses. These recommended actions are examples of the types of activities that businesses could undertake at each step of the process, but are not an exhaustive list, recognising that human rights due diligence is an ongoing, context-driven process and that business approaches will need to evolve.

This section outlines practical guidance in relation to the effective implementation of the four steps in human rights due diligence:

1. Identify and assess actual and potential adverse human rights impacts;
2. Integrate findings from human rights assessments across relevant internal functions and processes and take appropriate action;
3. Track performance to verify whether adverse human rights impacts are being effectively addressed; and
4. Communicate publicly, where appropriate, on company responses to actual and potential human rights impacts.

Each business will need to ensure that the implementation of human rights due diligence is appropriately tailored to its operating context and its involvement in actual and potential adverse human rights impacts through its own activities and business relationships across the value chain. Some businesses will already have some structures in place to support this, as well as personnel with the required skills, knowledge, and experience in human rights. For others, there may be limited resourcing and awareness across the business in relation to human rights. For all businesses, effective implementation of human rights due diligence processes across each of these four steps will require appropriate resourcing, training, and commitment from senior leadership.

The importance of stakeholder engagement

Effective human rights due diligence should be informed by engagement with potentially affected individuals and groups. This is important across all steps of human rights due diligence. In particular, in relation to step 1, identifying and assessing impacts, the UNGPs state that where appropriate, there should be direct consultation with rights-holders, or their legitimate representatives, with a particular focus on vulnerable and marginalised groups.

Businesses should begin by undertaking an exercise to map their stakeholders, which are defined in the UNGPs as “any individual who may affect or be affected by an organisation’s activities”. They should then identify the affected or potentially affected persons or groups within this group of stakeholders. These are both internal stakeholders, such as workers, and external stakeholders, such as local communities, workers in the supply chain, and consumers. Early identification of relevant stakeholders will support businesses to develop more effective stakeholder engagement plans throughout each step of human rights due diligence.

In particular, businesses should focus on identifying and engaging with vulnerable or marginalised groups or individuals throughout all stages of human rights due diligence. This vulnerability could be due to a number of factors, including socioeconomic status, ethnicity, gender, age, minority status, religion, or disability. The UNGPs emphasise the importance of focusing on the rights and needs of groups or individuals that may be at a heightened risk of becoming vulnerable or marginalised. This is important across all stages of due diligence. It is also important to undertake stakeholder engagement in relation to human rights risks in operations and value chains in both developed and emerging economies, as these people often face additional barriers at each step and may have more limited access to remedy.

Effective stakeholder engagement can be challenging. Businesses should be aware of potential challenges and seek ways to overcome these to enable meaningful engagement, which may involve sectoral or multi-stakeholder collaboration.

Challenges of stakeholder engagement can include:

- > Language barriers
- > Cultural and inter-generational divisions
- > Distrust of the business or the sector
- > Lack of access to stakeholders due to lack of infrastructure or geopolitical factors
- > Risks for human rights defenders
- > Power imbalances
- > Passage of time for legacy issues

Effective stakeholder engagement will seek to mitigate these challenges through a transparent consultation process that is informed by rights-holders or their legitimate representatives and relevant experts that properly understand the operating context. Businesses should seek to learn from these stakeholders on how they can improve their engagement processes to support continuous learning and improvement.

1. Identify and assess actual and potential adverse human rights impacts



The first step in human rights due diligence is for businesses to identify and assess actual and potential adverse human rights impacts with which they may be involved, either through their own business activities or through their business relationships, such as customers, joint venture partners, or suppliers.

Business activity can impact any internationally recognised human right. These include civil and political rights, such as the right to life, the right to liberty and security of person, freedom from slavery and the right to freedom from discrimination, as well as economic, social and cultural rights, including the right to work, and the right to the highest attainable standards of physical and mental health.

