

# Human rights lens in Australia

A growing focus

Once generally considered to be adequately addressed through our legal system, expectations on human rights assurance for projects based in Australia are showing signs of increasing.

Human rights due diligence and assurance includes the scoping of a project's potential exposure and contribution to human rights infringements, and subsequent action to manage and mitigate any identified risks and impacts. This has long been a fundamental process for companies operating in, investing in, or buying from 'conflict-afflicted and high-risk areas' (CAHRAs)<sup>1</sup>.

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## Subtle changes emerging

In 'low risk' jurisdictions such as North America, Europe and Australia – human rights have generally not been seen as material, with compliance to local laws being seen as sufficient proof of good practice. This has meant that, for Australian projects, a specific consideration of human rights due diligence and assurance mechanisms has not been front of mind for most.

This dynamic largely remains in place. The human rights context in a jurisdiction such as Australia is significantly more benign than in a nation state where, for example, the rule of law is not universally applied or where all or parts of that nation are in a state of conflict. However, subtle changes are emerging, arguably due to two reasons:

1. A reappraisal by investors and buyers of the human rights risks associated with projects in low-risk jurisdictions, especially in light of high-profile incidents linked to cultural heritage and First Nations peoples.
2. Linked to above, moves towards a more rights-based approach to responsible investing and sourcing.

More recently, we are seeing human rights becoming more of a widespread focus and being considered in company policies and industry standards<sup>2</sup>. In the financial sector, investors and lenders are seeking evidence and reassurance that Australian project owners or proponents have awareness of their potential or actual human rights impacts and have developed approaches and systems to address these.

Under the [Equator Principles](#), Australia is deemed to be a Designated Country, meaning it has 'robust environmental and social governance, legislation systems, and institutional capacity designed to protect their people and the natural environment.'<sup>3</sup>

In theory this should mean that additional due diligence and assurance on human rights is not necessary. However, market participants are increasingly applying a human rights lens to ensure the rights of stakeholders – and particularly First Nations peoples – are protected. This is especially the case in regards to Native Title, cultural heritage, and the United Nations' principle of Free, Prior and Informed Consent (FPIC) across the country, and land rights in the Northern Territory.

## What Australian businesses need to know

As a result of this shift in the human rights dynamic in Australia, we offer an introduction below to human rights, and the associated due diligence and assurance environment around this area of risk.

## International legal instruments

Human rights are protected by numerous international legal instruments. These include the:

- United Nations' [Universal Declaration of Human Rights](#)
- United Nations' [Declaration of the Rights of Indigenous Peoples](#) (which includes the FPIC principle)
- International Labour Organization's [Declaration on Fundamental Principles and Rights at Work](#) and its international standards.





## Guidance on human rights

There are numerous guidelines and tools for human rights due diligence. Some are provided universally, while others are industry or location specific.

Universally, the United Nations' [Guiding Principles on Business and Human Rights](#) (UNGPs) is the primary, international standard for companies to undertake due diligence on human rights. The OECD [Guidelines on Multinational Enterprises](#) provides recommendations by governments to multinational enterprises to contribute to sustainable development and address adverse impacts.

The International Finance Corporation's [Performance Standards on Environmental and Social Sustainability](#) include eight extensive and robust standards, spanning risk management, labour, resource efficiency, community, land re-settlement, biodiversity, Indigenous peoples, and cultural heritage.

The [Danish Institute for Human Rights](#) (the Danish Institute) has also developed a comprehensive range of guidance and tools for use universally, as well as some sector-specific information. This includes its [Human Rights Impact Assessment Guidance and Toolbox](#) which is considered best practice, and is tailored for large-scale business projects.

At the national level and supranational level, countries such as the UK and Germany, and blocs such as the European Union, all have specific laws ruling modern slavery. This is also the case in Australia, where entities with an annual revenue over \$100 million are required to submit a modern slavery statement to the Minister for Home Affairs. The Australian Government has released [updated guidance](#) for this in May this year.

At the industry level, the mining sector internationally received guidance from ICMM on [human rights due diligence](#) in May this year, which provides a range of tools and resources.

Last month the OECD also released its [Handbook on Environmental Due Diligence in Mineral Supply Chains](#) to support downstream enterprises incorporate environmental considerations into their supply chain due diligence processes, and help upstream enterprises meet due diligence expectations of their customers and other downstream business relationships. Human rights have been mentioned throughout the handbook as many environmental impacts can cause or contribute to adverse human rights impacts.





## Human rights vs other assessments

Given this focus, how does an Australian company assess the human rights risks and impacts potentially associated with a project?

