



OVERVIEW of AusNCP and OECD Guidelines for Multinational Enterprises

Webinar – Academic Cooperation

2-3pm Tuesday 8 September 2020

Meeting summary

Chair: Professor Justine Nolan, UNSW Faculty of Law

Presenters:

Ms Kate Lynch, Senior Executive Officer, Australian National Contact Point, Department of the Treasury

Mr John Southalan, Independent Examiner, Australian National Contact Point

AusNCP and the Guidelines for Multinational Enterprises

- This webinar provided an introduction to the [Australian National Contact Point](#) and the role it has in promoting the [OECD Guidelines for Multinational Enterprises \(OECD Guidelines\)](#).
- The [OECD Guidelines](#) for Multinational Enterprises are a key international instrument to promote responsible business conduct and contain non-binding recommendations to the business community on best practice.
- Adhering OECD members provide a National Contact Point (NCP) service to promote the Guidelines and provide [non-judicial complaint handling services](#).
- Australia's National Contact Point is housed within the Australian Department of the Treasury, in the Market Conduct Division. The AusNCP has managed 20 specific instances ([complaints](#)) since it was established in 2001. It is currently managing one active complaint.

Overview of the Guidelines

- The OECD Guidelines are a key international instrument to promote responsible business conduct. They contain non-binding recommendations on RBC, addressed by governments to multinational enterprises.
 - They acknowledge and encourage the positive contributions that business can make to economic, environmental and social progress, and recognise that business activities can result in adverse impacts related to disclosure, human rights, employment and industrial

relations, environment, bribery and extortion, consumer interests, science and technology, competition and taxation.

- In 2018, the OECD adopted new [Due Diligence Guidance for Responsible Business Conduct](#) that recommends businesses carry out risk-based due diligence to avoid and address adverse impacts associated with their operations, their supply chains and other business relationships. The Guidance is aimed at practical implementation, providing plain language explanations and examples.

National Contact Points

- There are 49 [National Contact Points](#) (NCP) globally, that implement the OECD Guidelines for Multinational Enterprises (the Guidelines) by promoting responsible business conduct to multinational enterprises (MNEs) and handling complaints (also known as specific instances) against MNEs.
- The OECD encourages adhering countries to structure their NCP in a way that is complementary to the domestic environment and not duplicative of existing complaint handling mechanisms.
- NCPs have existed since the 1983 update of the Guidelines and they have had the ability to receive complaints related to the observance of the Guidelines since the year 2000.
 - As of 2019, NCPs have collectively handled over 500 complaints.

AusNCP complaint handling system

- Cases are generally handled by the NCP country in which the incident occurred, or the NCP where the MNE is headquartered. The company does not have to be market listed in Australia or Australian-owned for the complaint to be heard in Australia. In certain circumstances NCPs may jointly manage a case if there are overlapping interests.
- The process of considering a complaint can take up to 18 months and concludes with a final statement written by the Independent Examiner that is published on our website.

Structural changes in the AusNCP

- In 2017, the AusNCP commissioned an [Independent Review](#) of the administrative structure of the AusNCP.
- The final report of that review made recommendations that emphasised the need for:
 - increased independence and expertise in decision-making;
 - clearer procedural guidance; and
 - improved stakeholder outreach.
- In response to the review's report, changes were made to the structure of the AusNCP designed to facilitate greater stakeholder engagement. These reforms aim to modernise the

way the AusNCP operates, enhancing transparency, accountability and the independence of the complaint handling process.

- While Treasury remains accountable for the overall Australian NCP function, a position of [Independent Examiner](#) has been established to handle specific instances. The Independent Examiner is contracted to undertake all such specific case instance work, including autonomous decision-making in relation to cases.
 - The inaugural Independent Examiner, Mr John Southalan, was appointed in August 2019, and has been responsible for assessing all specific instances from that time.
- The second reform introduced to enhance transparency, accountability and predictability was the establishment of an [AusNCP Governance and Advisory Board](#).
 - The Governance and Advisory Board consists of representatives from government, business, civil society and unions. Our Independent Examiner also attends Board meetings as an observer.
- The third area of reform introduced in 2019 was [revised procedural guidance](#) to provide greater visibility and improve the way we handle cases. This guidance will continue to be reviewed and updated as needed.
- Finally, the fourth area of reform made to the AusNCP was to increase stakeholder engagement such as this Academic Cooperation webinar.
- Suggestions for further outreach areas are always welcome, and can be directed to Secretariat@ausncp.gov.au

Note:

The webinar was not recorded but participants exchanged questions and answers throughout the webinar via the chat function.

Topics included:

- whether details of complaints are publicly available (<https://ausncp.gov.au/complaints/view-closed-complaint>);
- the number of complaints raised and investigated;
- whether other NCPs have independent expert examiners to consider complaints;
- how Australian MNEs are defined for the purpose of considering complaints;
- the AusNCP approach to fact finding and stakeholder engagement for cases; and
- questions around recommendations for final statements.