

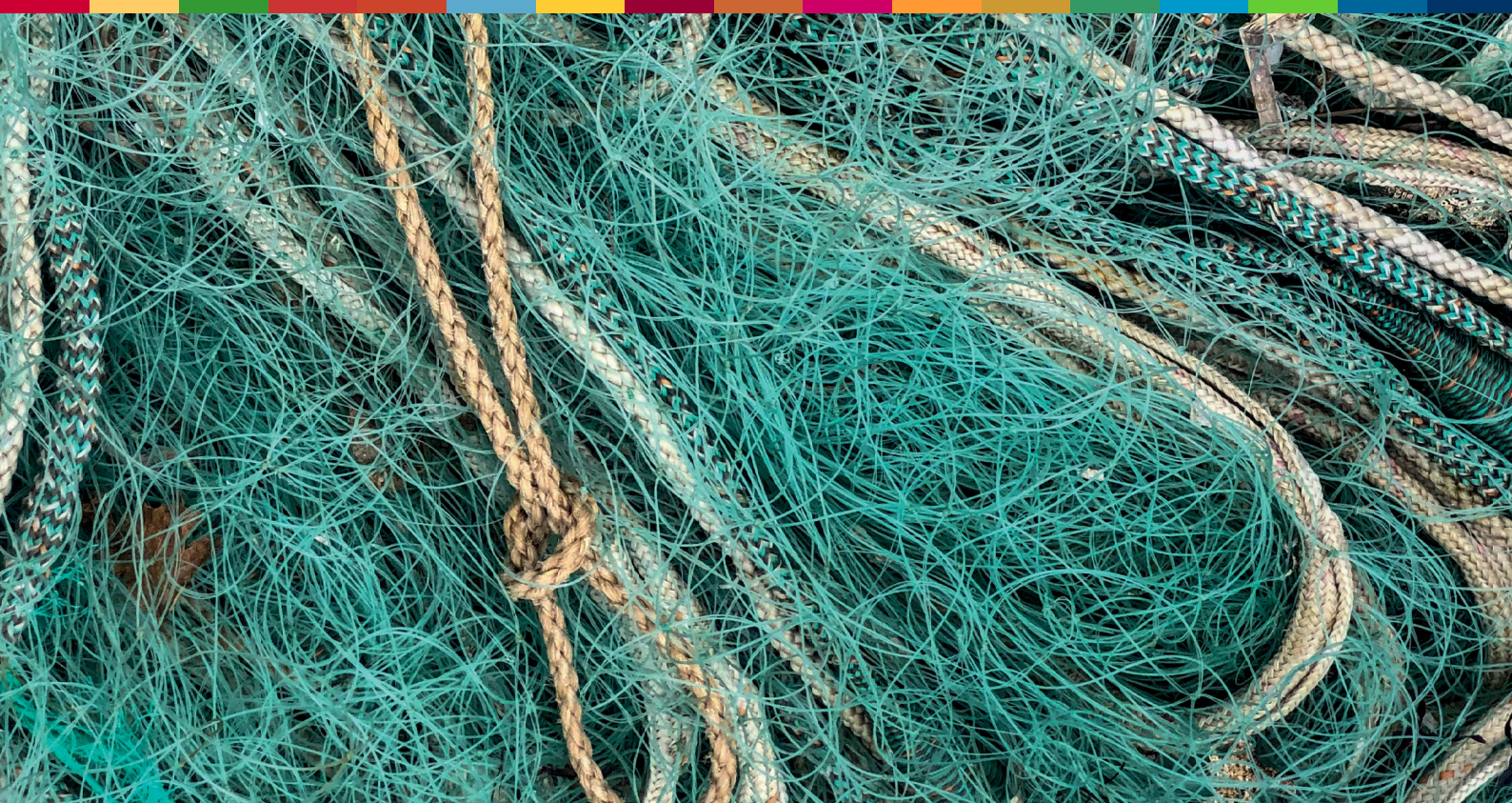
EFFECTIVE MODERN SLAVERY GRIEVANCE MECHANISMS

A Case Study Publication for Business

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Network Australia





Acknowledgement of Country

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

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Acronyms and Abbreviations

AFP	Australian Federal Police
AusNCP	Australian National Contact Point
Australian Act	Australia's <i>Modern Slavery Act 2018</i> (Cth)
Cth	Commonwealth Government (Australia)
CHRB	Corporate Human Rights Benchmark
ETI	Ethical Trading Initiative
FLA	Fair Labor Association
GCNA	Global Compact Network Australia
Guidance Note	Global Compact Network Australia's <i>Implementing Effective Modern Slavery Grievance Mechanisms: A Guidance Note for Business</i> (the companion report to this document)
GRI	Global Reporting Initiative
IFC	International Finance Corporation, a part of the World Bank Group
ILO	International Labour Organization
NGO	Non-Government Organisation
NXP	NXP Semiconductors
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
OHCHR	Office of the High Commissioner for Human Rights
PPP	Public Private Partnership
RBA	Responsible Business Alliance
SDGs	Sustainable Development Goals
SVAP	Responsible Business Alliance's Supplemental Validated Audit Process
UK	United Kingdom
UK Act	<i>Modern Slavery Act 2015</i> (UK)
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
USA	United States of America
VAP	Responsible Business Alliance's Validated Assessment Program

About This Publication

This report was funded by an Australian Border Force, National Community Crime Prevention Program, Modern Slavery Grant. This grant seeks to support the implementation of Australia's *National Action Plan to Combat Modern Slavery 2020-25*.

Key intended outcomes of the National Community Crime Prevention Program, Modern Slavery Grant opportunity, as stated by Australian Border Force include:

- > Increasing awareness amongst vulnerable groups, service providers, businesses and the broader Australian community of modern slavery in Australia, including awareness of indicators to support the identification of victims, best practice responses and referral pathways.
- > Increasing understanding and supporting effective implementation of Australia's *Modern Slavery Act 2018* (Cth) (Australian Act) amongst businesses and the broader Australian community to support combating modern slavery in supply chains.
- > Reducing factors that make people vulnerable to modern slavery and increasing resilience to modern slavery amongst vulnerable groups, such as migrant workers and children.
- > Building and enhancing networks that aim to share best practice, resources and information on modern slavery.

Purpose

The purpose of this report is to increase Australian businesses' understanding of effective grievance mechanisms that can address modern slavery in their operations and supply chains, and to equip businesses to establish and operate these mechanisms. This will support businesses to describe their actions to respond to modern slavery risks, including remediation processes – a requirement of the Australian Act.

According to the *United Nations (UN) Guiding Principles on Business and Human Rights* (UNGPs), a grievance mechanism is a critical means by which an affected person or stakeholder can raise a human rights concern and lodge a complaint with a business enterprise to seek remedy.¹

To make it possible for grievances to be addressed early and remediated directly, the UNGPs state that businesses should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by the business. These mechanisms also support human rights due diligence processes by enabling business enterprises to identify adverse human rights impacts with which they may be involved. The report aims to help businesses to understand current practice in relation to establishing and operating grievance mechanisms to address modern slavery so that they can set up and run their own mechanisms individually or collectively in alignment with the UNGPs.

Approach

The report is informed by desktop research, a literature review and one-on-one interviews with organisations featured in the case studies in Part Four of the report. These case studies demonstrate good practice in addressing modern slavery complaints and include examples of operational (company) level, supplier partnership and multi-stakeholder grievance mechanisms. In taking this approach, the report aims to build Australian businesses' practical knowledge of the steps and considerations needed to implement their own effective grievance mechanisms, individually or collectively. Experts on modern slavery and the UNGPs have peer reviewed the report to ensure its validity.

How to use this publication

The report offers businesses a basis for understanding the expectations set out in the UNGPs and the Australian Act in relation to grievance mechanisms. By incorporating case studies of Australian and international businesses and organisations, it illustrates good practice examples for designing and implementing grievance mechanisms that can address modern slavery. This report is accompanied by a practical guide, *Implementing Effective Modern Slavery Grievance Mechanisms: A Guidance Note for Business* (guidance note). The guidance note provides practical advice, flags key considerations, and outlines good practice steps for designing and implementing grievance mechanisms, based on the research presented in this report.

Executive Summary

Modern slavery exists today in Australia and around the world. Government estimates found that over a two-year period, up to 1900 people in Australia experienced modern slavery.² Globally, over 40 million people are estimated to live in conditions of modern slavery,³ including 16 million in private sector supply chains.⁴

Despite there being no universally accepted definition of modern slavery, the term is commonly used to refer to exploitative practices including forced labour, slavery, servitude, debt bondage, human trafficking, deceptive recruiting for labour services, the worst forms of child labour and forced marriage. Australia's *Modern Slavery Act 2018* (Cth) (Australian Act) is the first legislation in the world to define modern slavery.⁵

Modern slavery practices constitute serious crimes under Australian law,⁶ and seriously violate a person's human rights and dignity.⁷ Individuals working in agriculture,⁸ construction,⁹ domestic work,¹⁰ meat processing,¹¹ cleaning, hospitality and food service¹² industries in Australia are reported to be more likely to be impacted by modern slavery practices – such as forced labour – than in other industries. If they are a temporary migrant worker, this vulnerability increases.¹³ Countries with enacted and proposed modern slavery legislation include the United Kingdom (UK),¹⁴ California,¹⁵ the Netherlands,¹⁶ and Canada.¹⁷ Legislation in France¹⁸ and laws proposed by the European Union highlight the importance of broader human rights risk management across the entire value of chain of a company. Since the implementation of the Australian Act in 2019, business awareness in Australia has further strengthened and been accompanied by growing expectations from external stakeholders such as civil society, investors, and customers. Although there are significant challenges posed by complex global supply chains where visibility can be limited, many businesses now view modern slavery as a critical risk for the business and the people it may impact.

This report aims to support businesses to better understand how they can effectively address and report on modern slavery risks by building practical knowledge about the role and function of effective grievance mechanisms. It is hoped that businesses will use this report and the supplementary guidance note to support how they establish and operate effective grievance mechanisms. These publications also aim to enable business to better report under the Australian Act.

The *United Nations (UN) Guiding Principles on Business and Human Rights* (UNGPs),¹⁹ describe grievance mechanisms as a critical means by which an affected person or stakeholder can raise a human rights concern and lodge a complaint with a business enterprise to seek remedy.²⁰ The UNGPs state that for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Grievance mechanisms also help businesses to identify their involvement in modern slavery practices, thereby supporting human rights due diligence – a process by which companies

can identify, prevent, mitigate and account for how they address their adverse human rights impacts.

Australian businesses face external expectations both domestically and globally to implement effective grievance mechanisms capable of hearing and addressing human rights related complaints, including around modern slavery. These expectations predominantly arise from the UNGPs, but also through other international frameworks. Several factors are bringing the role of effective grievance mechanisms to the attention of business. These include additional expectations from key stakeholders such as States, international institutions, investors, customers, consumers, worker organisations and civil society organisations, the growth and impact of international benchmarking, and heightened reporting expectations.

To effectively provide a meaningful forum for the resolution of complaints, grievance mechanisms must be trusted and used by the people they are meant to serve. The UNGPs' effectiveness criteria for non-judicial grievance mechanisms form the basis for dialogue about 'effectiveness' in this report and the companion guidance note. The criteria state that to ensure their effectiveness, non-judicial grievance mechanisms should be legitimate, accessible, transparent, predictable, equitable, rights-compatible, a source of continuous learning, and for operational-level mechanisms, be based on engagement and dialogue.²¹

This report broadly introduces the different types of grievance mechanisms available to people impacted by modern slavery in businesses' operations and supply chains. Specific focus is given to mechanisms that business can implement within their own operations, in partnership with suppliers and through multi-stakeholder initiatives.

Case studies of four businesses based in Australia and overseas and two international multi-stakeholder initiatives draw out key insights about the challenges and opportunities of designing, implementing, and measuring effective grievance mechanisms. The case studies reveal that although most grievance mechanisms are not designed to specifically detect and remedy modern slavery practices, they are taking into account, and to varying degrees applying, the UNGPs effectiveness criteria to ensure that they are trusted, used and can help to resolve modern slavery complaints.

The case studies show that there is much work to be done to fully align grievance mechanisms with the UNGPs' effectiveness criteria. Measuring the effectiveness of grievance mechanisms appears to be in its infancy across many of the case studies. Also, no organisation recounted seeing many instances of modern slavery being reported through the grievance channels they offer, despite knowing the prevalence of certain types of modern slavery in their supply chains and reports from civil society organisations. This might suggest that businesses need to improve trust and accessibility. Building the legitimacy of grievance mechanisms with site management and workers was also a consistent theme raised. This could in turn impact the accessibility of mechanisms for workers.



The findings suggest there is scope for businesses to further develop and operationalise the expectations set out by the UNGPs' effectiveness criteria. They also show that the COVID-19 pandemic has impacted on businesses' capacity to detect and respond to modern slavery, partially resulting from a lack of knowledge about the real impacts to workers' lives. Critically, when COVID-19 restrictions limit on-site investigations and audits, existing factory-level grievance mechanisms are one of the few channels for workers to communicate what is happening on the ground.

While the grievance mechanisms themselves form the focus of the case studies, the importance of accompanying actions – both internally and in partnership with external stakeholders – that support their effectiveness is made clear. For instance, fostering effective working relationships with civil society and worker organisations can help to build worker trust in grievance channels and in turn, promote accessibility. Ensuring more effective access to grievance mechanisms for direct workers – those directly employed or contracted by a business enterprise – and workers in supply chains was

also tied to leveraging relationships with factory owners and managers. Internal proactive approaches, such as worker committees and human resources clinics, can also be used to prevent issues from escalating into potential instances of modern slavery, and support a timelier resolution of issues. These accompanying actions demonstrate that it is important to consider the whole ecosystem of approaches that can complement and enable the implementation of an effective grievance mechanism.

Key insights

Key insights on the following page can be applied by business in the design and implementation of an operational-level grievance mechanism, or in partnership with suppliers. These insights draw on the case studies and are expanded upon in the companion guidance note.



