

Follow Up Statement

Complaint submitted by

Publish What You Pay Australia in its own name and on behalf
of the Myanmar Alliance for Transparency and Accountability
and the Bawdwin Labour Union

against

Mallee Resources Limited

13 June 2025

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Follow up statement

Background

1. On 14 September 2021, the Australian National Contact Point for Responsible Business Conduct (AusNCP) received a complaint from Publish What You Pay Australia (PWYP, or the notifier) on behalf of 245 civil society organisations (CSOs), against Myanmar Metals Limited which is now known as Mallee Resources Limited (MYL, or the enterprise).¹
2. At the time the complaint was initiated, the enterprise had announced an intention to divest from a joint venture to develop the Bawdwin silver, lead and zinc mine in Myanmar (Bawdwin Joint Venture, or BJV).
3. The notifier alleged that MYL's proposed divestment from the BJV did not comply with the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines)² and that divestment, if it occurred, would constitute irresponsible disengagement. The notifier alleged that MYL had not conducted human rights due diligence and meaningfully engaged with stakeholders regarding the divestment, had not taken steps to prevent or mitigate adverse human rights impacts, and had not met the disclosure expectations under the OECD Guidelines in communicating with civil society and local stakeholders.
4. The enterprise denied that it had irresponsibly disengaged from the BJV and alleged that the complaint had been brought by PWYP in bad faith.
5. On 29 August 2022, the AusNCP published an Initial Assessment in which it accepted the complaint and offered its 'good offices' (dispute resolution).³ On 21 September 2022, the enterprise declined to enter into dispute resolution.

Final Statement

6. As the enterprise was unwilling to participate in 'good offices'/dispute resolution, the Independent Examiner conducted a further examination of the allegations in the complaint. The examination involved gathering and considering presently available information, as well as additional information sought from the parties and from publicly available sources. Consistent with the AusNCP procedures, the examination was undertaken in order to prepare a final statement that included an assessment of whether the enterprise's actions were consistent with the OECD Guidelines, and, where appropriate, to make

¹ Complaint against Mallee Resources Limited (formerly Myanmar Metals Limited) submitted to the Australian National Contact Point for Responsible Business Conduct (AusNCP) by Publish What You Pay, dated 14 September 2021 (Complaint); Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, 2011, <http://dx.doi.org/10.1787/9789264115415-en> (OECD Guidelines 2011).

² OECD Guidelines 2011.

³ AusNCP, available at [Initial Assessment: Complaint submitted by Publish What You Pay on behalf of Myanmar-Based Civil Society Organisations against Mallee Resources Ltd](#), AusNCP, Australian Government, 2023.

recommendations to improve observance of the OECD Guidelines. In August 2023, the AusNCP published the Final Statement for Complaint 27 (the Final Statement).⁴

7. The Final Statement largely upheld the complaint initiated by the notifiers. The Independent Examiner assessed that the enterprise had not undertaken human rights due diligence or engaged meaningfully with stakeholders in respect of its decision to divest from the BJV, contrary to the OECD Guidelines. The enterprise's disclosures in respect of activities, structure, ownership and governance, as well as the enterprise's risk management and relationships also did not meet the expectations set out in the OECD Guidelines.
8. Other aspects of the complaint were not upheld. Specifically, contrary to the complaint, the Independent Examiner observed that the enterprise did not fail to comply with the OECD Guidelines by withholding copies of agreements in relation to the Bawdwin mine between the enterprise's Myanmar partner, Win Myint Mo Industries Co Ltd and the Myanmar mining authority, Mining Enterprise 1.
9. The Final Statement also identified that, while it was the enterprise's responsibility to respect human rights and to have adequate policies and processes in place, the enterprise was not assisted in knowing and fulfilling the Australian Government's expectations of business enterprises under the OECD Guidelines by the publications and promotional activities of Australian Government agencies. This included agencies such as the Australian Trade and Investment Commission (Austrade) which were promoting investment in Myanmar in the period 2017 to 2021, and whose publications and promotional activities made insufficient reference to the importance of undertaking human rights due diligence prior to and during business activities in Myanmar.

