NHRIs and the corporate responsibility to respect

The Honourable Catherine Branson QC

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1 Introduction

Ever-increasing numbers of Australian companies recognise that respecting human rights is good for business. More than 40 Australian organisations have publicly committed to integrating human rights in their practice by joining the United Nations Global Compact.

For the past 23 years, the Australian Human Rights Commission has been working in various ways to help businesses recognise their responsibility to respect human rights.

For example, on a daily basis we receive, investigate and conciliate complaints from employees about human rights issues in the workplace. In the 2008-2009 reporting year these types of complaints made up around a third of all enquiries received by the Commission.¹

We have developed best practice guidelines designed to assist companies in relation to discrimination, harassment and accessibility in the workplace or engage native title holders who own resource-rich land.

We have also worked on developing policy frameworks which necessarily involve and impact on the corporate sector as well as the government. For example, we have successfully advocated for paid maternity leave and the elimination of discrimination against same-sex couples regarding work-related entitlements. We continue to encourage businesses, and others, to allow staff to adopt flexible working hours for better work/life balance and to reduce barriers to employment for people with disability.

Today I want to focus on some recent examples of work that we have been doing as a NHRI to help encourage business to fulfil the second pillar in the Ruggie framework - the corporate responsibility to respect human rights.

One of those projects involves four short factsheets that we developed for Australian companies. Those factsheets focus on providing Australian companies some guidance on how to take the first step towards integrating human rights into their everyday business practices.

The other projects involve our collaborative work with businesses to promote gender equality in some of Australia’s leading corporations and to increase participation of people with disability in the workplace.

I am hoping that in describing these projects, I can demonstrate the special role that NHRI s can play in promoting the corporate responsibility to respect human rights. In particular I want to highlight that one of the strengths of NHRI s in this space is that we are uniquely placed to positively engage with governments, businesses and civil society organisations; we can often be the independent bridge that would otherwise be missing in these discussions.

I also hope that by sharing our experiences of positively engaging with businesses, we can generate new ideas, inspire new projects and open the door to learning from each other.

2 Providing guidance to business on how to integrate human rights into their everyday business

When moving into the business and human rights space we started out with the belief that NHRIs can play an important role translating international human rights instruments into language that makes sense to Australian businesses.

When we tested that proposition - by talking with Australian companies regarding their needs - we found that there was indeed a great demand for materials that explained how human rights principles should be applied to the business context.

As a result we developed a suite of resources called Good Practice, Good Business.

Some of those resources focus on providing practical guidance in eliminating discrimination and harassment in the workplace – these guidelines are specifically linked to our responsibility to administer various anti-discrimination acts.

In addition to the discrimination-specific guidelines, we developed guidelines focusing on how human rights are relevant to Australia’s major industries – the mining and resources sector, the finance sector and also the retail and manufacturing sectors.

When developing these sector-specific fact sheets we had three primary goals

1. to educate the corporate sector on how human rights are relevant to business
2. to translate human rights principles into a language that business can relate to, and
3. to guide business as to how to integrate human rights considerations into everyday business practices.

The most challenging of these three goals was the second one – translation. We came to recognise that there was little point in using words like ‘human rights obligations’ because that immediately turned business executives off. Instead, we needed to start using the language of business risks and business opportunities.

By working with company representatives and expert NGOs, and by using the Ruggie framework and other well-established thinking in this area, we started to identify the potential risks an Australian company might be exposed to if it failed to take appropriate steps to prevent human rights violations. We also tried to identify the long term benefits and opportunities that could be created by incorporating human rights considerations into business thinking. And, possibly most importantly, we identified some of the practical tools which could help companies integrate human rights considerations into everyday business practices.
3 What rights are relevant?

To give you just a flavour of what we included in those fact sheets, we started by identifying that an Australian company’s operations can impact on a diverse range of people including employees, customers, business partners and the community in which they operate. Some human rights, such as the right to work in just and favourable conditions, are easily identified as business issues. However, businesses can have an impact on a much broader range of rights, for example:-

- The rights of Indigenous peoples – especially for mining and resource companies.
- The right to health – especially in highly polluting or dangerous industries (or in the finance industry which funds those industries).
- The right to life and security – especially for companies employing private security companies.

In the fact sheets, we give some examples of the types of questions that a company might start asking itself in order to find out what rights they might be impacting on. For example, questions like:-

- Does the business providing a safe working environment?
- What policies and practices are in place to ensure that workers are not discriminated against because of their race or sex?
- What measures have they taken to ensure the security of their staff in risky working environments?
- Does the business assess the impact on land, housing, water and farming needs of the local community?
- If the business involves developing or utilising land, do they consult with and obtain the free and informed consent of the indigenous community?

4 What steps should companies take?

We then highlighted that companies need to do some due diligence which include the following five broad steps:

1. **Companies should assess the human rights impacts of their operations** on all people connected to the company’s business activities - for example workers, business partners, suppliers, contractors, trade unions, local communities and customers.