Collaborate: The most comprehensive approach is for a business to have its own grievance mechanism, as well as concrete expectations for suppliers to implement their own mechanisms.



Access to remedy: In determining what level of responsibility a business has in providing remedy in relation to the activities of suppliers, consideration needs to be given to whether the business has caused, contributed to, or is directly linked to the activity.



Design: Worker-centric design and implementation is critical to building trust for, and credibility of, the mechanism.



Design: Building supplier ownership of a factory-level grievance mechanism begins in the design phase of developing a mechanism.



Collaborate: Effective working relationships with civil society and worker organisations, including through the staffing of grievance hotlines and in carrying out grassroots socialisation of a mechanism, can help to build worker trust in the grievance channel and in turn, promote accessibility.



Access to remedy: Leveraging relationships with factories can ensure more adequate and effective access to grievance mechanisms for direct and supply chain workers. Similarly, leveraging long-term relationships with suppliers, by fostering trust and a collaborative approach, can support systemic change in supply chains.



Access to remedy: Creating access to an effective grievance mechanism and remedy beyond tier one of the supply chain is a key challenge. Beyond identifying issues in tiers two and three of the supply chain, businesses need to consider their role in giving access to an effective remedy to these workers.



Trust: Building trust with workers and site management is critical to ensuring effective access to, and use of, grievance mechanisms.



Trust: Despite the resource intensity required in their establishment, worker voice apps are scalable and can offer a holistic 'one-stop-shop' that can help to build worker trust in the organisation and credibility for the grievance mechanism.



Escalation: The effectiveness of worker voice apps depends upon the management systems that sit behind the app. Ensuring clear lines of responsibility in relation to the receipt, classification and management of grievances lodged is critical.



Trust: Quick acknowledgement of receipt of complaints and notification of the approximate turnaround time helps to build trust for the grievance mechanism and in how complaints are handled.



Track: Grievance tracking charts can help build transparency and predictability around the grievance process.



Pilot: Piloting a mechanism at one or a few locations and with the business's own employees can be helpful in identifying gaps before broader implementation across locations and suppliers.



COVID-19: COVID-19 impacts to businesses have drastically decreased the visibility of issues faced by workers. While COVID-19 restrictions are limiting the ability of auditors to conduct physical investigations, existing factory-level grievance mechanisms that are effective can continue to provide workers with a channel to make complaints.



Access to remedy: Proactive approaches, such as worker committees and human resources clinics, can be used to prevent issues from escalating into potential instances of modern slavery and can support a timelier resolution of issues and potential breaches.

Note: It is suggested that key insights are read sequentially to better support the design and implementation of an effective grievance mechanism.



Introduction

This report aims to increase awareness and understanding of effective grievance mechanisms so that Australian businesses can address modern slavery in their operations and supply chains and deliver higher quality mandatory and voluntary reporting under Australia's *Modern Slavery Act 2018* (Cth) (Australian Act). It provides practical examples of action from around the world.

Prevalence of Modern Slavery

The International Labour Organization (ILO) approximates that over 40 million people live in modern slavery conditions globally,²² including 16 million in private sector supply chains.²³ While modern slavery might be perceived as an issue in countries with less stringent labour laws and less developed human rights protections, Australian Government estimates found that up to 1900 people in Australia experienced modern slavery over a two year period (2015–2016 and 2016–2017).²⁴ More broadly, methodological improvements in the Global Slavery Index have exposed a higher prevalence of modern slavery in highly developed, high-income countries, than was previously understood.²⁵

The industries operating within Australia that are most prone to modern slavery practices — such as forced labour — include agriculture,²⁶ construction,²⁷ domestic work,²⁸ meat processing,²⁹ cleaning, hospitality and food services.³⁰ Migrants are the victims of modern slavery in most of the identified cases in Australia.³¹ This reflects a global trend whereby migrants and refugees are most vulnerable to and disproportionately impacted by modern slavery.³²

Due to the pervasive nature of global supply chains, it is crucial for businesses in Australia to understand the modern slavery risks that extend beyond country borders. Supply chain workers and contractors can be 'hidden workers' who do not have access to worker protections and remedy when exploitative practices occur. Regulatory developments in Australia and elsewhere recognise the need for entities to identify and address modern slavery risks that exist within business operations and beyond into supply chains. For example, the Australian Act requires entities to describe modern slavery risks that may be present throughout their operations and supply chains and explain their actions to assess and address these risk areas.

Reporting and acting on modern slavery

Regulatory requirements now compel entities based or operating in Australia, with an annual consolidated revenue of at least \$100 million, to report annually on modern slavery risks within their own operations and supply chains and those of any entities they control.³³ They must also report on measures taken to assess and address those risks.³⁴

Other organisations can elect to report voluntarily. These requirements reflect the growing global trend to embed international 'soft law' initiatives like the *United Nations (UN) Guiding Principles on Business and Human Rights* (UNGPs) and *Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*³⁵ (OECD Guidelines) into legislation. This is, in part, based on 'a growing consensus that both Governments and businesses have a role to play in addressing the human rights impacts of business, and that Governments must step into the global framework and regulate it'.³⁶

In addition to legal, compliance and broader business drivers, the International Finance Corporation (IFC) report *Managing Risks Associated with Modern Slavery* identifies moral and business justifications for mitigating modern slavery risks. These include, 'underlying ethical values, reputation management, ensuring compliance with international conventions and laws, reducing business risk, securing access to markets, and increasing security of supply and business productivity'.³⁷ Increasing pressure from consumers and external stakeholders — including investors and civil society organisations — is also creating impetus for business to act on modern slavery.³⁸ Importantly, the *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* also highlights the Government's view that acting to address modern slavery risks can provide commercial and reputational benefits to businesses.³⁹

Using grievance mechanisms to hear and address modern slavery complaints

Under the mandatory criteria for modern slavery statements in the Australian Act, reporting entities are required to describe actions taken to assess and address modern slavery risks, including their due diligence and remediation processes.⁴⁰ Although grievance mechanisms are not explicitly referenced under the mandatory criteria, they are named in the *Guidance for Reporting Entities* under the requirement to report on remediation processes.⁴¹ This guidance expressly states that due diligence and remediation processes should be implemented in line with the UNGPs recommendations. Reporting statements must also describe how entities are assessing the effectiveness of actions taken to assess and address modern slavery risks.⁴² This includes stating how they are assessing the effectiveness of any grievance mechanisms and other remediation processes they may have established.

Grievance mechanisms are not the only avenue through which businesses should seek to identify modern slavery and broader human rights risks. However they complement other risk management practices undertaken as part of a business's human rights due diligence (e.g. risk assessments and audits).

Structure of the report

There are four parts to this report:

Part One provides an overview of the external expectations facing businesses in relation to grievance mechanisms that address human rights related complaints. It also explores the UNGPs as the key standard businesses can follow to meet these expectations.

Part Two introduces grievance mechanisms and the role they play in supporting businesses to meet their responsibility to respect human rights. The different types of grievance mechanisms are identified and explained, with an emphasis on non-State-based mechanisms, as these form the focus of the case studies in Part Four.

Part Three broadly defines modern slavery and discusses what related grievance mechanisms entail. This includes how to meet the expectations of the Australian Act and the importance of developing and implementing mechanisms that are resilient to shocks and crises.

Part Four is comprised of six case studies of organisations based in Australia and overseas. It gives examples of grievance mechanisms that address modern slavery independently, or alongside broader human rights issues. These organisations include businesses, industry and cross-sector coalitions representing a range of sectors including technology / telecom / electronics, retail, food production and finance. Case studies highlight operational (company) level grievance mechanisms, businesses working in partnership with suppliers to develop or implement grievance mechanisms, and multi-stakeholder initiatives.

Understanding key terms

The UNGPs set two separate but inter-related expectations for establishing access to remedy:

- > The first is for businesses to have grievance mechanisms in place; and
- > The second is for businesses to provide for, or cooperate in, remediation if they identify they cause or contribute to an adverse human rights impact.

In setting out these expectations, the UNGPs offer an authoritative definition of terms like grievance, grievance mechanism and remediation. This report draws on the UNGPs' definition of a grievance, which is understood to be, 'a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities'.⁴³

Common terms used to describe those who are aggrieved include complainants, rights-holders and stakeholders. Human rights risks should be understood as referring to the risk of harm to rights-holders (e.g. people in a workforce, supply chain or community). But if not addressed, these risks can also have reputational, commercial and legal consequences for business.

Also drawing on the UNGPs, the term grievance mechanism is used, 'to indicate any routinised, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought'.⁴⁴

Part One: External Expectations and Standards



Part One: External Expectations and Standards

Australian businesses are increasingly expected to implement effective grievance mechanisms capable of meaningfully hearing and addressing complaints of their involvement in human rights harm, including modern slavery. This section deals with international expectations specifically.

A growing trend from corporate self-governance towards regulation,⁴⁵ signalled by the enshrining of international human rights frameworks into domestic law,⁴⁶ means that businesses are increasingly required to develop policy and operational responses to meet the expectations set out in the UNGPs and other related international standards.

The UN Guiding Principles on Business and Human Rights

Comprised of three interconnected pillars, the UNGPs outline the expectation that:

- > States have a duty to protect against human rights abuse by third parties, including against breaches by business enterprises;
- > Businesses have a responsibility to respect human rights ('avoid infringing on the human rights of others' and address 'adverse human rights impacts with which they are involved');⁴⁷ and
- > Both States and businesses should provide victims of business-related adverse human rights impacts access to effective remedy.⁴⁸

The UNGPs also say that where a business is directly linked to (but did not cause or contribute to) harm through a business relationship, the responsibility to respect human rights does not require that the business itself provides for remediation, though it may take a role in doing so.⁴⁹

Principle 22 recognises that operational-level grievance mechanisms can be an effective means of enabling remediation. Principle 29 expects that businesses establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.⁵⁰

For grievance mechanisms to be effective, they should meet the UNGPs' effectiveness criteria, established under Principle 31.⁵¹ The purpose of these criteria is to ensure that the

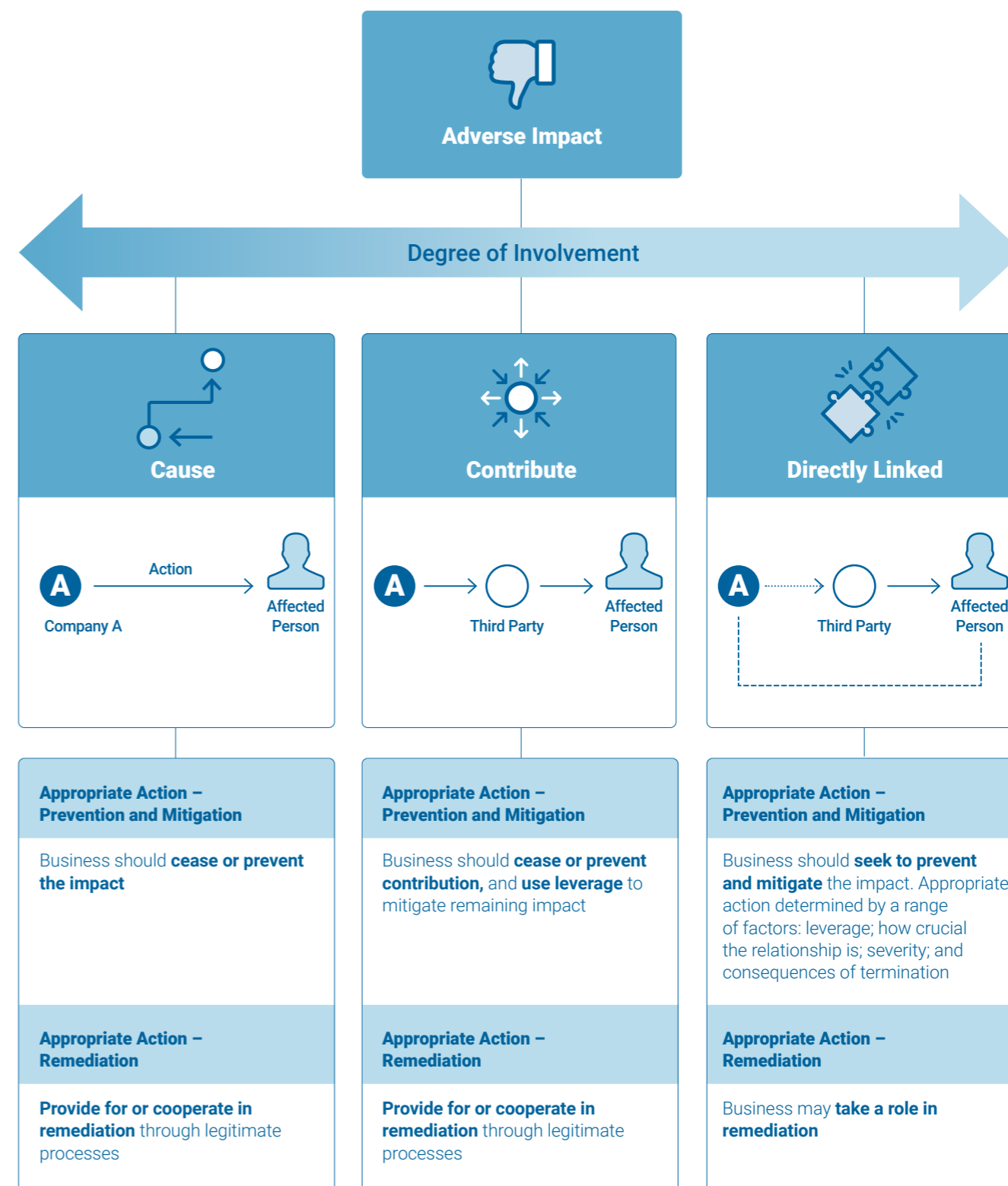
grievance mechanisms employed by business enterprises are trusted and used. The criteria are that a grievance mechanism is legitimate, accessible, predictable, equitable, transparent, rights-compatible, be a source of continuous learning and, for operational-level mechanisms, based on engagement and dialogue (see Part Two for more details). In this context, grievance mechanisms enable a process whereby complaints can be heard, businesses can determine their level of involvement in the alleged harm, and where necessary, remedy can be provided.

