



29 November 2016

Mr S Stuart Clark AM  
President  
Law Council of Australia  
19 Torrens St Braddon ACT 2612

Dear President

### **Law Council of Australia's Engagement on Business and Human Rights**

Thank you for your letter of 22 September 2016 and your invitation to the Corporate Law Teachers' Association to provide feedback on the suggestion of including business and human rights in the mandatory corporate law and ethics curriculum. We are very happy to provide the following comments and to develop a future dialogue with you on this issue.

I surveyed the members of our CLTA Executive Committee, and past presidents of the association for their views on this question. Please note that our comments relate only to the issue of including business and human rights in the compulsory corporate law curriculum, and not in ethics courses.

A number of law schools in Australia already include content on business and human rights in their corporate law curriculum. For example, for the last two years the Australian National University College of Law has spent the first week of lectures (4 hours) discussing the broad framework of transnational business regulation, including 2 hours discussing the UN Guiding Principles. An essay question on this topic is also included in the interim assessment. As a result of the high level of interest this topic generated, in 2015 a group of law students established the Corporate Accountability Project, as part of the ANU College of Law's Law Reform and Social Justice Program (<http://corporateaccountabilityproject.weblogs.anu.edu.au>). In addition CLTA members, such as Professor Paul Redmond and Dr Kath Hall, have recently written on the importance of lawyers (and law students) understanding the relationship between corporate law and human rights (papers attached).

These examples indicate that there is both potential and interest in Australian law schools to teach and research on business and human rights issues in the context of corporate law. However, at present these initiatives are limited to a small number of universities and academics.

All CLTA members surveyed considered the work that the Law Council is currently doing, both on its own and in conjunction with the IBA, is impressive. However, there was general reluctance to make the UN Guiding Principles on business and human rights mandatory content for all corporate law courses. The main concerns are that:

- The current list of topics to be covered in compulsory corporate law courses is already very tight and focuses on basic conceptual issues that all law students need to learn so removing any of the current material is difficult;
- At best 1-2 hours would be dedicated to this topic even if it were made compulsory. This risks the discussion being superficial and only including an overview of the international framework and UN Guiding Principles;
- Developing a link between the transnational business and human framework and national corporate law is not straight forward as the underlying concepts and legal frameworks are very different. This might present a challenge to less experienced academics.
- At present most business and human rights regulation is international or transnational in nature, and based on a unique soft law framework. This suggests that the current obligations may be better discussed in an international law course. This position might change if a UN treaty is created which requires states to legislate and create national obligations on corporations - in which case there might be a stronger argument for including the topic in all corporate law courses.

A number of CLTA members supported *encouraging* rather than *mandating* the inclusion of business and human rights issues within compulsory corporate law courses. In this context, it was thought that the focus should be on putting before students some material about the *UN Guiding Principles of Business and Human Rights*, especially the responsibility of business enterprises to respect human rights. The point was made that teaching business and human rights issues to corporate law students can assist them to understand the changing context in which corporations and lawyers operate, as well as provide with a broad understanding of the corporation's legal and social role. In particular one member noted that:

Thinking about business and human rights is more a matter of perspective, the way we view our discipline and the questions we want to leave with students ... We don't need to provide answers but I would argue for the value of leaving such questions with students. They will surely meet them in practice in the not-too-distant future. And they leave students with a sense of the moral heft of our subject.

We trust that this feedback is of assistance.

Yours sincerely



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