The UNGPs expect businesses to identify the risk of involvement in adverse impacts to all internationally recognised human rights related to the full range of business activities and relationships. Depending on the operating context and industry of a business, different human rights may be at a greater risk than others and to different degrees. Consequently, identifying and assessing human rights risks can enable businesses to determine their salient human rights issues, i.e., which adverse human rights impacts are or could be most severe from the perspective of rights-holders, and prioritise their actions to address these.

Importantly, the UNGPs make it clear that human rights due diligence is an ongoing process, and as such, businesses should assess potential and actual adverse human rights impacts periodically. They should also take into account changing contexts, such as conflict.

1A. Initial actions for businesses at earlier stages of HRDD implementation

For businesses at an early stage of implementing human rights due diligence, including those that have begun with a focus on modern slavery, there are various approaches available to expand their approach to also identify broader adverse human rights impacts.

For example, businesses could consider expanding existing modern slavery risk assessment processes, or other ESG processes to assess suppliers (such as anti-corruption or environmental performance), to include identification of broader human rights impacts relevant to that part of the organisation. This could include expanding a modern slavery questionnaire for suppliers or other business partners to also include questions relevant to broader labour exploitation, such as the right to freedom of association and the right to just and favourable conditions of work. In time, there could be further expansion to other human rights issues beyond labour rights.

These types of assessments may need to be accompanied by capability building for the staff who are sending the assessments to suppliers or business partners and those who are receiving the responses. Capability building may also be required for suppliers to understand what is being asked of them in these questions, including in relation to human rights terminology.

Examples of questions related to broader human rights that could be added to existing questionnaires for suppliers or other business partners

- > Do you have a policy statement expressing a commitment to respect all internationally recognised human rights?
- > Is there a member of your senior staff or executive who is responsible for ensuring that respect for human rights is implemented across your business?
- > Do you have any policies or procedures related to labour rights specifically, such as excessive overtime, living wage, freedom of association etc?
- > Do you train your workers to ensure that they understand the risks around broader labour exploitation? Do your workers have access to grievance mechanisms to safely report any concerns related to labour rights issues beyond modern slavery such as discrimination, freedom of association, fair work conditions, etc?

1B. Refining responses for businesses that have already begun to take action on broader human rights risk management

For businesses that have already begun to identify and assess actual and potential human rights impacts beyond modern slavery, there are a number of opportunities to align these processes more closely with the UNGPs. A helpful next step for businesses looking to take a comprehensive approach is to develop an understanding of their *salient human rights issues*, i.e., the human rights impacts that are at risk of the most severe negative impacts through the businesses’ activities or relationships.⁴⁶ This process supports businesses to prioritise due diligence efforts on the human rights issues that are most severe.

Businesses should involve all relevant functions and business units in the assessment of the salient human rights issues and also test their findings with external stakeholders. While saliency assessments are not human rights impact assessments that require robust rights-holder engagement, businesses should still look at opportunities to engage with potentially affected rights-holders and other stakeholders to ensure an accurate assessment of the potential and actual human rights impacts forming the basis for the saliency assessment. In line with the UNGPs, businesses should try to consult these stakeholders directly in a manner that takes into account language and other potential barriers to effective engagement. Practically, businesses should seek advice from appropriate experts to ensure that any engagement is conducted effectively, safely, and equitably.

⁴⁶ Shift Project and Mazars LLP (2015) UN Guiding Principles Reporting Framework. Available at: https://www.ungpreporting.org/wp-content/uploads/UNGPREportingFramework_2017.pdf (Last accessed 3 August 2023)

Salient human rights issues assessments

A salient human rights issues assessment involves several steps.

First, the business should identify the full range of human rights that could potentially be negatively impacted through its activities and business relationships. This includes adverse human rights impacts across all operations and the whole value chain, as well as impacts that businesses may be directly linked to through business relationships.