The UNGPs also establish a framework for companies to determine an appropriate course of action when a business identifies that it has caused, contributed to, or is directly linked to an adverse human rights impact (see Figure 1).

The *Guidance for Reporting Entities* offers useful examples of how businesses may cause, contribute, or be directly linked to modern slavery. For instance, a risk that a business may cause modern slavery may materialise if a factory owned and operated by that business uses exploited labour.⁵² In relation to supply chain risks, a business may contribute to modern slavery if it specifically requests a contractor to source the cheapest possible labour for a project, and disregards evidence of worker exploitation,⁵³ or 'knowingly sets unrealistic cost targets and delivery timeframes for a supplier that can only be met using exploited labour'.⁵⁴ A business may be directly linked to modern slavery if it invests in an overseas infrastructure project and despite implementing safeguards, the investee engages subcontractors who use forced labour on the project.⁵⁵

The Office of the High Commissioner for Human Rights (OHCHR) further explains that connections between 'caused', 'contributed to' and 'directly linked' to a human rights impact exist on a continuum of involvement.⁵⁶ Depending on actions taken, or a failure to act, there is an increasingly accepted view that a business can shift along this continuum in relation to involvement in human rights harm and the consequent appropriate action. For instance, if a business fails to act to prevent or mitigate a persistent and foreseeable modern slavery practice, such as forced labour, which is directly linked to its business operations, it could be considered as enabling the issue to continue and found to have contributed to the harm.⁵⁷

Figure 1: The UNGPs' Cause, Contribute and Directly Linked Continuum and Appropriate Actions



Adapted from: Wachenfeld, Margaret, Hodge, Mark, Zimmerman, Vanessa, Lehr, Amy and St. Dennis, Haley. *State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships*. Institute for Human Rights and Business (IHRB) and Global Business Initiative on Human Rights (GBI), 2012, 35. Available at: <https://www.ihrb.org/pdf/state-of-play/State-of-Play-Full-Report.pdf>.

The relationship between human rights due diligence and grievance mechanisms

Human rights due diligence is a complementary process that enables businesses to 'know and show' that they are respecting human rights. It is also embedded in the UNGPs. According to Principle 17, due diligence is a primary means by which businesses can 'identify, prevent, mitigate and account for how they address their adverse human rights impacts'.⁵⁸ The corporate responsibility to respect human rights (embodied in Principle 15) includes expectations that businesses should implement due diligence and establish or cooperate in grievance mechanisms, to enable access to remedy.⁵⁹

The UNGPs recognise that effective grievance mechanisms can strengthen human rights due diligence processes.⁶⁰ Grievance mechanisms can be used to identify trends in human rights risks and impacts, track the efficacy of responses to adverse human rights impacts (the third element of a due diligence process under Principle 20 of the UNGPs⁶¹), and inform policy and process improvements. They can also be a platform for fostering positive relationships

with stakeholders (including workers' organisations and civil society advocates) by demonstrating a business's commitment to addressing human rights impacts.⁶²

While the Australian Act does not mandate action on due diligence and the implementation of grievance mechanisms, it does require entities to report on their actions to respond to modern slavery risks, including any due diligence and remediation processes.⁶³ *The Guidance for Reporting Entities* also clearly links reporting on grievance mechanisms to the UNGPs' expectation of reporting entities to provide access to remedy.⁶⁴ Businesses that undertake due diligence and implement grievance mechanisms (as part of their remediation processes) will be best placed to meet the disclosure expectations set by the Australian Act.

Other key international standards

Most major international instruments for responsible business conduct now expect the provision of grievance mechanisms and remediation where victims have suffered adverse impacts from business conduct.⁶⁵ The expectations set out under the UNGPs are reflected in other key

Figure 2: Key International Standards that Reference the UNGPs



international standards – to varying degrees – including for example the **Ten Principles** of the UN Global Compact,⁶⁶ **OECD Guidelines for Multinational Enterprises** (OECD Guidelines),⁶⁷ International Labour Organization's (ILO) **Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**,⁶⁸ **International Finance Corporation (IFC) Performance Standards**,⁶⁹ and the **GRI Standards**⁷⁰ (see Figure 2).

Key stakeholders

The key stakeholders that expect business to implement effective grievance mechanisms include States, international institutions, investors and lenders, customers and consumers, labour unions, civil society organisations and impacted rights-holders, including community members and workers. Investors, lenders and civil society organisations increasingly expect businesses to ensure that their strategies and operations align with the UNGPs and other standards, and that rights-holders have access to effective grievance mechanisms throughout their business operations and supply chains.⁷¹ For instance, many international financial institutions (less so private banks) now require corporate clients to give communities and other right-holders affected by their activities access to grievance mechanisms.⁷²

International benchmarking

International benchmarking drives increased visibility of stakeholder expectations of grievance mechanisms. The Corporate Human Rights Benchmark (CHRB), now part of the World Benchmarking Alliance, offers stakeholders a yearly comparison of the policies, process and practices implemented by large companies 'to systematise their human rights approach, and how they respond to serious allegations'.⁷³ Reflecting the UNGPs, it includes non-industry specific indicators that address high level commitments, human rights due diligence and access to remedy.⁷⁴ It includes implementation indicators that capture complaints or concerns from workers, individuals and communities.⁷⁵ The CHRB is increasingly being used by investors, shareholders and lenders to assess the performance of companies regarding their human rights programs and to advocate for improved performance.⁷⁶

Key points to consider

- > The UN Guiding Principles on Business and Human Rights (UNGPs) are the authoritative guide on expectations for business in preventing and addressing involvement in human rights harm;
- > The UNGPs expect businesses to establish effective grievance mechanisms and to remediate, or cooperate in the remediation of, any harm that businesses identify they have caused or contributed to;
- > The UNGPs establish criteria for the effectiveness of grievance mechanisms to ensure that mechanisms are trusted and used;
- > The expectations for business conduct set out in the UNGPs are reflected across several other voluntary international standards (to varying degrees), including the Ten Principles of the UN Global Compact, the Organisation for Economic Co-operation (OECD) Guidelines for Multinational Enterprises (OECD Guidelines), International Finance Corporation (IFC) Performance Standards and GRI Standards;
- > States, international institutions, investors and lenders, customers and consumers, labour unions, civil society organisations and impacted rights-holders are some of the key stakeholders that expect business to implement effective grievance mechanisms; and
- > International benchmarking is increasing visibility of business performance on human rights issues. It is also enabling stakeholders to advocate for greater action and improvements around grievance mechanisms.









Part Two: Introduction to Grievance Mechanisms



Part Two: Introduction to Grievance Mechanisms

This section offers a broad overview of grievance mechanisms, the role that they play in supporting businesses to meet their responsibility to respect human rights and explanation of the different types of grievance mechanisms.

Figure 3: UNGPs' Effectiveness Criteria for Non-State-Based Grievance Mechanisms.⁷⁷

	Legitimate	Intended users and stakeholder groups trust the mechanism. The entity implementing and managing the mechanism is accountable in their conduct of grievance processes.
	Accessible	The mechanism is known to intended users and stakeholders. People receive adequate assistance if they face barriers to access.
	Predictable	Users are given clear information on the procedure and likely timeframes for each stage in the process. Potential outcomes are clearly stated and the process can be monitored.
	Equitable	Aggrieved parties can participate in the grievance process on fair, informed and respectful terms by having reasonable access to information, advice and expertise.
	Transparent	Stakeholders are informed about the grievance process and the mechanism's performance.
	Rights-compatible	Outcomes and remedies align with international human rights norms and standards.
	Promoting continuous learning	Future grievances and harms are prevented by applying lessons that improve the mechanism's performance.
	Based on engagement and dialogue	From the design phase to implementation and review, ongoing dialogue is used to engage intended users and stakeholder groups. Dialogue is also used to facilitate redress and access to remedy. Note: This criterion relates to operational level grievance mechanisms only.

What is an effective grievance mechanism?

An effective grievance mechanism is one that is trusted and used by the people it intends to serve. Effectiveness is critical to delivering meaningful remediation.⁷⁸ The UNGPs specify eight effectiveness criteria for non-judicial grievance mechanisms (see Figure 3).

How do grievance mechanisms support businesses to meet their responsibility to respect human rights?

Grievance mechanisms help businesses to identify adverse human rights impacts in operations and supply chains and enable their remediation. The growing focus on corporate accountability with respect to human rights means that businesses are increasingly expected or required — either in adherence to 'soft' international law standards or 'hard' legislative provisions — to implement policy and procedures to mitigate and address human rights risks.

Effective grievance mechanisms, and more broadly human rights due diligence, can help businesses track their human

rights impacts and responses.⁷⁹ They help to identify human rights risks early and understand how they arise, so that contexts where grievances are most prevalent can be prioritised for improvement.⁸⁰ By offering early access to remedy, company-level grievance mechanisms can 'limit dispute escalation, facilitate dispute resolution and contribute to the prevention of future disputes by enhancing relationships and enabling systemic learning'.⁸¹ They can also serve monitoring, auditing and stakeholder engagement functions.⁸²

There is increased public reporting by businesses about their grievance mechanisms, particularly in relation to their accessibility and how complaints are dealt with.⁸³ Greater transparency, both with users and other stakeholders, is critical to build trust around corporate commitment to respect human rights. Public reporting is one way to build trust, if appropriate protections are in place to ensure that it does not put anyone at further risk of human rights harm.

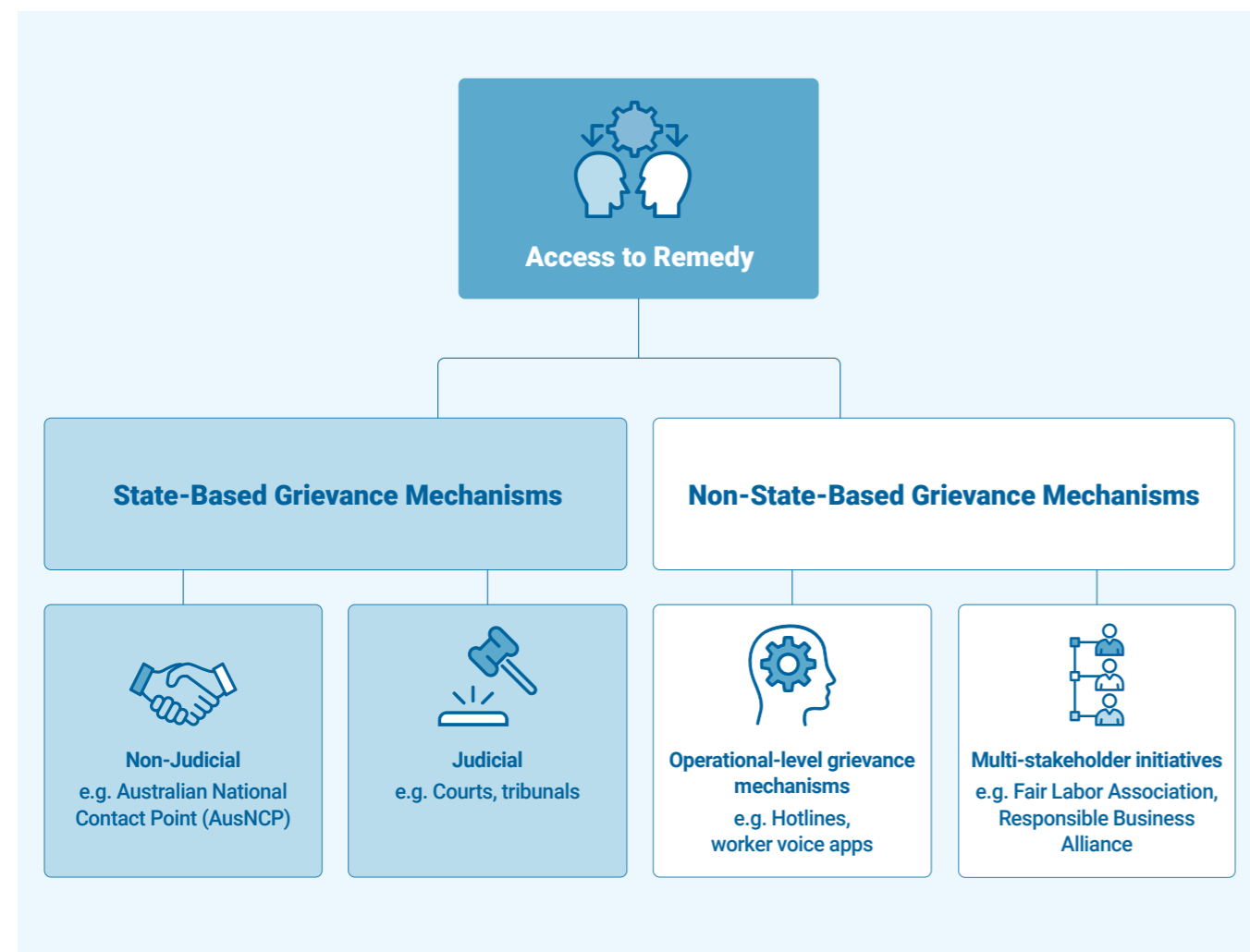
What are the different types of grievance mechanisms?

The UNGPs set out a system of remedy that incorporates both judicial and non-judicial, State, and non-State-based grievance mechanisms (see Figure 4). Rights-holders do not always seek direct remedy from a company for a business-related human rights complaint in the first instance.⁸⁴ Instead, rights-holders tend to access remedy by whatever channels they have available to them, which at the time may not include direct access to the company in question.⁸⁵ While this report focuses on non-State-based grievance mechanisms it also discusses State-based mechanisms given the potential for rights holders to take complaints directly to them.