Firstly, precedents are in place. When going through approval, most mining, energy, infrastructure, and commercial real estate developments will need to go through some form of social performance assessment or other impact assessment. This may be in the form of a Social Impact Assessment (SIAs) and/or an environmental, social and health impact assessment (ESHIA).

There are key similarities between these processes and human rights-based assessments. Both identify and address adverse impacts which are typically similar. Both also involve similar approaches to data collection and consultation with affected communities, and place an emphasis on process as well as outcomes of the assessment (for example understanding they are ongoing processes).<sup>4</sup>

But it is important to understand that there are also some key differences:

### Standards and regulations

Human rights are protected by instruments of international law, and assessments are based on the UNGP. SIAs and ESHIAs can use a range of different benchmarks and standards based on the context, including values and norms.<sup>2</sup>



### Scope

Human rights due diligence is concerned with impacts which may be caused or contributed to through business activities – as well as those directly linked to its operations, products or services<sup>5</sup>. This includes up and down the value chain.

The Danish Institute and IPIECA has provided a list of some human rights areas that are not always considered in ESHIAs<sup>6</sup>:

- supply chain labour issues
- post-conflict or conflict-sensitive areas, and operation-related security activities
- gender analysis, Indigenous people, and vulnerable individuals and groups
- community impacts related to business relationships or activities (e.g. partners, government companies or joint ventures operations)
- legacy human rights impacts related to previous operators, and cumulative impacts related to companies in the same area
- project and in-migration impacts such as overloading infrastructure and social services.

### Focus on adverse impacts and most significant harm

Social performance looks at the benefits as well as adverse impacts, while human rights assessments only consider adverse impacts. Socio-economic benefits do not ‘offset’ human rights impacts under human rights assessments<sup>5</sup>. Businesses are also required to focus on the issues that are causing the most harm – while keeping an eye on less material impacts as contexts can change<sup>2</sup>.

### Stakeholders

Human rights assessments include identifying rights-holders and their entitlements, duty-bearers and their obligations, and other relevant parties<sup>5</sup>. Human rights approaches are also mainly focused on protecting the rights of individuals, as opposed to the wellbeing of groups, which is often the focus of other social performance assessments<sup>2</sup>.



## What’s expected from companies?

The UNGPs expect companies to have policies and processes appropriate to their size and circumstances, to assess and address potential and actual adverse human rights impacts. This expectation is largely mirrored in the main due diligence mechanisms used by capital markets.

The UNGP expects to see:

- a public policy commitment on respecting human rights
- identification and assessment of actual and potential human rights impacts
- integration of human rights assessments into core business and decision-making processes – and acting upon the findings
- tracking of responses
- communication on how impacts are addressed
- if necessary, remediation of any human rights impacts.

The ICMM ‘Corporate responsibility to protect’ figure summarises these expectations.

**Human rights due diligence is an evolving space for companies, and not all human rights will be relevant in all circumstances.**

**Every business will also be at a different level of maturity when considering and managing human rights impacts. Over time, it’s expected human rights due diligence will be an ongoing and integrated process.**

	Commit	Identify	Integrate	Track	Communicate	Remedy
UNGPs	Commit publicly to respect human rights, and ensure that this policy commitment is embedded in its institutional culture	Identify actual and potential adverse human rights impacts	Integrate findings from impact assessment across relevant company processes	Track the effectiveness of measures that address adverse human rights impacts	Communicate with stakeholders on how impacts are addressed and how effectively	Implement processes for helping provide remedy to anyone who is harmed as a result of its actions or decisions
Engagement	Ensure stakeholder engagement includes raising awareness of company human rights policy	Incorporate and draw on meaningful consultation with affected and potentially affected people, particularly vulnerable people	Engage affected people to ensure their awareness of, input, and involvement in planned impact management actions	Engage affected people to involve them in the monitoring and evaluation of impact management	Publicly report on how impacts are being addressed, including performance. Ensure reporting is clear, accessible, and does not create risk to rightsholders.	Engage widely to promote awareness, accessibility, and accountability of grievance mechanism/s

Figure 1. Corporate responsibility to protect – expectations of companies under the UNGPs. (Source: ICMM 2023, p.11)



## Expectations reflected in international principles and standards

As mentioned above, UNGP expectations have been reflected in international principles and standards. For example, the [Equator Principles](#) – which guide Equator Principles Financial Institutions (EPFIs) on addressing adverse risks and impacts of financed projects – require entities to assess potential adverse human rights impacts as part of their Environmental and Social Impact Assessment. This is applicable where a project has potential to cause adverse human rights impacts.

In the metal and mining sector, the [GRI Sector Standards Project for Mining – Exposure draft](#) asks companies to consider a list of 25 likely material topics and determine which are material to their organisation, and will require reporting. Human rights are integrated throughout the topics including:

- climate adaptation and resilience
- impacts on local communities
- Indigenous peoples
- land and resource rights
- security practices
- child labour
- forced labour and modern slavery
- freedom of association and collective bargaining
- corruption
- conflict-affected and high-risk areas.