To determine which of these impacts might be the most salient, the potential impacts are then assessed looking at **severity** and **likelihood**. The focus in this process is on **risk to people**. Ultimately the business should still try to address all of its human rights impacts but this process enables businesses to prioritise those impacts that are the most salient based on these elements.

Severity: A severity assessment involves assessing the scale, scope and remediability of an adverse human rights impact.

- > **Scale** means the gravity of the impact on the human right(s).
- > **Scope** means the number of individuals that are or could be impacted.
- > **Remediability** means the degree to which those who are impacted could be restored to their prior enjoyment of the right(s).

Likelihood: To understand likelihood, businesses should assess their particular context to determine whether each potential adverse human rights impact is more or less likely to occur. This could involve an assessment of countries of operation or where the business sources goods or products to determine whether certain factors could influence the likelihood of a potential adverse impact occurring, such as a weaker rule of law, the presence of corruption, or whether there is evidence of these types of impacts have occurred in the past. In this process, businesses should also consider the effectiveness of their company controls and risk management systems in mitigating and addressing these potential impacts to determine the likelihood of the impact occurring.

Once it has determined the impacts that might be the most salient, some companies will look to determine group-wide or business unit-wide salient issues by grouping the identified salient impacts into issue areas. For example, if an assessment identified ‘freedom of association’ and ‘excessive overtime’ as potential human rights with a relatively high saliency rating they might consider grouping these into a salient human rights issue related to labour rights.

Following the process of undertaking a salient human rights issues assessment, businesses could develop salient human rights issue action plans to address these priority areas. These plans should consider what the business will do to address these issues at each of the subsequent steps of human rights due diligence.



2. Integrate findings from human rights assessments across relevant internal functions and processes and take appropriate action



The second stage in the human rights due diligence process is to take appropriate action depending on the business’ involvement in the actual or potential adverse human rights impact, as well as to integrate the findings across relevant functions in the business and develop control mechanisms designed to prevent and address involvement in impacts.

All aspects of human rights due diligence, including integration and taking appropriate action, will vary in complexity depending on the size of the business, its operating context, and the risk of severe human rights impacts. Moreover, appropriate action will vary according to whether the business causes or contributes to an adverse human rights impact, or whether it is directly linked. The specific control mechanisms will also vary depending on the type of human rights impacts that are identified. While specific control may differ, several key activities support effective integration, including establishing governance frameworks and assignment of responsibility at appropriate levels, raising awareness and conducting training, and developing policy and procedure documents that explain the roles and responsibilities of key personnel related to human rights risk management. As with all steps in the due diligence process, integration and taking appropriate action is an ongoing process, which requires a continuous learning approach.

2A. Initial actions for businesses at earlier stages of HRDD implementation

For businesses in the earlier stages, key integration and taking appropriate action steps include building on existing governance structures in different areas of the business, such as expanding activities related to the integration of modern slavery risk management programmes or other ESG areas, such as anti-corruption. Where possible, these businesses should be seeking to use the UNGPs continuum of involvement to assess their actions and responses and raise awareness across the business on how to use the continuum.

Establishing governance frameworks

Establishing governance frameworks helps to ensure that all relevant personnel across the business are clear on their role in relation to human rights risk management, including at a senior leader level. Where a company already has an existing cross-functional working group focused on modern slavery or other ESG areas (such as sustainability, anti-corruption or environment), it could expand this group to also focus on human rights issues generally or on particular human rights issues identified through risk assessments. This could include formally expanding the mandate of any modern slavery working group or committee to broader issues, or creating a standing item at meetings related to other relevant human rights.

Training and awareness raising

While some personnel may be aware of modern slavery risks and how they might manifest, they may be less familiar with broader human rights impacts. As a first step, businesses should undertake awareness-raising campaigns internally to ensure that their personnel understand what human rights are and how they are relevant to the business, including where modern slavery sits in relation to broader human rights issues. Businesses should then conduct broad training across the business. Depending on the business context, this could include human resources, legal, procurement, communities, sales, security, and risk management teams. For businesses in earlier stages, this training could begin as a simple e-Learning module or key human rights concepts included in a broader training programme.