State-based judicial mechanisms

State-based judicial mechanisms refer to courts and ombudsperson's offices, with international arbitration also being a pathway for remedy in relation to human rights matters.⁸⁶ These mechanisms can deliver legally binding adjudications and are often the final channel for rights-holders to access remedy once a complaint has escalated. However, access to courts for civil matters is costly. This creates an impediment for right-holders to access a remedy. Resource disparity between the rights-holders and companies can also hinder access to remedy via the courts. In relation to criminal matters, the UN identifies that state prosecutors often lack the resources, expertise and support to uphold the obligations of States to investigate 'business involvement in human rights

Figure 4: Grievance Mechanism Categories



related crimes'.⁸⁷ For businesses, addressing criminal or civil complaints from rights-holders through the courts is a costly process. It can lead to reputational damage, even if a court finds that a human rights breach did not occur.

State-based non-judicial mechanisms and non-State-based mechanisms may offer rights-holders and businesses a more effective means of resolving human rights complaints. These channels can also support the resolution of grievances where there is insufficient basis for a legal claim.⁸⁸

State-based non-judicial mechanisms

In some instances, courts or ombudspersons may refer a human rights related matter to a State-based non-judicial mechanism for mediation and early settlement.⁸⁹ Examples of State-based non-judicial mechanisms include:

- > Bodies enforcing public law standards with strong fact-finding powers and ability to determine and enforce remedies on their own initiative;
- > Dispute resolution bodies with some fact-finding powers and ability to issue binding legal determinations on their own initiative;
- > Enforcement or dispute resolution bodies with some fact-finding powers but which rely primarily on referring to other regulators, law enforcement agencies and / or judicial mechanisms for enforcement of human rights related standards; and
- > Mediation-type bodies which rely for their effectiveness largely on the cooperation and good will of participants, with few (if any) investigative powers and no formal powers to issue legally binding determinations. For instance, a sector-specific mediation mechanism established to respond to public concerns about adverse human rights impacts of that sector but with no powers to compel participation.⁹⁰

National Contact Points, such as the Australian National Contact Point (AusNCP), can facilitate the resolution of human rights issues (related to the OECD Guidelines) and provide access to remedy. The fact that the AusNCP is not a court enables matters to be resolved through a more flexible and values-driven mediation process.⁹¹ Complaints against multinational enterprises can be made to the AusNCP by any interested party subject to certain admissibility criteria⁹² and are managed by an independent examiner with oversight by a multi-stakeholder Governance and Advisory Board.⁹³

While State-based non-judicial grievance mechanisms offer a less litigious pathway, many may require parties to first access a company-level grievance mechanism.⁹⁴

Non-State-based grievance mechanisms

Non-State-based grievance mechanisms both complement and supplement judicial mechanisms and State-based non-judicial grievance mechanisms.⁹⁵ This category includes mechanisms established directly by businesses, industry associations and multi-stakeholder groups, as well as

regional and international human rights bodies (which are not discussed in this report). These types of grievance mechanisms have the potential to offer more timely access to remedy, cost less and can be transnational in reach.⁹⁶ However, issues with their design and implementation – which tend to occur at an operational level – can create barriers for rights-holders.⁹⁷ The UN Human Rights Council reports that few non-State-based grievance mechanisms established by businesses or other stakeholders are meeting their intended aims. Rights-holders cite significant issues in identifying, accessing and using these mechanisms.⁹⁸ Access to a full remedy is a particular issue, due to a mechanism's limited mandate, available resources, or both.⁹⁹ It is incumbent upon businesses to ensure that they go beyond mere implementation of a grievance mechanism and put in place measures to ensure that it is effective in meeting its intended aim.

Operational (company) level and collective business-led mechanisms are two of several types of non-State-based grievance mechanisms. They seek to identify negative impacts, provide remedy when negative impacts occur and inform the ongoing effectiveness of a business's management approach.¹⁰⁰

Operational (company) level grievance mechanisms

These mechanisms are typically managed by businesses themselves, together with relevant stakeholders, or through an external body.¹⁰¹ Principle 29 of the UNGPs states that operational grievance mechanisms should be accessible to individuals and communities who could be negatively impacted by a business enterprise.¹⁰² This can include direct workers, contractors, subcontractors, supply chain workers and local affected communities.¹⁰³ If well designed and implemented, this type of mechanism can be the most direct and efficient means for rights-holders to seek remedy for harm. Unlike some State-based mechanisms, rights-holders do not need to meet a legal standard of evidence to access an operational-level mechanism. There are likely to be core criteria however, that need to be met to access remedy.¹⁰⁴

Effective operational-level grievance mechanisms can foster engagement and dialogue with key stakeholder groups and intended users, both in their inception and ongoing functioning. They can drive continuous improvement by offering businesses critical feedback from rights-holders on the effectiveness of their human rights due diligence.¹⁰⁵ They also offer workers and other stakeholders a means by which to communicate issues related to the business. Such issues may include working conditions, underpayment, extortion by labour intermediaries, forced overtime, confiscation of identity documents and threats of deportation, or even more serious allegations such as forced labour, bonded labour, human trafficking and child slavery.¹⁰⁶

Whistleblower mechanisms that give employees a channel to flag a wide range of breaches of company codes and ethics can also form a part of a grievance mechanism and provide a channel for human rights complaints to be made.¹⁰⁷

Multi-stakeholder initiatives

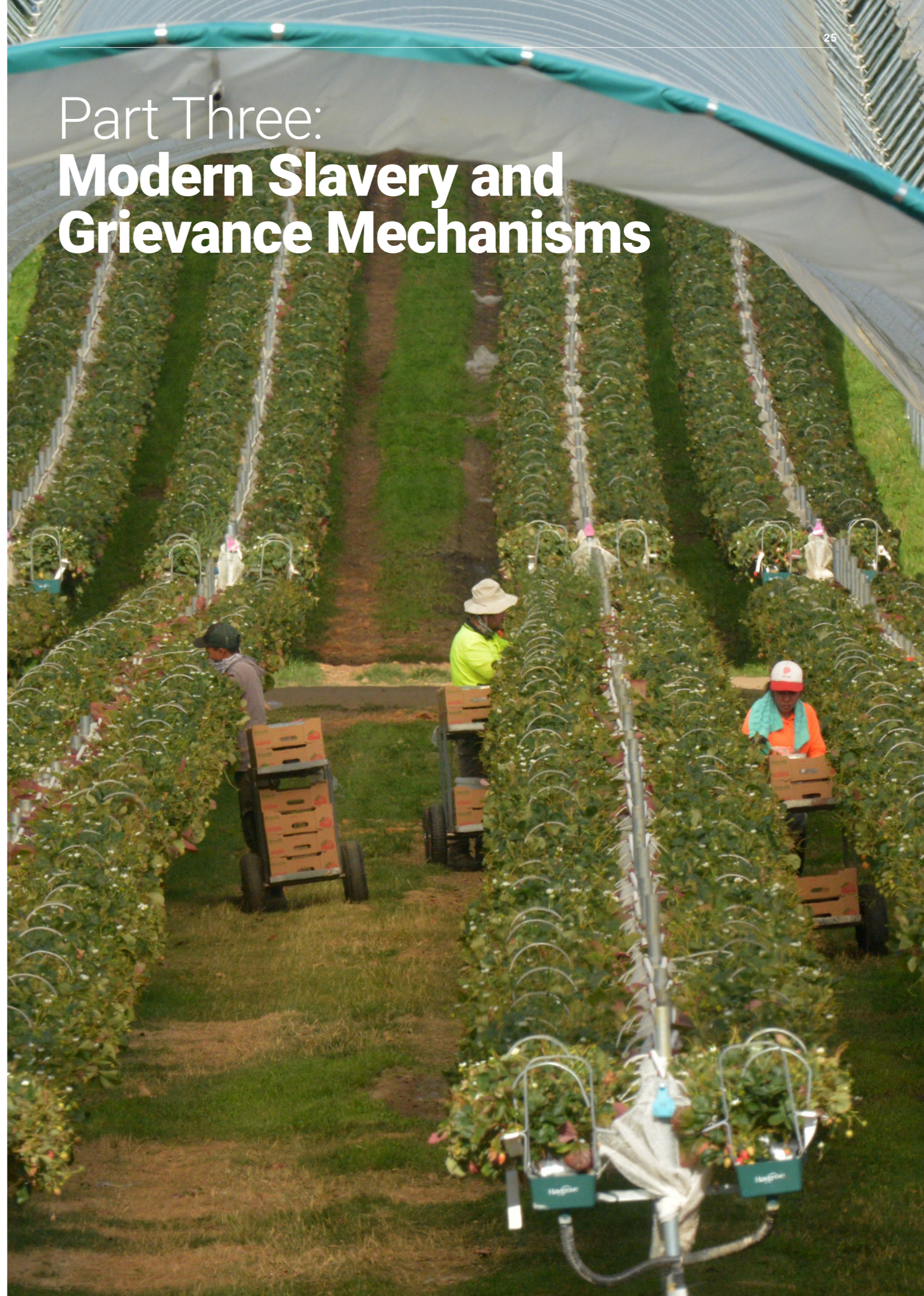
In this report, the term multi-stakeholder initiatives refers to initiatives that bring together numerous businesses and other key stakeholders to collaborate on human rights issues, including modern slavery. The UN Human Rights Council defines grievance mechanisms developed by industry, multi-stakeholder, or other collaborative initiatives as 'mechanisms external to companies that administer a set of commitments that the companies have agreed to adhere to'.¹⁰⁸ Such mechanisms fall under Principle 30 of the UNGPs and can include grievance mechanisms as part of 'codes of conduct, performance standards and global framework agreements between trade unions and transnational corporations'.¹⁰⁹

Multi-stakeholder initiatives may include grievance mechanisms that are used by numerous businesses. In some instances, these may be referred to as collective business-led mechanisms. This report focuses on how multi-stakeholder initiatives have been used by businesses at an operational level. Collective business-led mechanisms can also be developed at a supplier level (e.g. a factory) to enable use by multiple businesses sourcing from the same supplier.

Key points to consider

- > A grievance is a 'perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities';¹¹⁰
- > Grievance mechanisms offer a routine process by which 'grievances concerning business-related human rights abuse can be raised and remedy can be sought';¹¹¹
- > The system of remedy expected from the UN Guiding Principles on Business and Human Rights (UNGPs) sets out different types of grievance mechanisms: State-based judicial mechanisms, State-based non-judicial mechanisms, and non-State-based mechanisms;¹¹²
- > Non-State-based mechanisms include operational (company) level grievance mechanisms and mechanisms established through multi-stakeholder initiatives; and
- > The UNGPs specify eight effectiveness criteria for non-judicial grievance mechanisms: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue (in relation to operational-level grievance mechanisms only).

Part Three: Modern Slavery and Grievance Mechanisms



Part Three: Modern Slavery and Grievance Mechanisms

What is modern slavery?

Modern slavery practices (see Figure 5) seriously violate a person's human rights and dignity¹¹² and constitute serious crimes under Australian law.¹¹³ Importantly, modern slavery practices captured under Division 270 of the *Criminal Code Act 1995 (Cth)* can apply whether the conduct occurred within or outside Australia, where the offender was an Australian corporation, citizen or resident.¹¹⁴

Figure 5: Definitions of Modern Slavery Practices¹¹⁵

Forced labour	Where the victim is either not free to stop working or not free to leave their place of work.
Slavery	Where the offender exercises powers of ownership over the victim, including the power to make a person an object of purchase and use their labour in an unrestricted way.
Servitude	Where the victim's personal freedom is significantly restricted and they are not free to stop working or leave their place of work.
Debt bondage	Where the victim's services are pledged as security for a debt and the debt is manifestly excessive or the victim's services are not applied to liquidate the debt, or the length and nature of the services are not limited and defined.
Human trafficking	The recruitment, harbouring or movement of a person for exploitation through modern slavery.
Deceptive recruiting for labour services	Where the victim is deceived about whether they will be exploited through a type of modern slavery.
The worst forms of child labour	Where children are exploited through slavery or similar practices, including for sexual exploitation, engaged in hazardous work which may harm their health, safety or morals, or used to produce or traffic drugs. The worst forms of child labour can occur in a variety of contexts and industries. This may include orphanage trafficking and slavery in residential care institutions, as well as child labour in factories and manufacturing sites, mining and agriculture.
Forced marriage	Where coercion, threats or deception are used to make a victim marry, or where the victim does not understand or is incapable of understanding the nature and effect of the marriage ceremony.

Modern slavery occurs along a continuum of exploitation, where a person's working conditions can gradually worsen until they lead to slavery or slavery-like conditions.¹¹⁶ Often these deteriorating circumstances can leave people with few chances to exit.¹¹⁷

Key regulatory developments in Australia and overseas

The Australian Government has ratified several international law instruments prohibiting forms of modern slavery.¹¹⁸ These commitments are domiciled into Australian law in the *Criminal Code Act 1995 (Cth)*.

The expectations outlined in soft law initiatives such as the UNGPs and OECD Guidelines are also increasingly being enshrined in domestic laws by States and governments, including in modern slavery laws in California,¹¹⁹ the United Kingdom (UK),¹²⁰ Australia (Commonwealth and New South Wales)¹²¹ and a broader human rights due diligence law in France.¹²² Other countries around the world considering modern slavery or broader human rights due diligence laws for businesses include Canada, the Netherlands, the United

States of America (USA) and the European Union. While the scope, coverage, reporting requirements, due diligence requirements and compliance mechanisms of these enacted and proposed laws differ, collectively they help to expose human rights standards in supply chains.¹²³

Modern Slavery Act 2018 (Cth)

The Australian Act came into force in 2019 and aims to drive business action to combat modern slavery in operations and supply chains. The Australian Act requires organisations based or operating in Australia with an annual consolidated revenue of over \$100 million to prepare annual modern slavery statements. These statements must describe modern slavery risks, and actions to assess and address these risks, within the reporting entity's global operations and supply chains and those of their controlled entities.¹²⁴ Smaller entities that do not meet the revenue threshold can choose to report voluntarily.¹²⁵ Modern slavery statements are housed publicly in an online register¹²⁶ run by the Australian Government.¹²⁷ The operation of the Australian Act will be formally reviewed in 2022.