Recommendations

10. The Final Statement recorded recommendations made by the Independent Examiner in order to improve observance of the OECD Guidelines in future. Those recommendations were that:

10.1. The enterprise should:

- (a) develop and implement a human rights policy consistent with the OECD Guidelines and the United Nations Guiding Principles on Business and Human Rights (UNGPs). The policy should include a commitment to undertaking adequate human rights due diligence in existing and future mining projects. Implementation of the policy should include training for the enterprise's senior and operational personnel about human rights due diligence in the context of mining, including stakeholder engagement;
- (b) consult with civil society organisations as to alleged human rights impacts that may have arisen since its divestment; and
- (c) use any leverage or influence it retains in respect of its former partners to encourage them to:

⁴ The Final Statement on Complaint 27 is available on the [AusNCP track complaints](#) webpage. The Final Statement is available in English and the Executive Summary of the Final Statement is available in Burmese.

(i) undertake human rights due diligence and address and remediate any adverse impacts that may have occurred; and

(ii) allow a copy of finalised contracts between Win Myint Mo Industries Co Ltd and Mining Enterprise 1 to be shared with the notifier, the Myanmar Alliance for Accountability and Transparency and the Bawdwin Labour Union.

10.2. To ensure consistency and policy coherence across the whole of the Australian Government, the AusNCP should liaise with government agencies and departments that assist Australian enterprises overseas, including Austrade:

(a) with a view to ensuring that the expectation of the Australian Government as to responsible business conduct is adequately reflected in Austrade materials and activities; and

(b) to seek to ensure that government departments and agencies consistently set out expectations and provide guidance on enterprises having human rights policies and conducting human rights due diligence, particularly in the context of high-risk and conflict areas.

11. The AusNCP stated it would follow up on these recommendations in 12 months.

Follow Up process

12. Part II of the OECD Guidelines sets out the implementation procedures for National Contact Points, and includes the requirement that they engage in follow up on the implementation of recommendations where relevant once a complaint has closed.⁵

13. The AusNCP's complaint procedures state that the "objective of any follow-up process will be to examine the extent to which the recommendations in the Final Statement have been implemented and whether any further engagement from AusNCP is warranted, including where appropriate, an offer of dispute resolution".⁶

14. The Independent Examiner commenced the follow up procedure in August 2024.

15. As part of the follow up procedure, the Independent Examiner invited all relevant parties to make submissions as to the extent of implementation of the recommendations. An invitation to make submissions on implementation was extended to the notifiers and the AusNCP Secretariat. It was not possible to follow up directly with MYL as it had entered into liquidation. The enterprise became insolvent on 31 July 2023 and administrators were appointed on 5 September 2023.⁷ Following the administrators' appointment, receivers were appointed and assumed control over the enterprise's businesses and assets and their day-to-day trading.⁸ On 12 April 2024, McGrath Nicol was appointed as

⁵ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, 2023, Part II Implementation Procedures, I.C para 5, 10.1787/81f92357-en (OECD Guidelines 2023).

⁶ AusNCP, *AusNCP complaint procedures* (2024), p 13, para 70.

⁷ McGrath Nicol, *Administrators report, statement and notice of s 439A*, 5 April 2024, p 7 (Administrators Report).

⁸ McGrath Nicol, *Statutory report by a liquidator to creditors*, 12 July 2024, p 8 (Liquidators Report).

liquidators. Accordingly, the follow up procedure involved contacting the enterprise's external administrators and offering them an opportunity to make submissions.

Implementation of recommendations to the enterprise

16. There is no evidence that the recommendations set out in paragraph 10.1 above were implemented by the enterprise.
17. The notifiers declined to make submissions for the purposes of the Follow Up statement. The external administrators for the enterprise responded that they had no staff or capacity to substantively investigate or respond.
18. The Independent Examiner was therefore unable to determine the extent to which the recommendations in the Final Statement were implemented by the enterprise. In circumstances where the enterprise became insolvent shortly before the publication of the Final Statement and entered external administration shortly thereafter, it appears unlikely that the enterprise implemented the recommendations.
19. As the enterprise is no longer operational, no further follow up is recommended.
20. The Independent Examiner makes the following observations regarding the recommendations to the enterprise and the enterprise's commercial failure:
 - 20.1. The Final Statement recorded that the enterprise had not undertaken human rights due diligence prior to or during its involvement in the BJV despite the Bawdwin mine in Myanmar being in a high-risk conflict zone.
 - 20.2. Shortly following the military coup in Myanmar on 1 February 2021, the enterprise divested from BJV without conducting adequate human rights due diligence, including meaningfully engaging with stakeholders. The enterprise sold its interest in the mine to its existing joint venture partner, which the notifiers identified had links with the Myanmar military. The Independent Examiner also identified independent credible sources of such links, as recorded in the Final Statement. The Final Statement observed the enterprise's due diligence prior to investing in Myanmar included checking whether its proposed partners were (at that moment) on a sanctions list, but that the enterprise did not appear to have inquired into whether the partners' prior conduct or its business relationships posed a potential risk to human rights. During the examination, the enterprise was unwilling to acknowledge that it had partnered with businesses linked to entities and individuals that had previously been officially sanctioned by the United States Government due to the association of those entities and individuals with the former military junta and their involvement in heroin trafficking. Appropriate human rights due diligence would likely have revealed these associations and the risks they could pose to human rights.
 - 20.3. After the coup, MYL sold its interest in the BJV for US\$30 million,⁹ however, it was unable to secure receipt of about half that amount reportedly after ANZ ceased all bank services in