2. **Companies should adopt and implement a human rights policy** that applies throughout the company and their supply chain.

3. **Companies should ensure compliance with all local laws and adopt codes of practice** relevant to the human rights impacts of their business and supply chain.
4. **Companies should implement a credible and transparent system of internal and independent monitoring and reporting** of their human rights policy, its implementation and its impacts.

5. **Companies should develop partnerships** with other companies, NGOs, community groups, unions, indigenous and other local communities and government to ensure respect for those human rights impacted by the company’s business operations and to establish appropriate systems to address grievances.

5 Where can companies get help?

We then gave companies references to resources and tools which can help in this process including relevant industry and reporting codes.

We have not gone the extra step, like the Danish Institute of Human Rights has, of providing one-on-one advice to companies on how to apply these tools. It is worth considering whether NHRIs and civil society organisations can play a more active role in working with companies to help them through this process.

In any event, as I mentioned in my introduction, we have been engaged in some collaborative projects with companies or industry bodies in relation to improving performance on specific human rights issues, like the project with Australian Stock Exchange which I will discuss shortly.

6 Working with business bodies to develop best practice in the area of sex and disability discrimination in the workplace

Through our work we have identified particular areas of need in the workplace – particularly in the areas of disability and sex discrimination.

6.1 **Working with business on gender diversity in the workplace**

A 2008 census of Australian Women’s Leadership found that women only chair boards of directors or hold CEO positions in 2% of the top 200 companies on the Australian Stock Exchange. In 2008, there was a decline in the representation of women on boards compared to previous years.

This statistic was the impetus for launching our project with the Australian Stock Exchange.

As a result of this partnership, from 2011, ASX200 companies will publicly report on meeting voluntary targets for gender diversity. Those targets will help create greater transparency and accountability in the role that women are given in our corporate sector. And they have already had an impact. Between January and June 2010, 24% of all ASX200 board appointees were female compared to just 5% in 2009.

Our Sex Discrimination Commissioner, Elizabeth Broderick has also worked with big business to create a new group called *Male Champions for Change*. This group is committed to working with CEO’s and Directors of major Australian companies to ensure that gender equality remains on the agenda.
6.2 Working with business on people with disability in the workplace

With respect to people with disability in the workplace there are also some worrying statistics – albeit that they are a little old as our most recent census results have not yet been published.

The unemployment rate for people with disability in 2003 was 8.65% compared to 5% for people without disability. Since 1993, the labour force participation rate of people with disability has fallen, while the participation rate for people without disability has risen. And in 2003, 53.2% of people with disability participated in the labour force as compared to 80.6% of those without a disability. For people with a psychiatric disability the workplace participation rate is even lower.

We have responded to this issue in a variety of ways.

Most recently we published a best practice guide to dealing with mental health in the workplace called Workers with mental health: A practical guide for managers.

We have also worked with businesses and other agencies to demonstrate that the cost of minor adjustments in the workplace for people with disability is far outweighed by benefits. Together with business we worked to dispel misconceptions about people with disability in the workplace – for example that people with disability are less productive, less safe, less likely to show up to work. This will, we hope, increase the willingness of businesses to hire people with disability and reduce the disproportionate unemployment rates.

Some other disability-related projects aimed at assisting business to integrate practical human rights approaches into their activities include working with banks and other financial service providers to improve access to electronic financial services for people who are blind or have low vision. We have also worked with the private sector housing industry and property developers to develop a national strategy to integrate universal housing design features in new developments to address the growing need for more accessible housing for people with disability and our ageing population.

7 Conclusion

Already, we are already starting to see encouraging results from engaging positively with corporations. We are developing tools and guidelines to educate and inform the business sector by consulting them about what they need. We are also liaising with business associations on the best ways to implement human rights practices.

There is no doubt in my mind that the enjoyment of human rights by people who are impacted by corporate activity is much better when the strategies to achieve this end are developed in partnership with those corporations. That doesn’t mean that all strategies in the field of business and human rights need to be developed in

\[\text{Australian Bureau of Statistics 2003} \quad \text{these are the most recent statistics on employment for people with disabilities. In 2009, the number of employed people with disabilities in the public service was 3%, declining to less than half what it was in 1986 (State of the Service Report 2008-2009).} \]
partnership with corporations, but where there is a choice to develop tools targeting business with them or without them, it is almost always better to work with them. And as an NHRI we are often welcomed to the corporate table where NGOs are not.

Similarly, where it is important to convey a consumer perspective in those tools, NGOs and consumer organisations may be more willing to talk to us than to the corporation allowing us to act as a bridge between parties.

Change to corporate behaviour will not happen overnight. The alliances we build and the strategies we use must be clever and carefully developed. However, NHRIs are, in my view, uniquely placed to help create the necessary strategic alliances. The potential gains will not just have an impact locally or nationally. If we can change the way a transnational corporation deals with human rights, the implications can be global. By sharing our experiences here today and adopting national action plans, we can ensure that businesses are aware of and meet their responsibility to respect human rights.