Implementing effective operational-level grievance mechanisms to address modern slavery

Under the Australian Act, reporting entities must include their due diligence and remediation processes when describing their actions to assess and address modern slavery risks.¹²⁸ While grievance mechanisms are not expressly referred to under the mandatory reporting criteria, the *Guidance for Reporting Entities* identifies grievance mechanisms as a remediation process that can be employed by reporting entities.¹²⁹ Entities must also describe how they are measuring the effectiveness of these actions.¹³⁰ Businesses can use grievance mechanisms to help them understand whether their response to modern slavery is effective, including by analysing trends and patterns in complaints.

Specificity and scope

The Australian Act does not require reporting entities to have a modern slavery-specific grievance mechanism (or broader remediation process) in place.¹³¹ However, the requirement in the Australian Act to report on remediation processes indicates that the Australian Government expects businesses to be taking action.

A key consideration for reporting entities is whether to use or adapt an existing grievance mechanism to cover modern slavery harms, or introduce a new grievance mechanism.

Generalised operational grievance mechanisms can function as 'early warning mechanisms that help prevent potentially more serious disputes'.¹³² Therefore, businesses that use mechanisms intended to deal with human rights subject matter (or even broader) may already provide workers and other stakeholders with an avenue to communicate modern

slavery-related concerns. Whether or not these channels are effective is a separate matter. There is also a growing awareness within business that human rights (including modern slavery) complaints require a nuanced approach and that this should be reflected in the grievance mechanisms used.¹³³ Even businesses who choose to have a single grievance mechanism for all human rights complaints, may wish to consider developing distinct processes for dealing with specific types of grievances, particularly those such as modern slavery that have more severe impacts on rights-holders.

Businesses may employ several grievance mechanisms that open multiple channels for direct and supply chain workers to raise concerns and grievances. The European Bank for Reconstruction and Development highlights that relying on one approach can often be ineffective.¹³⁴ For instance, employee suggestion boxes, open-door policies, or anonymous complaints processes together may form a broader system for grievance management but alone, they are insufficient.¹³⁵ It also highlights the importance of providing multiple communication channels so that workers can find an avenue they are comfortable using.¹³⁶

Building resilience to shocks and crises — including considerations during the COVID-19 pandemic

The COVID-19 pandemic resulted in massive disruption to global supply chains. Those already vulnerable to modern slavery practices, including migrant workers, are being disproportionately impacted by the pandemic and are at risk of (further) exploitation.¹³⁷ International border closures due to COVID-19 have meant fewer opportunities for Australian

businesses to conduct global audits and on-the-ground due diligence of both their own operations and supplier factories. Despite these disruptive impacts, it is important that businesses continue to meet their responsibility to respect human rights, including the right to freedom from modern slavery.

The pandemic also demonstrated the need for businesses to build resilience into the design, implementation and management of grievance mechanisms. For instance, there are several vulnerable groups who may rely on person-to-person engagement to lodge a grievance, including people who are economically marginalised, have lower levels of literacy, indigenous peoples and other minority groups.¹³⁸ With limited to no capacity to facilitate face-to-face contact with workers in overseas jurisdictions, businesses are being forced to respond creatively to maintain effective grievance mechanisms. One approach being taken is partnering with trusted local organisations, including anti-trafficking and labour rights organisations who maintain legitimate access to workers and communities and can collect and communicate grievances.¹³⁹

Where grievance mechanisms were in place before the global pandemic – and were known and trusted by workers – these mechanisms have enabled workers to maintain critical access to businesses. In turn, businesses can maintain ‘eyes on the ground’ in relation to worker conditions, where in-person audits are not possible.

Using digital technologies can also support workers to continue to access grievance channels during the pandemic. For instance, utilising online worker interviews in partnership with representative workers’ organisations or non-government organisations (NGOs) and use of worker voice apps.

Working in partnership with suppliers

The Australian Act seeks to promote increased transparency in business supply chains. Section 16 of the Australian Act requires a reporting entity’s modern slavery statement to include information on its due diligence and remediation processes relating to modern slavery in its operations and supply chains. In doing so, the Australian Act creates a basis upon which reporting entities may support suppliers to develop their own grievance mechanisms which offer access to remedy to affected rights-holders in line with the UNGPs.

For discussion on how businesses can support suppliers to develop their own grievance mechanisms, see Part Four of the guidance note.

Key points to consider

- > The expectations set by the UN Guiding Principles on Business and Human Rights (UNGPs) (and other ‘soft’ law initiatives) are increasingly being embedded into modern slavery legislation in jurisdictions globally;
- > Under the *Modern Slavery Act 2018* (Cth) (Australian Act), organisations with an annual consolidated revenue of over \$100 million, based or operating in Australia, are required to report annually on modern slavery risks within their own operations and supply chains (as well as those of their controlled entities), and on measures taken to deal with those risks, such as due diligence and remediation processes;
- > Effective operational-level grievance mechanisms can be used to identify and remediate modern slavery in business operations and supply chains;
- > Businesses developing and implementing an operational-level grievance mechanism should apply the UNGPs’ effectiveness criteria;
- > Effective grievance mechanisms that are known and trusted by workers can provide supply chain workers with an important access point to businesses when visibility over supply chains is limited (e.g. during times of crisis); and
- > Supporting suppliers to develop their own operational-level grievance mechanisms can improve a business’s human rights risk management policies and procedures and its capacity to meet the Australian Act’s reporting expectations.

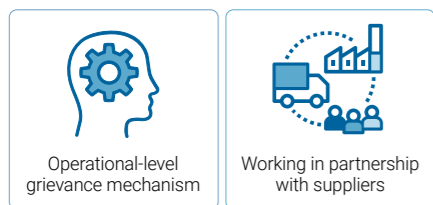
Part Four: Case Studies

The following case studies highlight good practice examples of grievance mechanisms – at the operational (company) level, working in partnership with suppliers and multi-stakeholder initiatives – that offer channels capable of addressing modern slavery practices, for direct and supply chain workers. Case studies are drawn from a range of sectors and underscore key learnings from the Global Compact Network Australia (GCNA). They can support business to identify and address challenges and opportunities in designing and implementing their own grievance mechanisms.

These case studies are based on interviews with organisational representatives and research from publicly available information on each organisation’s approach. They are intended as a learning resource and their inclusion does not represent the endorsement of the GCNA for the organisation or its actions. While aspects of the case studies suggest good practice, this view is based solely on information provided by organisations through interviews and publications. The GCNA cannot attest to the implementation of these mechanisms in practice.



Case Study 1: NXP Semiconductors



Industry: Technology, telecom and electronics

About

Headquartered in the Netherlands, NXP Semiconductors (NXP) designs and manufactures semiconductor technologies that are applied across the automotive, digital networking and secure identification industries. NXP has manufacturing sites in Malaysia, Thailand, Singapore, China, Taiwan, USA and the Netherlands.¹⁴⁰

NXP grievance mechanisms

NXP's 'Speak Up' hotline

NXP's 'Speak Up' hotline enables NXP employees to report violations against the NXP Code of Conduct, including modern slavery grievances affecting individuals. It is also available to supply chain workers. The hotline is facilitated and managed by a third-party. The legal department of NXP is the main gatekeeper for all anonymous reports received through Speak Up. It is responsible for channelling these reports to the respective compliance managers in the company for investigation and resolution. Direct and supply chain workers receive a business card with non-retaliation information and a local toll-free number and email address during audit-related private worker interviews.¹⁴¹ These business cards are translated into different languages to ensure accessibility to migrant workers.¹⁴²

This hotline was used by a foreign migrant worker in Taiwan to report that they were overcharged for dormitory services by an NXP supplier. NXP reported working with the supplier to investigate the issue (which uncovered other instances of the same practice) and remediating the matter, with the people affected being repaid by the supplier.

NXP also provided an example of use of the hotline in 2020 during the COVID-19 pandemic to identify and remedy a worker welfare-related incident. A cafeteria worker in an NXP owned and operated factory in Malaysia, with outsourced cafeteria services, lost their employment during the pandemic and was to return to their home country. Due to border closures, this worker, along with colleagues, were stranded in Malaysia. NXP reported working closely with the cafeteria service contractor, and a civil society organisation that supports migrant worker communities in Malaysia, to provide the stranded workers with material support.

The COVID-19 pandemic prevented NXP staff from undertaking on-the-ground supplier factory audits for much of 2020. Use of online audits, including worker interviews via

We asked, are the grievance mechanisms that we have in place actually enabling the people who are most vulnerable within the organisation – workers – to voice their concerns? And the answer to that was no, we need to find better solutions or tools to engage.'

Tony Khaw,
Director, Corporate Social Responsibility, NXP

video call, enabled NXP to continue to share the Speak Up hotline card with supply chain workers. Workers would be shown the card and were asked to take a screenshot during confidential interviews without management present so they would have access to hotline number and non-retaliation information.

WOVO worker voice app

NXP uses a continuous cycle of review and reflection to assess the effectiveness of its grievance mechanisms. Assessments of initial processes (e.g. suggestion boxes and open-door policy) were found to be ineffective in capturing serious concerns and complaints from direct workers. This, combined with the use of the Speak Up hotline for unrelated and minor complaints, prompted NXP to develop a tool that was specific to receiving and managing operational-level grievances. It was observed during site visits that most workers use smart phones, which led to NXP engaging a third party to create a mobile-driven, two-way communication app called 'WOVO'.

Piloted at the Kuala Lumpur manufacturing site in Malaysia with NXP's direct workers, the WOVO app has so far captured 47 complaints that have required additional investigation.¹⁴³ To date, none of these grievances have related to modern slavery practices.

The WOVO app aims to create greater access to grievance processes for direct workers, particularly migrant workers who are most vulnerable to modern slavery practices such as forced and bonded labour. Workers installing the app on their phones must give NXP consent for their phone number to be associated with a personal protection code, which is used to verify claims that originate from NXP direct workers. At the time of reporting, 95 per cent of workers at the pilot site had downloaded the WOVO app.

NXP intends to make the WOVO app available to direct workers at its other manufacturing sites globally and is interested to explore its applicability to supply chain workers. Implementation of the app has required significant on-the-ground resourcing, which was hindered during the pandemic. NXP explained that a high level of commitment and effort is required to ensure that the app is implemented effectively. For instance, ensuring that feedback received via the app is acted upon within a timeframe that reflects best practice to build trust with users.

Once a worker lodges a grievance on the WOVO app, the complaint is acknowledged within 24 hours. The complaint is classified by the team administering the app, who then refer the complaint on to one of the committees representing the operational functions of the factory. NXP clarified that in instances where a worker has a workplace harassment issue to report, the most appropriate mechanism to use is the Speak Up hotline, where independence and anonymity are assured. The WOVO app was identified by NXP as the more appropriate mechanism for workers reporting grievances on workplace issues. In these instances, the site from which the grievance was raised will receive support from management and assigned site functional representatives to review and improve the conditions being reported. NXP reported that it considered independence to not be critical to the resolution of these types of grievances. It is the assigned committee that decides who in the organisation is best placed to address the complaint. Once this triaging has taken place, the worker making the complaint is given an estimate on how long it might take to resolve the matter. On average, 60 per cent of complaints are addressed in less than one week, 16 per cent in less than two weeks and 24 per cent in more than two weeks. These turnaround times reflect the relative complexity of the grievances reported, which have not yet related to modern slavery practices.

The WOVO app also allows NXP to broadcast operational announcements to workers at the Kuala Lumpur manufacturing site. There is also scope for training modules to be offered through the app in the future.

Avoiding the escalation of complaints and helping to identify human rights issues

NXP employs several dialogue-based forums to monitor and develop its human rights approach. Forums include quarterly coffee talks and dialogue sessions, and open-door policies where workers can alert site general managers of concerns directly.¹⁴⁴ These can help issues to be addressed before they escalate into potential human rights abuses and more serious complaints.

Communicating with workers about grievance mechanisms

NXP notifies workers of its operational grievance mechanisms and zero tolerance policy against retaliation during the recruitment process.¹⁴⁵ When on-boarding, workers undertake training about protections for people who lodge a grievance or report Code of Conduct violations.¹⁴⁶ Posters are also used at manufacturing sites to notify direct workers of the grievance mechanisms available.

Measuring effectiveness

NXP receives feedback on the effectiveness of its grievance mechanisms during audits and assessments, such as by interviewing workers on how they would choose to report grievances.¹⁴⁷ Data analytics are collected on the number of grievances received by Speak Up hotline and the WOVO worker voice app, including the demographics of where the complaints originate (e.g. direct or supply chain workers) and turnaround time in initially responding to and closing a

complaint. This data is collated and consolidated by the legal team for review and reporting to NXP's Audit Committee on a monthly basis. Factory management, operations committee members and the Director, Corporate Social Responsibility have access to this data.

Expectations on suppliers around remediation processes

In addition to its own Code of Conduct, which prohibits child and forced labour,¹⁴⁸ NXP requires suppliers to adhere to its Supplier Code of Conduct (Supplier Code), and requires that their own suppliers also follow the Supplier Code.¹⁴⁹ NXP's suppliers (and their suppliers) must make an anonymous complaint mechanism available to their workers in alignment with local laws and regulations.¹⁵⁰ All supplier employees must be fully informed and understand the policy of non-retaliation that applies to complainants.¹⁵¹ Additionally, management system standards require suppliers to implement an effective grievance mechanism capable of collecting feedback on or violations against the Supplier Code.¹⁵² This includes a requirement to assess worker understanding of the Supplier Code.

NXP reported conducting training with suppliers to build awareness of the Supplier Code. This training focuses on salient modern slavery risks (e.g. forced labour) in its supply chains. A supplier portal is presently being developed for suppliers to enable two-way communication and for NXP to update suppliers on new requirements.

NXP assesses the presence and efficacy of grievance mechanisms used by suppliers when conducting site assessments. When it observes practices that do not align with the Supplier Code it directs suppliers to rectify these issues. For example, NXP reported seeing suggestion boxes being placed under the surveillance of security cameras. This, in turn, meant workers were not comfortable using them because the mechanism did not allow for anonymous reporting.