⁹ Mallee Resources Limited, Annual Report 2022, p 11, Directors Report.

Myanmar.¹⁰ The enterprise's administrators confirmed that of the US\$30 million, US\$13.1 million was unable to be repatriated out of Myanmar to Australian bank accounts. A portion of that amount (US\$4.5 million) was subsequently paid to the enterprise while US\$5.7 million remained outstanding and was not recovered by the receivers.¹¹

- 20.4. Both the enterprise's Board and its administrators attributed the enterprise's failure to an inability to raise sufficient funding.¹² While the unpaid monies from MYL's Myanmar interests were not the sole reason for the enterprise's failure, the inability to obtain those funds contributed to its financial predicament.
21. It is not apparent that there was a cause and effect relationship between MYL's lack of human rights due diligence and the ultimate failure of the enterprise. The enterprise may well have been wound up even if it had observed the OECD Guidelines' expectations on human rights in its operations in Myanmar and upon divestment. Nevertheless, the enterprise's inability to fully repatriate funds from Myanmar following its hasty divestment contributed to the financial shortfall identified by the Board and external administrators. The case therefore represents a salutary lesson of what can happen where appropriate enhanced human rights due diligence is not carried out prior to and during operations in conflict and high-risk areas.
22. As set out in the Final Statement at paragraph 90, it is appropriate in conflict affected and high-risk areas that human rights due diligence should be enhanced. The commentary to the OECD Guidelines, which were refreshed in 2023, also now clearly sets out the expectation that "[i]n the context of armed conflict or heightened risk of gross abuses, enterprises should conduct enhanced due diligence in relation to adverse impacts".¹³ Enhanced human rights due diligence prior to and during investment and divestment in high-risk and conflict zones is more likely to equip an enterprise to rapidly respond in a human rights compatible manner if conflicts flare. Such preparedness is also likely to have commercial benefits for the enterprise, placing it in a more informed and readied position to respond to broader business risks than it would otherwise have been.

Implementation of recommendations to the Australian Government

23. On 25 November 2024, the AusNCP responded to the Independent Examiner's request for information regarding implementation of the recommendations to government as set out at 10.2 above. The AusNCP's response was supplemented on 16 December 2024 and 16 April 2025 with further information following requests by the Independent Examiner for details of measurable impacts of the AusNCP's efforts.

¹⁰ Roddan M (15 March 2022), [ASX miner repatriates \\$17m from Myanmar after ANZ refused transfer](#), *Financial Review*.

¹¹ Administrators Report, p 78.

¹² Administrators Report, p 29.

¹³ OECD Guidelines 2023, Commentary of Chapter IV Human Rights, para 45.

24. The substance of the AusNCP's submissions was that:

- 24.1. The recommendations complement the findings of the 2022 peer review of the AusNCP by representatives of other National Contact Points (the Peer Review).¹⁴ The Peer Review recommendations included that the AusNCP:
 - (a) revise its promotional plan to strategically leverage key actors and relationships (recommendation 2.1) and
 - (b) enhance its contribution to policy coherence in the Australian Government by promoting use of the OECD Guidelines by key government actors, and by seeking further opportunities for promoting the OECD Guidelines and the NCP through related agendas (recommendation 2.3).
- 24.2. In response to the Peer Review in 2022, the AusNCP has significantly expanded its responsible business conduct (RBC) awareness raising activities among Australian Government agencies. It has maintained a particular focus on Foreign Affairs and Trade portfolio agencies including Austrade, Export Finance Australia (EFA) and the Department of Foreign Affairs and Trade (DFAT). A list of the reported activities of awareness raising within Australian Government agencies is contained in Appendix A.
- 24.3. The AusNCP has also worked with Austrade, EFA and DFAT on leveraging their stakeholder networks and communication channels to promote RBC and the OECD Guidelines to new audiences. A list of the reported activities of awareness raising through Australian Government agencies is also contained in Appendix A.
- 24.4. The AusNCP noted that improving awareness is an ongoing and continuous process and is a focus of activities for the AusNCP Secretariat outlined in its Stakeholder Engagement Strategy for 2024-2025. The AusNCP also seeks regular feedback on its Stakeholder Engagement Strategy from the AusNCP Governance and Advisory Board, which includes members from several government departments, as well as business, union and other civil society representatives.
- 24.5. The AusNCP Secretariat provided information regarding the content of EFA's website which predated the recommendations in the Final Statement. EFA on its website encourages its clients to apply the principles and standards of the OECD Guidelines.¹⁵ EFA has also embedded RBC features in its policies and procedures. For example, it uses the Equator Principles¹⁶ to assess the environmental and social risk of project and project-related transactions, and the OECD Recommendation on Bribery and Officially Supported Export Credits¹⁷ before providing financial support, including by requiring its customers to sign an anti-bribery declaration which includes a reference to the OECD Guidelines.