Key concepts for human rights awareness raising and training

- > What are human rights?
- > How does modern slavery fit into broader human rights issues?
- > How are human rights relevant to the business including key risk areas and business drivers to ensure robust risk management?
- > What are the key external business and human rights standards that apply, including the UNGPs?
- > What expectations do these standards set?
- > How can we best prioritise our response to human rights issues? If the business has undertaken a salient human rights issues assessment, this could include a summary of the process and salient issues.

Updating and developing policies, procedures and other key documents

Businesses should undertake a process to develop policies, procedures and other key documents to ensure that broader human rights issues are included where appropriate. Importantly, where a business does not already have one, this process should include the development of a human rights policy statement that includes an express commitment to respect all internationally recognised human rights. Following this, businesses could also undertake a broad review of other existing documents to determine where they may be able to include more specific references to human rights. This could include supplier codes of conduct, employee codes of conduct, procurement policies, and other relevant documents that might relate to human rights. The review could begin by assessing what policies are relevant, such as supplier and employee codes of conduct or procurement policies. Then, the business could undertake a process to determine whether there are opportunities to include an additional human rights focus. For example, a business could update its incident management procedure to include a framework for how to identify a human rights incident and what to do if one is identified or update supplier contracts to include clauses related to human rights beyond modern slavery, such as freedom of association.

Refining responses for businesses that have already begun to take action on broader human rights risk management

For businesses that have already begun to take action on broader human rights risk management, key integration and taking appropriate action steps include building on existing actions and targeting relevant personnel across the business, including senior leadership. These businesses should also use the UNGPs continuum of involvement to inform their responses in a consistent way, ensuring that for each of their identified risks, they have clear analysis on how they have determined their level of involvement and a plan to appropriately respond.

Establishing governance frameworks

Approaches to human rights governance will evolve as businesses refine their overall approach to integrating respect for human rights. For example, businesses may start with a cross-functional working group with responsibility for overseeing human rights-related activities, but over time may begin to focus on upskilling relevant team members across the business as specialists to lead day-to-day human rights work.

Regardless of the particular approach, it is critical that businesses establish clear accountability for addressing human rights risks including clear terms of reference for any group with responsibility for overseeing human rights risk management-related activities. This type of accountability requires clear links to senior leadership in the business and internal communication channels across the business. For more advanced businesses, this may include a designated executive team champion or sponsor for human rights risk management or a Board committee with responsibility for ESG risks with an express mandate that includes human rights risk management.

Training and awareness raising

Alongside this, businesses should ensure that human rights expertise is not concentrated in a few individuals in the company, but that the skills and knowledge required to effectively implement a human rights management approach are found across the business. In particular, these businesses should focus on training executives and the Board on human rights to ensure that they understand the importance to the business and that there is a culture of 'tone from the top' in relation to human rights. Businesses can target core areas of the business for training to begin to refine their approach to human rights due diligence. For example, a business could use its saliency assessment to provide advanced training to areas of the business that have the most relevance to its salient human rights issues. For example, if a business determines that labour exploitation in its supply chain is a salient human rights issue, it could begin by targeting its training and awareness raising to its procurement team, as well as other teams that play a role in supply chain management. This could include product managers that may have ongoing relationships with suppliers and legal counsel who may be involved in contract management. If a business determines that environmental impacts is a salient human rights issue, then the environment, operational, or sustainability teams could receive regular targeted training on the human rights related to their area of work.

The business should then ensure that these relevant teams continue to receive ongoing targeted training. To further advance integration, businesses could engage with suppliers and other business partners to raise awareness and communicate expectations in relation to human rights and provide opportunities to upskill them, for example through webinars, supplier training days or training materials.

