**UN Human Rights Council Working Group on the issue of human rights and transnational corporations and other business enterprises**

**Questionnaire for States: National Action Plan on Business and Human Rights**

**Australian Response**

**July 2014**

**Contact information and disclosure**

1.*Contact details for Working Group follow-up questions*

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**2.**

Yes, the Working Group may include the government’s name in the list of respondents.

**3.**

Yes, the information submitted may be referred to in public.

**National action plans on business and human rights**

4. *Has the government taken steps to implement the Guiding Principles on Business and Human Rights since they were endorsed by the HRC in June 2011.*

Businesses are subject to Australia’s laws that incorporate relevant human rights law.

5. *Do these efforts include a plan to develop or update a State national plan on Business and Human Rights and/or the implementation of the UN Guiding principles?*

No

**Alignment of existing CSR frameworks with the Guiding Principles**

6. *Are there specific national corporate social responsibility policies, programs or regulation?*

No.

7. *Do government CSR programs, policies or regulation refer explicitly to the Guiding Principles on Business and Human Rights?*

No.

**Reporting and corporate governance requirements**

8. *Has the government ever put out a policy or set other expectations regarding company reporting on how they address potential and actual adverse human rights impacts as per the Guiding Principles?*

1. *if not, do you provide guidance on a specific sub-set of human rights issues, for example labour or land rights? Indicate which and the specific standards companies are expected to follow.*

The Government does not require companies to report on how they addresses potential and actual adverse human rights impacts. Furthermore, the Government does not provide guidance on how companies should report on specific sub-sets of human rights issues.

9. *Are there any guidelines in your country to encourage business enterprises to report on their human rights risks and impacts?*

Companies listed on the ASX are required to comply with the ASX Corporate Governance Principles and Recommendations (‘the Principles’) on an ‘if not, why not’ basis.  Under the Principles, a listed entity should act ethically and responsibly, with reference made to the need to respect the human rights of its employees. A listed entity is also expected to ‘disclose whether it has any material exposure to economic, environmental and social sustainability risks’.  There are currently approximately 2,100 companies listed on the ASX.

10. *Does the country have any laws that require companies to report on their human rights risks and impacts?*

No.

11. *For all of the above, if these policies, guidelines or laws exist, do they apply to all companies or only to certain types of companies (ie State-owned enterprises, listed companies, etc.)?*

As noted above, only companies listed on the ASX are required to report under the ASX Corporate Governance Principles and Recommendations.

12. *For all of the above, did the government consult with business enterprises, civil society, investors or other stakeholders in developing these policies, guidelines or laws?*

Not applicable.

13. *Is commitment to respecting human rights a requirement at incorporation or when companies are listed in the stock exchange?*

Yes, see response to question 9 above.

**Public procurement**

14. *Has the government taken steps to integrate human rights considerations into public procurement frameworks and processes?*

The Commonwealth Procurement Rules articulate the Australian Government’s procurement policy, and prohibit agencies from seeking to benefit from supplier practices that may be dishonest, unethical or unsafe.  This obliges agencies not to contract with suppliers that are known to engage in exploitative labour practices, such as slavery or human trafficking, or that use suppliers that engage in such practices.

15. *Does the government have human rights due diligence requirements for public procurement?*

*a) If yes, please indicate in which areas.*

Since 2003, the Commonwealth Government has had a comprehensive, whole-of-government approach to combating human trafficking and slavery.  Australia works with other governments and organisations to prevent human trafficking, prosecute the perpetrators, and protect and support trafficked people.

The Attorney General’s Department has policy responsibility for human trafficking and slavery issues and chairs a number of forums in which associated issues and information are discussed, including the Interdepartmental Committee on Human Trafficking and Slavery, and the National Roundtable on Human Trafficking and Slavery.

Australia ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol) in 2005, and is a party to both the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

Australia has also ratified a number of International Labour Organisation (ILO) Conventions that set international labour standards, including ILO Convention 29 on Forced or Compulsory Labour (1930) and ILO Convention 182 on the Worst Forms of Child Labour (1999).