Modern slavery disclosures

NXP makes modern slavery disclosures under the *Modern Slavery Act 2015* (UK) (UK Act) and *Transparency in Supply Chains Act 2010* (California). In its 2019 Modern Slavery and Human Trafficking Statement, NXP reported that its salient modern slavery risks, in relation to operations and supply chains, were forced labour, bonded labour and child labour.¹⁵³ While it reported no incidents in relation to these risks within its operations, NXP disclosed that 38 per cent of suppliers audited were found to charge fees (e.g. recruitment fees).¹⁵⁴ The holding of workers' personal documents by a supplier was also found.¹⁵⁵ At the time of reporting, almost all affected workers had received remedy, with only one supplier failing to repay fees to workers. NXP reported continuing to engage this supplier in ongoing dialogue to resolve the matter.¹⁵⁶ More broadly, NXP reported auditing beyond the first tier of suppliers in its supply chain.¹⁵⁷ It also discloses data on the grievance mechanisms it uses.

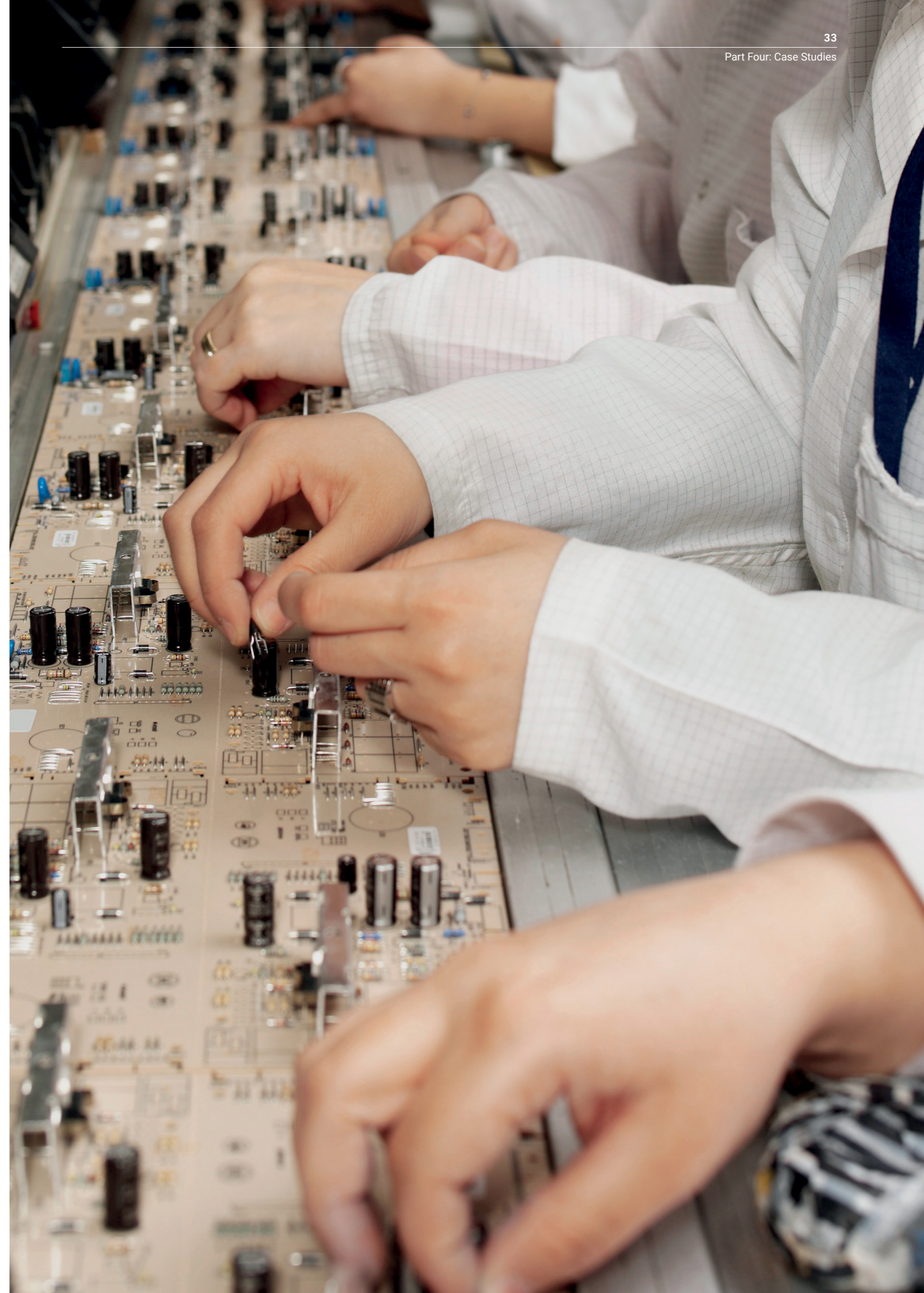
GCNA's key learnings

Challenges

- > Ensuring access to grievance mechanisms for vulnerable direct workers and workers in the supply chain is a primary challenge. Engaging effectively with tier two and three suppliers can help to ensure there is access to effective remedy for affected vulnerable workers in supply chains.
- > While worker voice apps offer a novel way to build accessibility, they require a high level of on-the-ground resourcing to be effectively implemented.

Opportunities

- > Despite the resource intensity required in their establishment, worker voice apps, like WOVO, are scalable.
- > The effectiveness of worker voice apps depends upon the management systems that sit behind the app. Ensuring clear lines of responsibility in relation to the receipt, classification and management of grievances lodged is critical while also ensuring that these lines do not impact on the legitimacy of the mechanism including the level of trust from workers in the mechanism. Care should be taken in setting up lines of responsibility to avoid conflicts of interest.
- > Quick acknowledgement of the receipt of complaints via a grievance mechanism and notifying the aggrieved person of the approximate turnaround time helps to build trust for the mechanism and in how complaints are handled.
- > Audit-related private worker interviews are a valuable opportunity to share information about grievance mechanisms with direct and supply chain workers.
- > The value of simple forms of communication like business cards should not be underestimated.
- > Working with suppliers to investigate grievances and remedy instances of breach is central to an effective system of remedy.



Case Study 2: Country Road Group and David Jones



Industry: Retail

About

The Country Road Group and David Jones businesses (Country Road and David Jones) are Australian fashion retailers comprised of multiple brands. They source their apparel and accessories from suppliers in China, India, Italy, Thailand, Bangladesh, Indonesia, Portugal, Vietnam and Australia.¹⁵⁸ They are part of the Woolworths Holdings Limited Group which is based in South Africa.

Developing a grievance mechanism pilot in partnership with a supplier

Aims and approach

Country Road and David Jones described using a collaborative approach and their leverage with suppliers to develop a pilot for a factory-based grievance mechanism in China for supply chain workers. They acknowledged that while companies can mandate requirements on suppliers through a code of conduct, creating a collaborative environment with shared values, in which suppliers are on board and share the aspirations of the company, will more effectively address modern slavery risks.

The pilot involves partnering with one key supplier in China, with whom Country Road and David Jones have a long-term business relationship. In addition to leverage and trust, the businesses identified the supplier as having an open and innovative mindset as critical factors supporting the pilot.

Prior to designing the grievance mechanism, Country Road and David Jones worked with the pilot factory to investigate the literacy levels of its workers and their access to smart phone technology. It was found that approximately 90 per cent of workers were literate in Mandarin and that almost all staff had access to a smart phone. Country Road and David Jones described taking a culturally sensitive approach in designing the grievance mechanism. They aim to increase the efficacy, use of, and trust in the tool, while being committed to ensuring that all complaints can be made free from fear of retribution.

The grievance mechanism is still in development, with ongoing research being undertaken into the right tools and processes to implement and scale the mechanism. Once implemented and evaluated, Country Road and David Jones hope to use the pilot to encourage other suppliers to implement the grievance mechanism in their own factories. It is intended that the grievance mechanism will be scaled up and implemented in partnership with further suppliers across both businesses.

How the factory level grievance mechanism will operate once introduced

Country Road and David Jones explained that the pilot grievance mechanism will utilise a digital messaging platform. Posters (to be located on the back of bathroom doors) and business cards (to be distributed to all workers in the factory) are written in Mandarin, with posters including prompts on the types of issues that workers might report through the mechanism. Workers will be able to access the digital platform via a QR code that is located on the poster and business card. Alternatively, workers will also be able to access the mechanism via phone or email.

The grievance mechanism will be managed internally by Country Road and David Jones Ethical Sourcing Specialist who has been tasked with developing the pilot project. Country Road and David Jones stated that it is important to have protocols in place that protect a worker's identity, validate and assess the issue, and ensure an effective resolution. A key issue identified by Country Road and David Jones was clarifying the lines of responsibility between Country Road and David Jones, and the supplier in the operation of the grievance mechanism.

'Where does our responsibility start? ... We're not trying to take on those issues as our own, it's more that we want to empower the factory to work through them. We would want the factory to own any issues that happened. We wouldn't automatically leave if there was a problem. Our goal would be to remediate.'

Sebastian Conley,
Sourcing Operations Manager, Country Road Group

Training

Country Road and David Jones recognise that for the grievance mechanism to be effective, the supplier – including its workers, human resources and corporate social responsibility management – would need to know it existed, understand the scope of subject matter that it addresses and know how to access it. They are working with management in the supplier factory to develop a training program that incorporates existing human resources channels that workers can use to lodge minor complaints and introduces the new grievance mechanism, which is intended to deal with more egregious issues. A key component of this training will be informing workers of the types of grievances that are best addressed by the new mechanism. The training is designed to be facilitated by the factory-based worker committee, to build worker trust.

Measure effectiveness

Key measures of effectiveness that Country Road and David Jones intend to use once its grievance mechanism is fully implemented are, whether workers know that it exists and whether they can use it. The effectiveness of training in streaming more egregious concerns through the grievance mechanism would also be assessed. Additionally, key performance indicators would be designed to determine how quickly suppliers act on issues and work through the remediation process.

Expectations on suppliers around remediation processes

Country Road and David Jones reported that all their suppliers and service providers are bound by their Code of Labour Practice (the Code),¹⁵⁹ which aligns with the ILO's conventions on ethical trade and the Ethical Trading Initiative (ETI) base code. The Code establishes a minimum standard of operations and prohibits forced, bonded and child labour.¹⁶⁰ Country Road and David Jones reports that regular social compliance checks to assess compliance with the Code are undertaken through independent auditors. The Code does not contain any expectations about establishing and implementing grievance mechanisms.

Modern slavery disclosures

Country Road and David Jones make modern slavery disclosures under the Australian Act. At the time of finalising this report, the 2020 Modern Slavery Statement had not yet been released.

'One of the big challenges that keeps coming up with regard to the development of grievance mechanisms globally is whether workers in factories actually understand what it means in their own language.'

Sebastian Conley,
Sourcing Operations Manager, Country Road Group

GCNA's key learnings

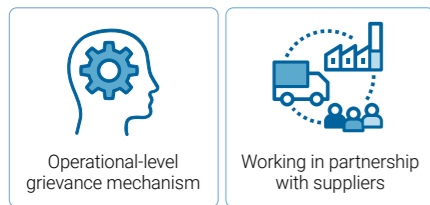
Challenges

- > Navigating the varying literacy levels of supply chain workers and their access to smart phones is important to help ensure access to a grievance mechanism;
- > Building trust with supply chain workers and management at the pilot site is also important to help ensure access to and use of the grievance mechanism;
- > It can be challenging to know how to deliver effective training for intended users of a grievance mechanism, including training on when to use the mechanism and when to use other complaints channels; and
- > COVID-19 restrictions have prevented visits to pilot locations, impacting the set-up of the mechanism.

Opportunities

- > Leveraging long-term relationships with suppliers, fostering trust and a collaborative approach can be key to gaining a supplier's support to establish a grievance mechanism; and
- > Building supplier ownership of a factory level grievance mechanism begins at the design phase.

Case Study 3: Thai Union Group



Industry: Seafood product producer

About

Headquartered in Thailand, the Thai Union Group (Thai Union), is a producer of seafood-based food products. It incorporates brands such as John West (UK), SEALECT, Mareblu, Petit Navire, Chicken of the Sea and Genova. As a processor of seafood, Thai Union does not own or operate fishing vessels, instead relying on suppliers for its product.

Grievance mechanisms

Thai Union promotes all feedback from workers, not only grievances. This has influenced its choice of worker voice mechanisms which capture a broad range of issues, including modern slavery practices, worker welfare issues, general working conditions and facilities. While its grievance mechanisms have detected indicators of modern slavery, broader human rights issues and suggestions for workplace improvement, no actual reports of modern slavery practices have been lodged by workers.

Internal channels

Thai Union has developed several grievance channels, including a human resources clinic, a phone line that allows workers to text or speak with human resources directly, elected worker welfare committees that hold meetings to discuss worker welfare issues, suggestion boxes and a hotline. Each Thai Union facility tends to have at least two of these grievance channels available to workers. Thai Union cited proactive channels (such as human resources representatives speaking with workers on the factory floor) as one of the more effective channels for capturing grievances, as issues can be caught early before they escalate. Thai Union chooses to direct its grievance channels internally to human resources, to increase direct employer-employee dialogue and trust.

'Speak Out', Thai Union compliance hotline

Launched in 2019 and operated by a third-party, Thai Union promotes its 'Speak Out' compliance hotline¹⁶¹ to direct and supply chain workers, contractors and clients globally. The hotline is promoted using internal communication channels, such as mass emails to employees, posters and social media. The anonymous service is available in 15 languages and offers a toll-free phone number and web-based channels for reporting grievances. Based on its 2019 Sustainability Report, Thai Union reported receiving nine grievances via this mechanism, with seven matters closed and two remaining in progress at the time its report was published.¹⁶²

In 2019, Thai Union initiated a donor funded 'Tell Us' project, in partnership with the fair labour and research civil society organisation Verité. Tell Us aims to strengthen internal worker voice mechanisms in five key processing facilities in Thailand. Thai Union reported that the program aims to raise the capacity of human resources staff to capture, investigate, and provide remediation for complaints raised by workers.¹⁶³ Critically, the program supports human resources staff receiving grievances through whichever channels they are received (including Speak Out) to learn how to effectively classify and respond to grievances and build user trust in the mechanism. For example, the standard operating procedures for handling grievances are communicated to workers so they know there are standards in place. A non-reprisal policy was another outcome of the project that aimed to build trust with workers.