Development of policy and procedure documents

For businesses with existing policies and procedure documents related to human rights, a key way to advance this area is to undertake an in-depth review of all policies to assess whether there are any gaps in relation to human rights and design a clear roadmap or pathway to improve these documents. For example, a finding that the company's current supplier-related policies, such as a Supplier Code of Conduct, do not adequately set expectations regarding the right to freedom of association for suppliers' employees could lead to creating new policies or updating existing ones to embed this expectation.

For businesses that have an existing human rights policy, they could also undertake an assessment of all other human rights-related policies to ensure that they are fully aligned with the human rights policy. For example, this could include occupational health and safety policies, community engagement policies, whistleblower policies, ethical sourcing policies, and broader procurement policies.

3. Track performance to verify whether adverse human rights impacts are being effectively addressed



The third stage in the human rights due diligence process is to track the performance of actions and to assess the effectiveness of efforts to address adverse human rights impacts. Monitoring progress is essential to ensure that the implemented control mechanisms are achieving the desired results and to identify areas that may require further attention.

This stage involves ongoing evaluation, measurement, and reporting to enable businesses to improve their processes as needed. By establishing robust tracking mechanisms, companies can instil a culture of accountability and continuous improvement in their human rights practices.

3A. Initial actions for businesses at earlier stages of HRDD implementation

Businesses may already have obligations to report on their processes for tracking effectiveness in relation to addressing modern slavery under modern slavery legislation, such as KPIs or business-wide processes to review progress. Other businesses may be tracking various indicators related to human rights, such as those related to whistleblower complaints or employee training. For these businesses, they may consider expanding their focus to explicitly focus on broader human rights. For example, if the business has KPIs

related to the management of grievances raised in relation to modern slavery, it could also assess its management of grievances in relation to broader human rights, such as excessive overtime or health and safety.

3B. Refining responses for businesses that have already begun to take action on broader human rights

For businesses seeking to refine their approach to tracking effectiveness, they could start to track against their risk assessment findings, including salient human rights issues assessments. To further advance their approach, companies could integrate human rights metrics and performance targets into employee and management incentive programmes, including developing indicators for relevant business units beyond sustainability and human rights teams. Businesses could also look to strengthen engagement with external stakeholders about their performance to be able to better integrate feedback from external stakeholders, including rights-holders, into their tracking processes.

These businesses should also ensure they are focusing on developing and applying indicators that are focused on outcomes, rather than outputs. This means framing indicators based on what the business hopes to achieve, rather than specific actions that contribute to achieving the outcome.

Example of indicators	
Output-focused	Outcome-focused
Number of staff who have completed human rights training	Staff report having improved their understanding of human rights training (e.g., % of staff)
Number of suppliers that agree to comply with the Supplier Code of Conduct in contract clauses	Suppliers report that they have read and understand the Supplier Code of Conduct expectations (e.g., % of suppliers)
Number of human rights-related reports identified through the grievance mechanism, including whistleblower hotlines	Potentially-affected and affected rights-holders report that the grievance mechanism is accessible and they feel safe reporting (e.g., % of rights-holders interviewed)

4. Communicate publicly, where appropriate, on company responses to actual and potential human rights impacts



The final stage in the human rights due diligence process is to communicate publicly, where appropriate, the company's responses to actual and potential human rights impacts. While businesses may choose or be required to formally report on their responses, such as through modern slavery statements or other human rights or sustainability reporting, this stage of due diligence involves all types of communication that the business may select.

This could range from relatively informal processes, such as in-person meetings and online dialogues, to formal consultation with affected stakeholders and public reporting. However, where businesses have operations or operating contexts that pose risks of severe human rights impacts, the UNGPs expect that they formally report on how they address them.

Clear, accurate, and accessible communication is important as it provides stakeholders with a measure of transparency and accountability, including potentially impacted individuals or groups.