In addition, the Commonwealth Government also has the Workplace Gender Equality Procurement Principles and User Guide which is currently linked to the procurement framework. The Commonwealth Government believes it is essential for all women to receive social and financial recognition for the work they do and the contribution they make to Australian society.

**Publicly owned or controlled enterprises**

16. *Are state-owned enterprises required to report on human rights risks and/or impacts? If yes, what issues are they required to report on?*

No.

17. *Do publicly owned or controlled financial institutions (export credit agencies or development banks) have safeguard policies that refer to human rights? If yes, do they have human rights due diligence requirements for activities or clients that benefit from financial or advisory support? If yes, what issues or spectrum of issues are these enterprises required to report on?*

Australia’s export credit agency, the Australian Export Finance and Insurance Corporation (Efic) has a policy and procedure for environmental and social review of transactions. This provides a sound framework for ensuring that EFIC upholds best-practice environmental and social standards in every transaction it supports.

EFIC discloses, on its website,  prospective involvement in any transaction associated with a project that has potentially significant adverse environmental or social impacts (a category A project) when the project is located outside Australia. That approach is consistent with EFIC's international obligations and guidelines.

EFIC incorporates Australia's international obligations and guidelines into its commercial decision-making framework. It examines human rights issues as part of its due diligence process. EFIC is informed in this regard by the World Bank's International Finance Corporation Performance Standards, the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises, the United Nations Guiding Principles for Business and Human Rights, the Equator Principles and the OECD Common Approaches.

**Companies operating abroad**

18. *Have embassies abroad received explicit instructions from the government to raise or advise on the human rights risks and impacts of businesses domiciled in its own jurisdiction that are operating abroad, as per the Guiding Principles?*

No

19. *Is there any requirement for companies operating abroad to report whether they have due diligence procedures (eg human rights impact and risk assessments) in place to address and manage human rights impacts of subsidiaries, joint ventures or other commercial interests abroad?*

No.

**Licensing**

20. *Do any environmental and social impact assessments that companies need to submit in order to obtain an environmental or operating license include specific questions on social and human rights impacts?*

*a) if yes, what spectrum of issues?*

In accordance with Australia’s Environment Protection and Biodiversity Conservation Act, the Minister for the Environment considers economic and social matters as well as the impacts of the proposed action on protected matters when deciding whether to approve a proposed action. In considering these matters, the Minister must also take into account:

* relevant comments from other Australian Government and state and territory government ministers (which could include information about social factors); and
* the principles of ecologically sustainable development, which includes a requirement that decision making processes should effectively integrate both long term and short term economic, environmental, social and equitable considerations.

Additionally, some permit application forms under the Environment Protection (Sea Dumping) Act 1981 (Sea Dumping Act) require information on an assessment of social considerations, and for information on consultation undertaken with relevant stakeholders. The assessment of applications for disposal of wastes at sea under the Sea Dumping Act must consider the potential effects on human health, living resources, amenities and other legitimate uses of the sea

**Investment policy**

21. *Does the process of preparing for an negotiating international investment agreements (BITs, FTAs or Economic Partnership Agreements with investment provisions) include consultation with either:*

*a) those government ministries/agencies/institutions (including national human rights institutions) that would be informed about the State’s international human rights obligations and the Guiding Principles’ pillar on the corporate responsibility to respect human rights; or*

*b) other stakeholders who could inform the State about the relevance of human rights obligations to IIAs?*

(a) and (b)

Australia takes a whole of government approach to the negotiation of international investment agreements in which all relevant agencies have the opportunity to input into the decision-making process.  The Department of Foreign Affairs and Trade – which has responsibility for the negotiation of free trade and investment agreements – consults widely with stakeholders across industry, civil society and academia.

22. *Who/what informs the team responsible for negotiating State-investor contracts with inward investors?*

*(c) none of the above.*

Australia does not enter into State-investor contracts with foreign investors.