The Sustainability Accounting Standards Board (SASB) [guidance for materiality](#) also considers human rights as likely to be considered material, and would expect to see proof that human rights are understood and that appropriate levels of management are in place.



## Finding an optimal and appropriate approach

Human rights due diligence can be done in different ways, depending on the company's context and their level of maturity within this space.

The [ICMM](#) has presented 10 different types of approaches for mining and metal companies to consider. These range from a short-term, desk-based approach to a fully integrated option. Companies may choose to focus on their supply chain, a particular issue, or stage of a project. Some approaches focus on external engagement, while others are based more on desk research and internal engagement.

A snapshot of three of the 10 approaches that may be more relevant in the Australian mining and metal sector is provided below.

### Human rights assessment

Allows a broader scope to be assessed regularly, with lower resourcing, engagement, and human rights expertise.

- **Scope:** All human rights issues, at company, operation, or policy level.
- **Process:** Short-term, desk-based assessment, with a focus on internal engagement.
- **Integration:** Internal engagement will build company capacity to understand human rights impacts and integrate into risk management processes.

### Project lifecycle event assessment

Supports companies and projects to adapt to changing circumstances.

- **Scope:** All human rights issues related to a specific stage or situation, such as market entry, expansion, or closure.
- **Process:** Usually once-off and undertaken ahead of the change. Includes engagement with stakeholders creating the change and those who are impacted by the change.
- **Integration:** Often coincides and interacts with risk management processes that are also addressing the specific stage or situation.

### Integrated into other processes

Integrates human rights into Environmental and Social Impact Assessment (ESIA).

- **Scope:** Broader focus including environmental, social and health impacts than human rights alone, with a risk of a reduced focus on human rights issues and assessment processes (such as business relationships).
- **Process:** Long term, less frequent, site-based assessment, with multiple experts. Involves coordination with other studies and engagement activities to avoid duplication and enhance robustness.
- **Integration:** Supports working towards full integration, especially if any human rights gaps are comprehensively addressed. While this a more effective way to integrate human rights management, there can be challenges related to working with other studies and experts, such as using different methods, metrics and standards to manage risk.

The Danish Institute has extensive guidance integrating human rights assessments into other processes. See its [‘Integrating human rights into environmental, social and health impact assessments’](#) and [‘Human rights impact assessment guidance and toolbox’](#).





## How to start

### 1. Context scanning

Research what your sector peers are doing in terms of human rights due diligence. Look at the websites of comparable organisations and see if they have a publicly available human rights policy, and whether they share information on human rights issues that are material for them and how they are managing them.

Get to know the UNGP and consider what guidelines and other standards might be suitable for your companies' context now and into the future.

### 2. Scope business projects or activities

Map out your companies' projects and activities, and start thinking about the value chain. Consider your organisation's size, context and operations, and where the more material human rights issues might exist. How well are social and environmental risk management integrated into the organisation currently, and what are the plans for maturing these systems into the future?

### 3. Stakeholder mapping

Review previous stakeholder engagement plans, communication plans, stakeholder registers and management systems to map already known stakeholders – and then identify where there are gaps. Consider:

- **Rights holders:** Employees, contractors and families; affected community members, including Indigenous peoples and people from culturally and linguistically diverse backgrounds; those impacted downstream; human rights defenders; and consumers.
- **Duty bearers:** The company responsible for the business or project; suppliers and contractors; business partners; government departments and agencies.
- **Other relevant parties:** Intergovernmental organisations; NGOs; national human rights institutions; subject matter experts; unions etc.

These steps will get you started and help you to make an informed decision on the type of human rights assessment approach that might be suitable for your business needs.

## Need more help?

Contact us if you'd like to talk about human rights in the context of your organisation, via [sustainability@consentium.com.au](mailto:sustainability@consentium.com.au) or call +61 8 8431 7113.

### Bookmarks

- 1 United Nations Interagency Framework Team for Preventative Action 2012, [\*Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict\*](#).
- 2 ICMM 2023, [\*ICMM Human Rights Due Diligence Guidance\*](#).
- 3 Equator Principles Association 2023, [\*'About the Equator Principles'\*](#).
- 4 Danish Institute for Human Rights 2020, [\*Human Rights Impact Assessment, Guidance and Toolbox\*](#).
- 5 United Nations 2011, [\*Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework\*](#).
- 6 Danish Institute and IPIECA 2013, [\*Integrating Human Rights into Environmental, Social and Health Impact Assessments\*](#).