



AusNCP Governance and Advisory Board

Terms of Reference

Purpose

The Governance and Advisory Board (Board) provides advice and other support to the Australian Government's National Contact Point (AusNCP) and the Independent Examiner with the goal of ensuring the AusNCP is visible, accessible, **transparent and accountable, in accordance with its obligations under the *OECD Guidelines for Multinational Enterprises (the Guidelines)***.

Role

The Board will provide advice and expertise to support the effective functioning of the AusNCP, including on matters of governance and accountability. Board members will assist the AusNCP Independent Examiner by providing professional advice (in an individual capacity and not by consensus) relevant to the Independent Examiner's consideration of active and emerging complaints (also known as specific instances), including on procedural matters. Board members may, when necessary, be called on to form a Review Committee (a subset of the Board) to conduct procedural reviews of AusNCP complaints in accordance with the Australian National Contact Point Complaint Procedures.

Board members will actively support Treasury in delivering the AusNCP function by using their own networks, events and publications to promote the Guidelines and the AusNCP's services. Treasury will also engage members on various operational and administrative matters as needed.

Terms of Reference

The Board is responsible for supporting the AusNCP in promoting the *OECD Guidelines for Multinational Enterprises*, and for providing their expertise to assist the AusNCP's mediation and conciliation functions in accordance with the Guidelines and oversight of the procedural integrity of the function. Board members will:

- Actively assist the Treasury in conducting outreach and publication activities that promote the AusNCP and the Guidelines, in accordance with an annual promotional plan. Board members are also encouraged to promote the application of the Guidelines as appropriate in their ordinary business.
- Support the effective handling of complaints, including providing input on, and oversight of, matters of procedural fairness. Members will engage with the Independent Examiner as necessary to ensure accountability of the Independent Examiner's decision making, in line with established and published guidance of the OECD and the AusNCP. This includes:

- advising the Independent Examiner on the application of the Guidelines and procedures in relation to complaint handling and decision making;
- recommending or facilitating access to additional expertise on issues outside the Board and Independent Examiner’s knowledge and experience;
- contributing to Treasury and the Independent Examiner’s understanding of broader contexts and emerging issues relevant to complaints under consideration; and
- conducting procedural reviews of AusNCP complaints when necessary and in accordance with AusNCP procedural guidance.

While members are not required to form a consensus view, their feedback on these matters will be shared with other members, unless there are sound reasons to maintain confidentiality of views.

The Board may make recommendations to Treasury regarding its terms of reference and any changes required to better achieve its objectives.

The Board is not responsible for:

- decisions or statements of the Independent Examiner on complaints, including content published in Final Statements;
- decisions about resources, reporting or other organisational matters, however it may provide advice to Treasury as necessary; and
- formal representative duties for the AusNCP (international or domestic) except where invited by Treasury.

Composition

The Board will be convened and chaired by a senior Treasury official, who will appoint members on the basis of their experience and expertise.

The Chairperson may dissolve the Board should the need arise, alter the permanent membership, or invite experts to participate in meetings on an ad-hoc basis. The Board must be advised in advance of any significant changes in membership or meeting attendance.

The Board will comprise a maximum of 12 members, with a quorum of four government and two external members required to conduct a formal Board meeting. Member positions will be held by the Australian Government (eight seats, including the Chairperson), non-government organisations (one seat), unions (one seat) and the business community (two seats). The AusNCP Independent Examiner will be a permanent Observer to the Board for the purposes of contributing to the sound functioning of the AusNCP, seeking advice from the Board, reporting on their work in managing complaints and promoting the AusNCP and OECD’s Guidelines for multinational enterprises.

As the agency responsible for the AusNCP function, Treasury will provide secretariat services to the Board, and all government agency members will bring to the Board relevant public policy expertise. Treasury will manage the AusNCP’s international relationships as required under its obligations to the OECD Investment Committee.

Non-government members will bring expertise and stakeholder networks, from domestic and/ or international perspectives, in one or more of the following areas: responsible business conduct; complaint handling; public policy; and corporate governance.

Board Operations

Membership is voluntary. Members are not remunerated for their services, however external members (including proxies) will be compensated by Treasury for pre-approved out of pocket expenses, including travel to attend relevant meetings convened by the Chairperson.