23. *Is the State policy on investment informed by the Guiding Principles on Business and Human Rights in promoting inward investment; and/or in supporting ‘home’ business enterprises to invest abroad?*

Australia’s policy on investment is informed by advice on human rights issues provided by the Department of Foreign Affairs and Trade.

**Alignment of international development and assistance agencies**

24. *For donor countries: are business and human rights considerations integrated in your development assistance policies?*

Australia’s new development policy *Australian aid: promoting prosperity, reducing poverty, enhancing stability* (launched on 18 June 2014) outlines the strategic directions for the aid program. The policy highlights the Government's commitment to mitigate adverse environmental and social impacts in the aid program through the application of mandatory safeguard policies in environment, resettlement, and child protection. These policies seek to ensure that our aid investments do not cause unacceptable adverse impacts to people and their environment.

*The Guideline: Integrating displacement and resettlement safeguards* (October 2012) provides advice to programs where there may be physical or economic displacement as a result of development. This guidance specifically outlines an approach that aims to see that displacement and resettlement from Australian aid funded activities are conducted in a manner consistent with international human rights standards.

The new development policy has an increased focus on the private sector as the primary driver of economic growth and poverty reduction. Australia will be reviewing our due diligence and safeguards approach to ensure that they are adequate for increased partnering with the private sector.

Australia plays an active role in international discussions on developing a framework of principles on business and human rights:

* In 2011, the Australian Government co-sponsored a resolution endorsing the UN Guiding Principles on Business and Human Rights at the Human Rights Council session in Geneva.
* Australia participated in the UN Forums on Business and Human Rights in December 2012 and December 2013.
* We support the UN Human Rights Working Group on Business and Human Rights.
* In particular, Australia supports the UN’s efforts to integrate the Guiding Principles into its programmes and activities. We see this as an effective means of advancing human rights and identifying and managing risks.
* Australia has also endorsed the OECD Guidelines for Multinational Enterprises.
* Australia expects companies operating in and from Australia to act in accordance with the standards, including in relation to employment, environmental standards and human rights.
* On 27 February 2013, Australia was accepted as a member of the Voluntary Principles Initiative. As a Government member, Australia promotes the use of the Voluntary Principles to Australian mining, oil and gas companies and encourages other countries to join.

**Alignment of development policies**

25. *Do national and local development plans reference the Guiding Principles on Business and Human Rights to identify and address potential adverse human rights impacts of government-led policies and programs?*

No.

26. *Does funding from national development banks/financial institutions require recipients to conduct due diligence on human rights risks and impacts?*

No.

**Judicial remedy**

27. *Can corporations be held criminally liable for human rights abuse under the country’s applicable laws? (If so, have any such cases been brought before national courts?)*

Division 12 of the Criminal Code Act 1995 (Criminal Code) establishes a comprehensive scheme for corporate responsibility for Commonwealth criminal offences. This applies to all Commonwealth criminal offences, except where explicitly displaced. As a result, a body corporate may be found guilty for offences in the Criminal Code, including those which may capture gross violations of human rights include slavery, slavery-like practices such as servitude and forced labour, torture, genocide and crimes against humanity.

A body corporate is liable for an offence committed by an employee, agent or officer acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, if the body corporate expressly, tacitly or impliedly authorised or permitted the commission of the offence.

Such authorisation or permission can be established by:

* proving that the board of directors or a high managerial agent intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence
* proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non‑compliance with the relevant provision, or
* proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

Where the relevant misconduct is committed by a high managerial agent, the body corporate will not be liable if it can prove that it exercised due diligence to prevent the conduct, or the authorisation or permission.

A parent company may be criminally responsible for an offence committed by a subsidiary in instances where the parent company has aided, abetted, counselled or procured the commission of the offence.

