



# Governance and Advisory Board Meeting

Australian National Contact Point for the OECD Guidelines for MNEs

## MINUTES

Tuesday, 28 July 2020, 10.00 – 1.00 pm

### Attendance via Teleconference

**Chairperson: Ms Kate Lynch**, Senior Executive Australian National Contact Point, Department of the Treasury (Treasury)

**Observer: Mr John Southalan**, Independent Examiner, Australian National Contact Point

**Ms Padma Raman PSM**, Chief Executive, Australian Human Rights Commission (HRC)

**Ms Clare Middlemas**, International Officer, Australian Council of Trade Unions (ACTU)

**Mr Bryan Clark**, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry (ACCI)

**Ms Keren Adams**, Legal Director, Human Rights Law Centre and Member, Australian Corporate Accountability Network (ACAN)

**Mr Martin Squire**, General Manager, Trade and International Branch, Department of Industry, Science, Energy and Resources, Innovation and Science (Industry)

**Ms Joanna Virtue**, Assistant Secretary, Integrity and Criminal Law, Attorney-General's Department (AGD)

**Mr Bradley Armstrong PSM**, Deputy Comptroller-General, Group Manager Customs., Australian Border Force

**Mr John Hopkins**, Chief Operating Officer and General Counsel, Export Finance Australia

**Ms Vanessa Zimmerman**, Chief Executive Officer, Pillar Two

**Mr Peter Colley (proxy member)**, National Research Director, Mining and Energy Division, CFMEU

**Mr Pero Stojanovski (proxy member)**, Deputy Chief Economist, Business Council of Australia (BCA)

**Ms Serena Lillywhite (proxy member)**, Chief Executive Officer, Transparency International Australia

### Apologies

**Mr David Tonkin**, Chief Counsel, Legal, Procurement & Fraud, Australian Trade and Investment Commission (Austrade)

**Mr John Donnelly**, Acting Assistant Secretary, Competitiveness and Business Engagement, Department of Foreign Affairs and Trade (DFAT)

### AusNCP Secretariat

**Ms Ruth Moore**, Australian National Contact Point, Treasury

**Ms Amy Burke**, Australian National Contact Point, Treasury

**Ms Carmela Magnocavallo**, Australian National Contact Point, Treasury

## Agenda

### 1. Opening remarks and apologies

Ms Lynch opened the meeting and welcomed all attendees to the AusNCP Governance and Advisory Board (Board) meeting.

### 2. Action items from last meeting

Ms Lynch noted the action item from the 28 October 2019 meeting, which was the AusNCP procedures should be revised again in 12 months, in consultation with the Independent Examiner, to capture any adjustments related to the operation of that new role.

Board members were advised that while it hasn't quite been 12 months, the review process has begun and suggested changes to the procedures will be shared for consideration in the Board meeting today.

### 3. Proposed amendment to Board Terms of Reference

The AusNCP Secretariat circulated a paper ahead of the meeting addressing a number of issues related to the structure and functions of the Board.

Ms Lynch briefly went through issues raised in the paper. The following changes were proposed:

- To increase the opportunity for proxy members to participate in the operations of the Board to the greatest extent possible.
- To address issues related to board accountability, a number of changes were proposed to the Board's terms of reference that seek to clarify the role of the Board in providing expertise and views about the extent to which the procedures are being followed, and to reiterate that the Board is not the accountable decision maker in relation to complaints.
- Board members were initially appointed for 12 months terms, with the process for extensions and future appointment to be determined during the first year. The AusNCP proposed moving to a model of three year terms for Board members, to ensure greater opportunity for Board members to develop and share experience over time. Three years terms will be offered to future members and reappointments staggered.
- The paper also raised issues related to potential conflicts of interest raised by Board members. The paper offered guidance about how to address potential conflicts.

Members made observations and provided feedback on the proposed changes, including highlighting the need to clarify the criteria for declaring a conflict of interest and to retain in the Board's terms of reference responsibility for overseeing activities, while making it clear that the oversight relates to procedural matters.

The Secretariat agreed to consider all comments made and will circulate an updated terms of reference to the Board for further comments out of session.

In response to a request, the Secretariat agreed to schedule optional teleconferences for Board members to enable discussion and clarification of case related procedural matters on which their view is sought.

### 4. AusNCP update on recent activities

Ms Lynch, Ms Moore and Mr Southalan provided Members with an update on active case work and summarized complaint processes that have been finalised since the last meeting of the

Board. Members made observations and provided advice on the four cases finalised since the last Board meeting.

Ms Lynch shared the AusNCP's experience at the virtual 2020 Global Forum and the NCP Networking meetings, including her participation as a panellist in a Global Forum session on how multi-stakeholder engagement can enhance access to remedy.

Mr Southalan, who observed the NCP Network Meeting, provided additional feedback about the meeting's strong focus on COVID-19 impacts and trends in environment-related specific instances.

*Note: Due to the sensitive nature of the case work and the publication of these minutes, detailed information has been excluded from the minutes.*

#### **5. Round table update, including supportive promotion activities and reflections on COVID-19 implications for RBC**

Ms Lynch shared how the AusNCP's activities have been affected by the pandemic and the principles that have been applied in ensuring that the AusNCP continues to be able to provide an avenue for parties to submit complaints, while being flexible in response to requests from parties.

Members were invited to update the committee on their activities, with a particular focus on reflections on COVID-19 implications for Responsible Business Conduct.

#### **6. Update from the Independent Examiner**

Mr Southalan circulated a paper to the Board outlining his current work focus and recent outreach activities. The Board was invited to provide feedback on the first year of Mr Southalan's appointment as Independent Examiner, to the Secretariat out of session.

#### **7. Procedural Review**

Mr Stojanovski, who led the procedural review committee in relation to the recently completed Deutsche Bank Australia/Palin procedural review, updated the Board on the experience of the committee.

In response to the findings of the procedural review committee, the AusNCP proposed to make changes to its procedures to ensure that future review committees receive all of the required material from the outset of a review, and that permission to share materials be sought from parties ahead of the commencement of the review. Ms Lynch spoke to the Secretariat's paper outlining the proposed changes to the procedures and sought feedback from the Board.

#### **8. Peer Reviews**

Ms Moore explained the upcoming Australian NCP Peer Review process to the Board, scheduled for the first quarter of 2021. The peer review could be conducted in person or virtually.

Members were informed that NCP Peer Reviews are voluntary. Australia's peer review will be facilitated by the OECD Secretariat and conducted by representatives of between 2 to 4 different NCPs who meet with government, business and civil society stakeholders and provide recommendations in a public report. Board members were advised they are very likely to be contacted as part of this process.

Ms Burke shared her observations of the peer review process, following Australia's participation in the Korean NCP's Peer Review during 2019-20.

**9. Discussion of current complaint**

*Proxy members left the meeting prior to commencing active case discussion.*

Mr Southalan provided an update on the AusNCP's current active case. Members provided feedback on the handling of the case to date.

*Note: Due to the sensitive nature of the case work and the publication of these minutes, detailed information has been excluded from the minutes.*

**10. Other business and close**

Ms Lynch thanked Members for their support and welcomed ongoing feedback to the AusNCP.

The next meeting is tentatively scheduled for November 2020.