External members hold their position in an individual professional capacity, however are free to make representations on behalf of their constituent groups and collaborate with their formal proxy on significant matters. External members will be required to sign a confidentiality agreement.

Non-government members will be appointed for terms of three years.

All members are required to abide by the terms of reference and will be listed on the AusNCP website. They will conduct themselves in accordance with strict confidentiality requirements and have an obligation to disclose any conflicts and interests. Members are otherwise free to disclose non-sensitive information that supports these terms of reference and contributes to the broader objectives of the AusNCP facility. See Annex A for further guidance about the disclosure of interests and management of conflicts.

Proxies can be nominated by external members and appointed subject to Treasury's agreement. They will be subject to the same conduct requirements as members. The purpose of formally designating proxy members is to ensure continuity and appropriate representation at each meeting, and also manage any significant conflicts of interest.

The Board will meet at least twice a year, but can be convened more often if the Chair considers it necessary.

These Terms of Reference will be reviewed annually by Treasury, in consultation with Board members.

Annex A: Guidelines for disclosing interests and managing conflicts

Introduction and scope

These guidelines provide information and guidance about how disclosures of interests will be assessed by the AusNCP Secretariat and how conflicts of interest will be managed by members of the AusNCP Governance and Advisory Board and the Independent Examiner based on advice from the Secretariat.

Further to the operation of the AusNCP Governance and Advisory Board as stated in the Terms of Reference above, all AusNCP Governance and Advisory Board members and their Proxies (collectively referred to as 'Board members' in this guideline) must take proactive, reasonable steps to disclose their personal and professional interests, including how they relate to their role and responsibilities on the Board.

Declarations of interest related to the assessment of a complaint will be managed under the procedures as published (at 10.6 as indicated below), however the same principles will be applied to any other circumstances that may arise.

- The Examiner and Board are required to declare any conflict of interest that may arise in relation to a complaint or AusNCP functions more generally.
 - Where a Board member has a conflict of interest, the Board will agree suitable measures to manage the conflict which may include excluding the member from discussions or correspondence about the complaint or issue in question.
 - If the Examiner's conflict of interest cannot be managed, alternative arrangements will be made by the Secretariat in consultation with the Board to enable the complaint to be handled effectively.
 - If parties raise conflict of interest issues during the course of an active complaint, the Independent Examiner will refer these matters to the AusNCP for consideration.
 - : Where the AusNCP [Secretariat] determines that a conflict impacts the handling of an active case, the AusNCP may consult with the Board about possible solutions and will provide instructions to the Independent Examiner.

Purpose

The purpose of this policy is to ensure that real, apparent or potential conflicts of interest relating to the business of the AusNCP Governance and Advisory Board are disclosed, assessed and managed effectively and consistently.

The Australian Department of the Treasury (through the AusNCP Secretariat and as the accountable body responsible for all AusNCP operational matters) will use this guidance to assess disclosures and inform its advice to the Board and/ or the Independent Examiner, regarding identification and treatment of conflicts.

Identifying interests and conflicts

A conflict of interest occurs when a Board member or the Independent Examiner's duty to the AusNCP clashes with their duties, obligations or interests elsewhere, such as their business or workplace interests, or family or friends.

Conflicts of interest are most likely to arise in relation to handling of AusNCP complaints however they may also arise in relation to other AusNCP activities such as appointments (of a future Independent Examiner or new members of the Board), or the relationship between a Board member and their Proxy in the context of a procedural review.

An interest (but not necessarily conflict) may arise if the Independent Examiner or a Board member:

- previously had, currently has or intends to have direct involvement in a complaint prior to it being submitted to the AusNCP (as opposed to simply raising awareness of the NCP function and explaining general procedural information to prospective notifiers);
- represents, or is employed by, organisations with financial or contractual links or affiliations to a party to a complaint;
- has a close personal relationship (e.g. spouse, domestic partner or immediate family member) with someone employed by a party to a complaint;
- holds an account, or major shareholdings with a party to a complaint; and
- has a close personal relationship with those who may have the above interests.

These are not exhaustive elements and it is up to the individuals to disclose interests relating to other situations that may relate to the functions of the AusNCP. A conflict of interest has potential to undermine the public and stakeholder's confidence in the performance of the AusNCP and its processes for resolving complaints. It can also damage the reputations of individual board members – even those not directly involved in an identified complaint.