4A. Initial actions for businesses at earlier stages of HRDD implementation

For businesses in the initial stages, they may expand their existing reporting activities, such as under the Modern Slavery Act or other sustainability reporting, to also discuss broader human rights issues. This could be achieved by adding a dedicated section in these reports that outlines the company's broader human rights policy commitment, actions taken to assess and address broader human rights risks management, and progress with respect to identified human rights risks. Alongside these formal reports, businesses could include a human rights section or page on their website that outlines their broader approach to human rights.

In these communications, businesses should be cautious not to engage in 'bluewashing', which is where a business falsely represents that it is taking action on human rights or other social commitments. An example is where a business makes a commitment to respect human rights or meet international standards, such as the UNGPs, but fails to act consistently with these commitments. As such, businesses should only communicate or report on actions that they actually take and commitments that they can keep. Businesses should also be cautious not to engage in 'bluehushing', which involves backtracking or staying silent on their human rights commitments to avoid a negative response from regulators or stakeholders.

What do the UNGPs say about public communications by businesses?

- In all instances, communications should:
- > Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
 - > Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
 - > In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

For more information, see UNGP 21.

4B. Refining responses for businesses that have already begun to take action on broader human rights risk management

For businesses seeking to refine existing processes, they could communicate publicly through a standalone human rights report or a more detailed human rights webpage in relation to actions on specific adverse human rights impacts or the company's overall response to salient human rights issues. This specialised reporting enables stakeholders, including investors, community members, workers, customers, and civil society, to gain deeper insights into the company's human rights approach and responses. Publicly sharing this information demonstrates the company's commitment to accountability and facilitates engagement with key stakeholders.

Businesses seeking to refine their human rights-related reporting should also consider adopting reporting frameworks with the greatest level of global alignment. In 2021, the Global Reporting Initiative (GRI) introduced revised Universal Standards that allow companies to report in alignment with the UNGPs and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.⁴⁷ Reporting in alignment with the GRI 'Universal Standards' will also assist participant companies of the UN Global Compact in filing their Communication on Progress.⁴⁸

Businesses could also communicate publicly in a more consistent manner in other fora, for example in-person meetings, online dialogues, or consultations with affected stakeholders. Regardless of the format for communicating, businesses should always seek feedback from external stakeholders, such as rights-holders or their legitimate representatives, civil society, and investors to ensure that they are effectively communicating how they meet the responsibility to respect human rights.

The provision of remedy

Where a business identifies that it has caused or contributed to adverse human rights impacts through its human rights due diligence processes outlined above, or through other means such as a grievance mechanism, the UNGPs set an expectation that it will provide for or cooperate in remediation through legitimate processes. While this publication focuses on human rights due diligence, a core component of the corporate responsibility to respect human rights is to have processes in place to enable the remediation of such adverse human rights impacts. Remediation can take a range of forms but should counteract or make good any human rights harms that have occurred.

One critical tool for businesses to enable remediation is to have effective grievance mechanisms for individuals and communities that may be adversely affected by their business activities, both in their operations and value chain. Grievance mechanisms support human rights due diligence by providing an avenue for businesses to identify human rights risks, monitor trends in complaints, incorporate this information into their strategies and improve policies and procedures. Just as grievance mechanisms can support due diligence, strong due diligence processes can contribute to well functioning, effective grievance mechanisms that are more trusted and accessible.

For more guidance on implementing effective grievance mechanisms and processes to enable remediation, please see *Implementing Effective Modern Slavery Grievance Mechanisms: A Guidance Note for Businesses*.



⁴⁷ Global Reporting Initiative (GRI) (2021) Universal Standards Setting a new global benchmark for sustainability reporting. Available at: <https://www.globalreporting.org/standards/standards-development/universal-standards/> (Last accessed 19 June 2023).

⁴⁸ UN Global Compact (2023) *Enhanced Communication on Progress*. Available at: <https://unglobalcompact.org/participation/report/cop> (Last accessed 12 June 2023).

The Ten Principles of the United Nations 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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