Thai Union reported that reimbursement of recruitment fees is one remedy it facilitated in its work with labour recruiters.

External hotlines

Thai Union promotes several third-party hotlines to its direct and supply chain workers via its website. These include hotlines operated by the Thai Ministry of Labour, Thai National Human Rights and ISSARA Institute (an independent NGO tackling human trafficking and forced labour). Thai Union reported a commitment to providing or facilitating access to remedy for complaints that arise through all channels, not just internal mechanisms. It reported regularly conducting worker satisfaction surveys to check whether workers are happy with how grievances are handled.

Measuring effectiveness

Thai Union stated that it broadly draws on the UNGPs' effectiveness criteria for assessing the effectiveness of its grievance mechanisms, but also that the criteria are not applied prescriptively. Thai Union measures the effectiveness of its operational-level grievance mechanisms at a factory level. It collects data on the number of complaints raised through internal and external channels and the recurrence of grievances.

Thai Union assess user perceptions of the effectiveness of its grievance mechanism. In its survey of overall working conditions, Thai Union asked whether staff are happy with the complaints process and the outcome of investigations. It identified scope for improvement in this process, including asking more targeted questions about how grievance mechanisms could be improved.

Working with suppliers and external stakeholders

Thai Union reported that it has mapped its tuna supply chain down to the level of fishing vessels.

Thai Union prohibits modern slavery practices, including forced and child labour, in its Supplier Code and Vessel Code of Conduct.

Both Thai Union workers and supply chain workers are protected from retaliation and are required to have access to fair procedures by which to lodge and resolve a grievance. The Supplier Code requires suppliers to make effective channels through which to lodge grievances accessible to workers. Specific channels vary across suppliers depending on what mechanisms they have put in place. In turn, grievances need to be fully investigated and a fair and unbiased resolution reached. Grievance mechanism channels are also required to be widely communicated and anonymous, guaranteeing confidentiality and non-retaliation.¹⁶⁴

Thai Union delivers annual training to suppliers in Thailand to build understanding of its human rights policies. The training is broad and does not specifically cover how to address grievances.

Thai Union reports engaging with the Migrant Worker Rights Network to protect the rights of migrant workers who are most vulnerable to modern slavery in the fishing industry.¹⁶⁵ This collaboration has involved promoting and supporting the election of migrant workers onto worker committees to ensure that their voices are represented, and interviewing workers to investigate issues such as the payment of recruitment fees. Thai Union also stated that it engages with the International Transport Workers Federation and Labour Promotion Network to support the protection of worker rights. Thai Union is currently working with its suppliers to help their workers understand their employment contracts.

Thai Union identified that travel and factory visitation restrictions in response to the COVID-19 pandemic have meant that third-party auditors are not able to conduct factory site visits. This has decreased the visibility of issues faced by workers. Thai Union's fishing vessel audit program has also been halted and been temporarily replaced with virtual audits. Thai Union acknowledges that this is not an adequate long-term replacement of in-person worker audits. The postponement of in-person health and safety training for fishing vessel owners – due to the inability to facilitate this hands-on training online – was also identified as a challenge.

Modern slavery disclosures

Thai Union makes modern slavery disclosures under the UK Act. Following its 2019 survey of major tuna brand owners, the Business and Human Rights Resource Centre reported that Thai Union had strong disclosure of its policies, process and actions taken to address modern slavery in supply chains.¹⁶⁶

Thai Union has reported modern slavery concerns raised by a third party.¹⁶⁷ Its reporting also identifies no receipt of modern slavery complaints via its grievance mechanisms.

GCNA's key learnings

Challenges

- > There is a lack of visibility in what happens at sea. Supply chain workers on fishing vessels are faced with communication challenges that can isolate them and leave them with little to no channel for raising grievances, particularly if using external channels.
- > The COVID-19 pandemic has restricted travel and factory visitation preventing third-party auditors from conducting factory site visits. This has further decreased the visibility of issues faced by workers.

Opportunities

- > Working in partnership with external stakeholders can support businesses to overcome challenges in addressing their responsibility to prevent and address modern slavery;
- > Proactive approaches can be used to prevent issues from escalating into instances of modern slavery;
- > Grievance mechanisms can uncover systemic issues that can be remedied using creative approaches;
- > Building the capacity of human resources staff can help to capture, investigate and provide remediation for complaints; and
- > Promoting and supporting the election of migrant workers onto worker committees, can help to ensure that their voices are represented and that there is another forum in which migrant workers can lodge complaints.

Case Study 4: ABN AMRO Bank



Industry: Banking and Finance

About

ABN AMRO Bank NV (ABN AMRO) is headquartered in the Netherlands. In 2016, it reported being the world's first financial institution to apply the UNGPs' framework to its human rights reporting.¹⁶⁸ ABN AMRO operates retail banking activities across the Netherlands, a corporate banking practice focused on North-West Europe and private banking activities across the Netherlands and North-West Europe.¹⁶⁹

Detecting modern slavery victims within retail customers

Analysis of retail customer accounts is a unique way that banks can identify instances of modern slavery. In its role as a service provider to retail customers, ABN AMRO reported on its capacity to detect, flag and provide evidence of modern slavery to support criminal prosecutions. In doing so, ABN AMRO can support the judicial enforcement of human rights abuses and contribute to access to remedy for victims of modern slavery, for instance, through providing evidence that can lead to a conviction and result in punitive sanctions.

ABN AMRO uses data analysis of financial transactions to detect modern slavery practices, including human trafficking and exploitation of migrant workers, with its retail account holders.¹⁷⁰ It is important to note that these instances of modern slavery are not necessarily connected to the conduct of ABN AMRO's business clients. Instances of modern slavery that are detected through data analysis of financial transactions are not necessarily caused by, contributed to, or directly linked to the actions of ABN AMRO.

ABN AMRO reported that initially, the detection of modern slavery was often a 'by-catch' of money laundering investigations. In recognition of this it developed, in partnership with the Inspectorate of the Dutch Ministry of Social Affairs and Employment and the University of Amsterdam, over 25 indicators to flag potential modern slavery victims. The project has now become a public-private partnership (PPP) with the Dutch Government.¹⁷¹ The long-term aim of the PPP is to make the identification of potential victims a central focus of banking due diligence. Since this project was initiated, these indicators of modern slavery have been adopted by five other banks in the Netherlands.

In practice, when one or several indicators for modern slavery are triggered, these findings are automatically shared with ABN AMRO's Security and Integrity Management department, whose analysts undertake additional research. Depending on the findings of this research, a case may be submitted to the Dutch Financial Intelligence Unit for handling by law enforcement agencies.

Lending to corporate clients

As a lender, ABN AMRO reported that it requires its corporate clients in high-risk sectors to have grievance mechanisms in place. Grievance mechanisms do not need to be specific to modern slavery but must be able to capture human rights related complaints. A key challenge is assessing the effectiveness of these mechanisms. Clients may struggle with ensuring their grievance mechanisms align with the UNGPs' effectiveness criteria and banks do not conduct on-the-ground due diligence in most lending relationships. This means that banks must ask the right diagnostic questions to assess effectiveness.

ABN AMRO identified a responsibility to use its leverage with corporate clients to ensure that access to remedy is provided. The responsibility of the bank to remedy a human rights breach depends upon whether it has contributed to, or is directly linked to, an action taken by a corporate client.¹⁷² In its *Discussion Paper: Working Group Enabling Remediation*, the Dutch Banking Sector Agreement identifies that 'the specific steps that may be available or appropriate for a bank to take in a specific situation will depend on a number of factors, including the type of financial relationship that connects a bank to an impact, the types of leverage the bank may have, and the roles being played by other relevant actors'.¹⁷³ At the time the discussion paper was published, there were no known examples of private commercial banks implementing grievance mechanisms to capture complaints connected to client activities.¹⁷⁴ This is an issue that ABN AMRO has sought to address in partnership with stakeholders.

Client confidentiality clauses often mean that banks cannot disclose which companies they finance. ABN AMRO identified this lack of visibility to external stakeholders as a potential barrier to giving those affected by client actions access to remedy through a bank-level grievance mechanism. ABN AMRO identified that the expansion in scope of a lender's grievance channels to offer remedy to stakeholders impacted by client activities had two key drivers: the matter against ANZ reported to the AusNCP regarding the Phnom Penh Sugar case,¹⁷⁵ and the 2019 OECD report *Due Diligence for Responsible Corporate Lending and Securities Underwriting*.¹⁷⁶

Designing a grievance mechanism with greater reach

In 2019, ABN AMRO announced it would take a first step towards establishing an independent bank-level grievance mechanism, open to affected stakeholders and their legitimate representatives impacted by the actions of corporate clients. Since then, it has reported engaging in dialogue with external and internal stakeholders to scope the mechanism and identify key issues to be addressed in the mechanism's design.

External stakeholders engaged to date include civil society organisations, trade unions, human rights experts working with ABN AMRO clients, the Dutch Banking Association, peers, academics and human rights lawyers. ABN AMRO identified that the non-profit organisation Shift – a non-profit organisation focused on providing expertise on the UNGPs – has been extensively involved in this process. Internally, the bank has involved staff from sustainability, environmental and social risk management, commercial, legal and public relations teams in the development of the grievance mechanism.

ABN AMRO identified a key question underpinning this exercise: What is the role of the bank in relation to potential adverse human rights impacts that are identified through the mechanism? It explained that much consideration is required, on a case-by-case basis, of when the bank might assume responsibility for potential harms or act as a facilitator and mediator. It also considers what role it might play in enabling access to remedy to rights-holders. Another question being explored by ABN AMRO is how to effectively, and on what basis, they can engage corporate clients in the implementation of the grievance mechanism.

ABN AMRO reported applying the UNGPs to the process of developing its new grievance mechanism. It explained that some effectiveness criteria, particularly accessibility, were more difficult to implement than others. Accessibility issues, in part, stem from transparency issues identified above, as well as corporate clients and potentially affected rights-holders being in jurisdictions far from the bank's headquarters.

Modern slavery disclosures

ABN AMRO undertakes modern slavery reporting under the UK Act. The bank identifies labour rights as one of its salient human rights risks.¹⁷⁷ It reported that its potential exposure to modern slavery risks is highest through the services it offers to corporate and retail clients.¹⁷⁸ Client related investments (e.g. corporate bonds, equity and other financial products) also expose ABN AMRO to modern slavery risks.¹⁷⁹

GCNA's key learnings

Challenges

- > Determining what level of responsibility the bank has in relation to the activities of a corporate clients, especially regarding the provision of remedy.
- > Assessing the effectiveness of a corporate client's grievance mechanisms when they struggle to align their grievance mechanisms with the UNGPs' effectiveness criteria and when banks do not conduct due diligence on the ground in lending relationships.
- > Lack of transparency around client relationships can be a potential barrier for individuals and communities to access remedy through a secondary (e.g. bank operated) grievance mechanism.

Opportunities

- > Using data analysis of financial transactions to detect modern slavery practices.
- > Using leverage with corporate clients to ensure that access to remedy is provided.
- > Lenders working with stakeholders to design a bank-operated grievance mechanism that can be accessed by affected stakeholders and their legitimate representatives impacted by the actions of corporate clients.

Case Study 5: Fair Labor Association



About

Headquartered in the USA, the Fair Labor Association (FLA) is a multi-stakeholder initiative that brings together universities, civil society organisations and socially responsible companies to improve working conditions and protect workers' rights globally.¹⁸⁰ The FLA administers a Third Party Complaint Procedure (Complaint Procedure) that is accessed by individuals, organisations and groups 'to report serious violations of workers' rights in facilities used by any company that has committed to FLA labour standards'¹⁸¹

Fair Labor Association affiliation and accreditation

Businesses that join the FLA commit to upholding the FLA Workplace Code of Conduct¹⁸² (Workplace Code) and the Principles of Fair Labor and Responsible Sourcing¹⁸³ or the Principles of Fair Labor and Responsible Production¹⁸⁴ in their supply chains. Companies that affiliate in the FLA's 'participating company' and 'participating supplier' categories are assessed regularly against FLA Principles. Businesses that successfully implement these principles and Workplace Code standards can be accredited by the FLA.¹⁸⁵

Both sets of FLA Principles require participating companies and participating suppliers to commit to ensuring that workers 'have access to functioning grievance mechanisms, which include multiple reporting channels of which at least one is confidential'.¹⁸⁶ These mechanisms are separate from the complaint procedure managed by the FLA. The FLA observed that many of the operational-level grievance mechanisms available to the workers it encounters are ineffective, in part because they are not trusted by the workers. Given the sensitivity of the issue, the FLA reported that instances of forced labour are difficult for workers to report via grievance mechanisms. The FLA explained that well-functioning grievance mechanisms require capacity building with suppliers and brands and attention paid to cultural, operational and systemic issues affecting these processes. It is working with participating companies and suppliers to help improve their implementation of operational-level grievance mechanisms.

The FLA Workplace Code explicitly prohibits forced, bonded and child labour.¹⁸⁷ Participating companies and suppliers are bound by this code.

Third Party Complaint Procedure

Overview

The FLA makes the Complaint Procedure available to workers in factories operated by, or in the supply chain of, all affiliated companies, including participating companies and participating suppliers. Grievances, including those in relation to forced and child labour, can be lodged through the Complaint Procedure in instances of a Workplace Code violation. The FLA emphasised that the Complaint Procedure does not seek to replace or compete with factory-level grievance mechanisms and State-based judicial and non-judicial remedies. This grievance mechanism is meant to be a last resort when other channels have been ineffective in delivering remedy.

Making a complaint

Complaints can be made by workers and their advocates, including trade unions and civil society organisations.