The Independent Examiner and Board members must regularly assess whether they have an interest and take reasonable steps to avoid situations where their private financial, professional or other interests could be or perceived to be in conflict with their role. They must not allow their interests to influence the decisions they make, the actions they take or the advice they provide in the course of their official duties.

Disclosing interests and conflicts

When a complaint is received by the AusNCP, a declaration of interests will be sought from the Independent Examiner and Board. Similarly, when a new Board member or Independent Examiner is appointed, a declaration of interests and signed confidentiality agreement will be sought.

Individuals affected by this policy should provide timely and fulsome disclosures when required throughout the term of their AusNCP service, which will be recorded in a Register of Interests and circulated to the Board and the Independent Examiner when updates are made. The Register will be held in confidence and not be made public, due to the sensitive nature of complaints. Individuals should not undertake to assess for themselves whether or not their interest is materially relevant.

Recognising that the AusNCP Governance and Advisory Board is comprised of Government and External members, these guidelines aim to preserve access to the expertise and stakeholder networks External members bring to the Board. While External Board members hold their position in an individual professional capacity, it is important they remain free to make representations on behalf of their constituent groups. Professional or personal associations with a party to a complaint from the Board members' stakeholder network or constituency will not generally be assessed as an actual conflict of interest, except in circumstances where they have been *directly involved* in the preparation and/ or lodgement of a complaint to the AusNCP (including being employed by a party to a complaint).

Assessing declarations of interest

The Register will also reflect the AusNCP Secretariat's assessment of all declared interests as real, apparent or potential, in accordance with the following criteria. The proposed treatment will take into consideration the degree of influence a Board member might have on the issue or individuals involved and whether there is a material benefit to be gained.

The purpose of labelling the interest in this manner will ensure full transparency, common language and mutual understanding for all Board members and the Independent Examiner. The treatment will depend on whether the conflict is:

- **Real** – where the AusNCP considers a direct conflict exists between current official Board duties and existing private or professional interests;
- **Apparent** – where the AusNCP considers it appears, or could be perceived, that private interests are improperly influencing the performance of official Board duties whether or not that is actually the case; or
- **Potential** – where the AusNCP considers private interests are not, but could, come into direct conflict with official duties.

Examples include:

- **Real** conflicts of interest may arise where a Board member is involved with a complaint in which they or a close personal relation holds a managerial position of a party involved, or they are employed by, or have a financial or contractual arrangement with, an organisation that is party to a complaint;
- **Apparent** conflicts of interest can occur where a Board member maintains strong social, personal and/ or professional relationships with parties to a complaint (including coaching prospective notifiers to craft their complaint by drawing on information not publically available); and
- **Potential** conflicts of interest may arise where a Board member has a close personal relationship with someone who has a real or apparent interest.

Some declared interests may require the AusNCP to take remedial action to ensure that a conflict does not undermine the Independent Examiner's, or the Board's ability to do its job. The treatment will depend on the nature of the interest disclosed and the specific circumstances of the individual case. The AusNCP Secretariat will share with all Board members its assessment of all new disclosures and proposed treatment.

Note that AusNCP Secretariat staff are required as a condition of their employment to report any relevant interests that arise in the course of their role. In the event that staff within the AusNCP Secretariat have an interest related to the functions of the AusNCP, this will be handled in accordance with established Australian Public Service protocols.

Treating conflicts of interest

Following the Secretariat's assessment of a disclosed interest, treatment may include but is not limited to the following remedial actions:

- sharing information with the Board about the interest and how it may conflict with the Board's role;
- excluding the relevant Board member from correspondence on a case;
- ensuring the relevant Board member is not present in case discussions;
- avoiding sharing internal papers that discuss the matter with the relevant Board member;
- excluding proxy members from participating in Reviews if there is a real or apparent conflict;
- temporarily appointing additional external Proxy members to undertake Reviews if existing Proxy members could be or become compromised; and
- the Board member or proxy avoiding informal discussions that might influence fellow Board members on the matter.

Review and update

These guidelines were developed in December 2020 to enhance the advice on conflicts outlined in the AusNCP Complaint Procedures. The guidelines are now appended as an Annex to the current published Terms of Reference for the AusNCP Governance and Advisory Board. The guidelines will be reviewed annually to ensure they remain fit for purpose. The Register will be updated and circulated throughout the year as required and tabled for input at each formal Board meeting.