28. *Do the country’s courts permit filing cases against corporations for alleged human rights abuses that were committed abroad (criminal or civil cases)? If so, have any such cases been brought before the courts?*

Division 15 of the Criminal Code provides for extended geographical application for some offences. For example, offences regarding slavery, genocide, torture and crimes against humanity have universal jurisdiction (extended geographical jurisdiction – category D) and therefore apply to conduct within or outside of Australia, and whether or not the offender was an Australian citizen, resident or body corporate.  Under section 16.1 of the Criminal Code, proceedings for a slavery, genocide, torture or crimes against humanity offence must not be commenced without the Commonwealth Attorney-General’s written consent if the alleged conduct occurs wholly in a foreign country and, at the time of the offence, the alleged offender is neither an Australian citizen nor an Australian body corporate. Slavery-like practices such as servitude and forced labour have extended geographical jurisdiction category B and therefore apply if the conduct, or the result of the conduct, occurs wholly or partly in Australia, or if the conduct occurs outside Australia but the offender is an Australian citizen, resident, or body corporate.

29. *Does the government provide assistance (financial or otherwise) to victims of alleged business-related human rights abuses who seek judicial remedy through the court system?*

The Attorney-General’s Department administers a number of legal financial assistance schemes, including the Australian Human Rights Commission Scheme. Under the scheme and pursuant to section 46PU of the Australian Human Rights Commission Act 1986, applicants who have commenced, or propose to commence, proceedings alleging unlawful discrimination in the Federal Court or the Federal Circuit Court, or who are respondents to proceedings in these courts, may apply for legal financial assistance. Financial assistance may cover the cost of legal representation and disbursements such as expert reports, photocopying and obtaining opinions from counsel. Applications are subject to an assessment of the applicant’s ability to meet the cost of the action without incurring serious financial hardship. An assessment of whether assistance is reasonable in the circumstances is also undertaken which includes consideration of the merits of the case, any detriment to the individual and potential broader impacts of a decision in the case.

**Non-judicial remedy**

30. *Does the government provide support for non-judicial grievance mechanisms (eg OECD National Contact Points if applicable) that afford access to remedy to victims of adverse business-related human rights impacts? If yes, are there incentives for companies to participate in non-judicial grievance mechanisms?*

The Australian Government is committed to promoting the use of the OECD Guidelines for Multinational Enterprises and their effective and consistent implementation. Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the Guidelines and to perform to — at minimum — the standards they suggest.

The Australian National Contact Point is a senior executive in the Department of Treasury.

31. *Does the national human rights institution facilitate dispute resolution, investigations or monitoring in cases of alleged business-related human rights abuse?*

Complaints against corporations may be made to Australia’s National Human Rights Institution, the Australian Human Rights Commission, where they have breached Australian anti-discrimination laws.  The Commission has power to investigate and conciliate these complaints.  If a resolution is not reached, the complainant may seek a judicial remedy.

32. *Are any other agencies of government departments involved in promoting or supporting dispute resolution between companies and consumers, workers or local communities?*

There are a number of government departments and agencies that provide dispute resolution.  For example, the Office of the Australian Information Commissioner may investigate complaints from individuals against private sector organisations regarding alleged breaches of the Privacy Act 1988. If the Office is not able to resolve the complaint by conciliation, it may issue a determination finding the complaint substantiated and recommend remedial action be taken, including the payment of compensation. A determination may be enforced in the courts. Complaints about discrimination in employment may also be made to the Fair Work Commission and the Fair Work Ombudsman.

**Multi-stakeholder initiatives**

33. *Does the government participate in one or more multi-stakeholder initiatives relevant to business and human rights?*

*a) if yes, please enumerate*

The Government holds a range of meetings with business where human rights issues may be raised.

Australia is currently undertaking a domestic pilot of the Extractive Industries Transparency Initiative in order to test the applicability of EITI principles and criteria in the Australian context and inform the Government’s decision on whether Australia should move to full implementation of the EITI.

Following the Government's agreement to undertake a pilot, a Multi-Stakeholder Group (MSG) was established to best represent the Australian extractive sector and broader community. A 7/7/7 model equally representing industry, civil society and government (including Commonwealth and three state governments) was adopted.