The FLA enables affected workers and their advocates to make complaints via email, mail, telephone, telephone message and fax. Complaints can also be made via another institution that could reasonably be expected to pass the information to the FLA, such as accredited monitors.¹⁸⁸

The FLA observed that, to date, most of the complaints it receives are from factory settings. But in the future, there could be a growing number of complaints emerging from the agricultural sector. It has also observed a high number of complaints emerging from Central American countries where there is a strong presence of FLA staff on the ground who foster good working relationships with stakeholders including unions. The FLA reported that in this region there tends to be higher levels of trust in the fair resolution of complaints. In other places, such as India, the FLA is aware of worker concerns, but fewer complaints have been received. Fear of repercussions and less union activity were cited as factors that may underpin this trend.

Threshold requirements

Complaints received through the Complaints Process are assessed by FLA staff. Claims should contain reliable, specific and verifiable evidence or information that an alleged non-compliance with the Workplace Code has occurred. Additionally, complaints must meet the standard of systemic or persistent non-compliance and there must not be an existing State-based judicial grievance mechanism that is viable and non-biased that can address the complaint and deliver an effective remedy in a reasonable amount of time.

The FLA cannot accept complaints that are outside the scope of the Complaint Procedure, for example, where a factory does not produce goods for an FLA-affiliated company. However, it will almost never reject a complaint that is not specific enough. The FLA explained that it is currently developing a one-page graphic explainer in different languages to make clear how a complaint can be submitted. In circumstances where a complainant's report does not contain the required threshold of information for an acceptable claim, FLA staff will support that person (where possible) to meet these threshold requirements.

Investigating complaints

Once a claim is accepted for investigation, the affiliated company is informed about the complaint and has up to 45 days to carry out an internal investigation. The company can choose to conduct the investigation themselves, or to engage an independent, third-party investigator – which generally is seen to carry a higher level of credibility. Based on the findings of this investigation, the FLA will determine whether further assessment of the complaint is required.

Remediation

If the investigation determines there is a significant likelihood of non-compliance with the Workplace Code, the FLA will then work alongside the affiliated company to develop an effective remediation plan, which must be implemented to the FLA's satisfaction.¹⁸⁹ Implementation is checked through active engagement with the FLA member company. Complainants are also able to track the implementation of the agreed remediation plan. This may include requesting updates on how the factory is making the corrective actions needed. The FLA is starting to move towards written verification reports that will be published on their website, but this is not yet a formal requirement.

The FLA may determine that no suitable resolution is possible through a remediation plan, in which case, it can propose a different safeguard mechanism.¹⁹⁰ Participating companies are expected to prepare a remediation plan within a set period, which enables the affected parties to monitor the progress of the remedy being implemented.¹⁹¹ This process promotes transparency and predictability of the Complaint Procedure.

Remedies for past complaints include:

- > Recognition of trade unions;
- > Reinstatement of unfairly dismissed workers with back pay;
- > Initiatives to improve labour management relations at the factory level; and
- > Delivering training and education programs for management and workers.¹⁹²

To promote transparency, the FLA publishes the investigative reports as well as summaries of each assessment on their website.¹⁹³

'Brands have said to us how important our established complaint mechanisms are, because they may be the only channel for workers to actually submit grievances and complaints.'

Eric Biel,
Senior Advisor, Fair Labor Association

GCNA's key learnings

Challenges

- > In relation to the Third Party Complaint Procedure (Complaint Procedure), an inability to have investigators conduct physical investigations, conduct interviews or review records in factories (due to COVID-19 restrictions) limited the identification of grievances throughout 2020 and early 2021;
- > Participating companies are reporting less visibility of the conditions in factories and that brands are no longer able to conduct physical audits;
- > Retrenchments and partial and full factory closures due to the COVID-19 pandemic have limited the capacity to address the marked increase in enquiries; and
- > Limited resourcing constrains the capacity to have staff on the ground to support workers and work with advocate organisations in some countries.

Opportunities

- > The Fair Labor Association (FLA) promotes transparency using the complaint Tracking Chart¹⁹⁴ and predictability by providing users with the Complaint Procedure, with information about the process and timeframes for the resolution of their complaint;
- > The FLA's collective approach effectively leverages influence with factories;
- > A strong FLA staff presence in some countries enables more grievances to be captured including during the COVID-19 pandemic; and
- > Strengthening country and regional capacity to have strong unions can strengthen the protection of worker rights and make the grievance mechanism more effective.

Case Study 6: Responsible Business Alliance



About

Based in the USA, the Responsible Business Alliance (RBA) is the world's largest industry coalition working to promote corporate social responsibility in global supply chains.¹⁹⁵ Its members, which include electronics, retail, auto and toy companies, commit and are held accountable to the RBA Code of Conduct (RBA Code). The RBA Code is also considered a 'complete supply chain' standard where members and suppliers of members are expected to cascade the requirements to their suppliers.

RBA Code of Conduct

Forced labour, bonded labour, child labour, slavery and trafficking of persons are prohibited under the RBA Code, in addition to the retainment of worker documents and payment of recruitment fees by workers.¹⁹⁶ The RBA Code requires members and their suppliers to implement an effective operational-level grievance mechanism capable of receiving complaints from workers about code violations and promoting continuous improvement.¹⁹⁷ Additionally, workers must be provided with a safe environment free from fear of reprisal or retaliation, to support feedback and grievances to be shared freely.¹⁹⁸

The RBA stated that its Code of Conduct aligns with the UNGPs, ILO Convention and the OECD Guidelines. It explained that it had previously participated in an externally led alignment exercise to the UNGPs. This work later informed the development of the RBA's current grievance processes. Processes have also been aligned with the OECD's *Due Diligence Guidance for Responsible Business Conduct*.¹⁹⁹

RBA's assessment programs: Expectations on operational-level grievance mechanisms

The RBA provides its members with several assessment tools to measure and understand how they are meeting RBA standards. Among these tools are the Validated Assessment Program (VAP) and Supplemental Validated Audit Process (SVAP) on topics like forced labour and chemical management. Carried out by third-party auditors in on-site assessments, these processes investigate whether the grievance mechanisms made available to workers are adequate and effective. This assessment investigates several criteria, including whether:

- > There is an adequate and effective process to anonymously report grievances and complaints, which is internal (for workers and staff) and external (for workers of suppliers, local community or interested actors and whistle-blowers);

- > Workers have access to grievance mechanisms in their native languages;
- > The mechanism is well advertised – this includes workers being given written information about how to access the grievance mechanism;
- > Workers can report grievances and complaints without fear of reprisal;
- > The member being audited promptly investigates the validity of a complaint or grievance and takes prompt remedial action for a valid claim;
- > The identity of those making a grievance or complaint is protected; and
- > Records of grievances and complaints are retained for a minimum of 12 months.²⁰⁰

Third-party audits under the VAP and SVAP are one way in which effective grievance mechanisms can be evaluated. In addition to this, the RBA makes several other grievance channels available to workers directly employed by members or in their supply chains.

RBA and third-party grievance mechanisms

The RBA explained that workers from member businesses, their supply chains and civil society organisations on behalf of workers, can lodge grievances and complaints through RBA grievance channels.

In addition, the RBA proactively scans for egregious allegations related to their members or their suppliers with advanced search engine analytics that examine news articles, social media posts, and videos. This process, along with the investigation of credible allegations, can result in a negative impact to the company's level of membership.

The RBA reported that for member compliance requirements to be enacted, an egregious claim must arise in relation to a regular or full member. When this occurs, a new case is opened (pending thresholds are met and the claim is credible and within the scope of the Code of Conduct) and the allegation fully investigated. This may result in an on-site investigation. Egregious claim cases must be corrected or will result in a downgrade of membership.

Grievances that are outside the scope of the RBA Code will generally be brought to the attention of the member by the RBA, encouraging them to address the claim. The RBA reported that it tries to contact partner organisations where there is a need and opportunity to provide a person raising the grievance access to victim services.

The RBA reported that most findings related to forced labour are found through audits and civil society organisation complaints.

Suara Kami Helpline

The 'Suara Kami Helpline' is a third-party grievance channel, implemented across 20 factories in Malaysia that are involved in the Responsible Workplace Program.²⁰¹ Factories participating in this program are required to advertise the helpline and promote its use. The helpline is available in multiple languages and is staffed by a Malaysian civil society

organisation. In its initial rollout, utilisation was low due to the limited number of factories involved and unfamiliarity with the helpline.

To respond to this situation and build accessibility and adoption, the RBA reported employing several approaches. Firstly, it worked with buyers to place greater expectations on businesses to make available and promote the helpline. Secondly, it worked with the Malaysian civil society organisation staffing the helpline to undertake outreach with workers to promote it. This was done with the explicit aim of building worker trust for the helpline.

The RBA credited civil society with the idea of grassroots socialisation, which is perceived as highly effective in building trust and engagement with the helpline. The helpline is now available to all members of the RBA and its Responsible Labor Initiative (RLI) for implementation in their supply chains, with the addition of special protocol enhancements related to the global health pandemic. Finally, the RBA is exploring targeted advertising through social media channels to promote the helpline. These methods have led to increased use of the helpline.

The RBA reported that it plans to promote the helpline through its Responsible Recruitment Program and make it mandatory for participating recruiters to raise awareness of and socialise the helpline amongst the workers they recruit.

RBA worker voice platform

The RBA recently launched a new Worker Voice Platform that includes a mechanism to enable workers in member organisations and supply chains to lodge complaints and grievances. One element of the platform is the RBA Voices Mobile app. The app includes worker surveys, audit support and mobile learning functions.²⁰²

Additionally, the app enables worker interviews to be conducted off-site, safely, without supervisor oversight, and from any device. In circumstances where workers face retaliation for participating in an audit, they can also report this through a QR code provided by the auditors. Gamified worker education on subjects that relate to health and safety, career development and personal growth are incorporated into the app and are available in multiple languages.

When asked if it was more advantageous to offer workers specific helplines and grievance channels or a more holistic service, the RBA advocated for the provision of a 'one-stop-shop'. It stated that a more holistic helpline can help to build worker trust in the organisation, particularly if it offers services and advice in relation to wage statements, housing, and healthcare.

RBA non-retaliation helpline

The RBA reported that it has a non-retaliation helpline that it promotes with workers via a business card handed to them after a worker interview. When a worker reports retaliation, an investigation is opened, and the issue is addressed.

RBA accountability mechanism

There is an accountability mechanism for its members on RBA's website that includes a complaints channel. This allows the RBA to be contacted directly by workers, civil society organisations and social workers.

GCNA's key learnings

Challenges

- > The global COVID-19 pandemic made workers more vulnerable at a time when civil society organisations are limited in their ability to support the work of the Responsible Business Alliance (RBA); and
- > Audits are taking place in a limited capacity, or via remote technology, due to COVID-19 restrictions. Given that more serious breaches of the RBA Code (such as forced labour) are more commonly detected through these two channels, fully functioning worker grievance models are especially important.

Opportunities

- > Leveraging relationships with factories can ensure more efficient and effective access to grievance mechanisms for direct workers and workers in supply chains, particularly when trust has not yet been built for third-party grievance mechanisms;
- > Worker-centric design and implementation considerations (such as multiple platforms and translations in local languages) are critical to building confidence in the credibility of the grievance mechanism. They are also pivotal in promoting accessibility of the mechanism;
- > Effective working relationships with civil society organisations can help to build worker trust in a grievance channel and in turn, promote accessibility. Working relationship examples include civil society organisations staffing grievance hotlines and carrying out grassroots socialisation of a mechanism; and
- > Holistic solutions that offer a 'one-stop-shop' can help to build worker trust in the organisation and credibility for the grievance mechanism.

Key Insights

Key Insights

Key insights from this research can be applied by business in the design and implementation of operational-level grievance mechanisms, or in partnership with suppliers. These insights draw on the case studies and are expanded upon in the companion guidance note.



Collaborate: The most comprehensive approach is for a business to have its own grievance mechanism, as well as concrete expectations for suppliers to implement their own mechanisms.



Access to remedy: In determining what level of responsibility a business has in providing remedy in relation to the activities of suppliers, consideration needs to be given to whether the business has caused, contributed to, or is directly linked to the activity.



Design: Worker-centric design and implementation is critical to building trust for, and credibility of, the mechanism.



Design: Building supplier ownership of a factory-level grievance mechanism begins in the design phase of developing a mechanism.



Collaborate: Effective working relationships with civil society and worker organisations, including through the staffing of grievance hotlines and in carrying out grassroots socialisation of a mechanism, can help to build worker trust in the grievance channel and in turn, promote accessibility.



Access to remedy: Leveraging relationships with factories can ensure more adequate and effective access to grievance mechanisms for direct and supply chain workers. Similarly, leveraging long-term relationships with suppliers, by fostering trust and a collaborative approach, can support systemic change in supply chains.



Access to remedy: Creating access to an effective grievance mechanism and remedy beyond tier one of the supply chain is a key challenge. Beyond identifying issues in tiers two and three of the supply chain, businesses need to consider their role in giving access to an effective remedy to these workers.



Trust: Building trust with workers and site management is critical to ensuring effective access to, and use of, grievance mechanisms.



Trust: Despite the resource intensity required in their establishment, worker voice apps are scalable and can offer a holistic 'one-stop-shop' that can help to build worker trust in the organisation and credibility for the grievance mechanism.



Escalation: The effectiveness of worker voice apps depends upon the management systems that sit behind the app. Ensuring clear lines of responsibility in relation to the receipt, classification and management of grievances lodged is critical.



Trust: Quick acknowledgement of receipt of complaints and notification of the approximate turnaround time helps to build trust for the grievance mechanism and in how complaints are handled.



Track: Grievance tracking charts can help build transparency and predictability around the grievance process.



Pilot: Piloting a mechanism at one or a few locations and with the business's own employees can be helpful in identifying gaps before broader implementation across locations and suppliers.



COVID-19: COVID-19 impacts to businesses have drastically decreased the visibility of issues faced by workers. While COVID-19 restrictions are limiting the ability of auditors to conduct physical investigations, existing factory-level grievance mechanisms that are effective can continue to provide workers with a channel to make complaints.



Access to remedy: Proactive approaches, such as worker committees and human resources clinics, can be used to prevent issues from escalating into potential instances of modern slavery and can support a timelier resolution of issues and potential breaches.

Note: It is suggested that key insights are read sequentially to better support the design and implementation of an effective grievance mechanism.

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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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