¹⁴ OECD, *OECD Guidelines for Multinational Enterprises - National Contact Point Peer Reviews: Australia*, OECD Publishing, 2022.

¹⁵ See Export Finance Australia, *OECD Guidelines for Multinational Enterprises* n.d.

¹⁶ Equator Principles, *The Equator Principles*, n.d.

¹⁷ OECD, *OECD Recommendation on Bribery and Officially Supported Export Credits*, OECD Publishing, 2019.

- 24.6. Forty-three DFAT websites mention the OECD Guidelines.¹⁸ By way of example, the Australian High Commission for Bangladesh website includes a “Doing business with Australia” webpage on which it prominently advises that the Australian Government encourages Australian enterprises operating overseas and multinational enterprises operating in Australia to observe the OECD Guidelines, summarises the areas covered by the OECD Guidelines, and provides links to both the OECD website and the AusNCP website.¹⁹
- 24.7. In March 2022, June 2022 and November 2023, AusNCP presented to DFAT staff about the AusNCP and the OECD Guidelines. Each was attended by between 10 and 50 DFAT staff.
25. The AusNCP’s efforts to raise awareness within and through Australian Government agencies is to be commended. Such activities ought to improve the potential for government agencies to recognise and act upon opportunities to promote the OECD Guidelines and the expectation that enterprises respect human rights and undertake human rights due diligence including, where appropriate, enhanced due diligence.
26. In responding to requests for this Follow Up statement, it became clear that it was difficult for the AusNCP to discern what actions had been taken as a result of the recommendations in the Final Statement, as opposed to continuing efforts that had commenced prior to the Final Statement. For example, the content of EFA and DFAT webpages referred to in paragraphs 24.5 and 24.6 above were made as a result of previous efforts, not since the recommendations in the Final Statement. Similarly, only one of the presentations referred to in 24.7 occurred after the Final Statement was released. It is also at present difficult to determine whether the AusNCP’s awareness raising efforts have led to greater whole of government consistency and policy coherence.
27. Understanding the effectiveness of the AusNCP’s awareness raising efforts in government would be improved by quantitative and qualitative annual assessments. Such a process might involve each year:
- 27.1. tracking the number, visibility and content of references to the OECD Guidelines in relevant Australian Government agency and department policies and publications
 - 27.2. identifying relevant policies or publications that do not clearly reflect the OECD Guidelines, including the expectation that multinational enterprises engage in appropriate human rights due diligence before and during their investments or operations – which due diligence should be enhanced in high-risk areas, and raising the issue with the relevant government department or agency for inclusion
 - 27.3. surveying Australian diplomatic posts, Austrade and EFA as to the number of times:
 - (a) they have proactively offered and provided information to multinational enterprises that would assist enterprises to know about and act consistent with the OECD Guidelines

¹⁸ These are the websites of Australia’s diplomatic posts in Bangladesh, Brazil, Brunei, Canada, China, (Beijing, Shanghai, Shenyang), Colombia, Croatia, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Hong Kong, Indonesia, Jordan, Kenya, Kiribati, Korea, Kuwait, Laos, Latvia, Lebanon, Malta, Mauritius, Mexico, Myanmar, Netherlands, Pakistan, Palau, Portugal, Qatar, Singapore, Saudi Arabia, Serbia, Spain, South Africa, Sweden, Switzerland, Tonga, Zimbabwe, United States.

¹⁹ See Australian High Commission Bangladesh, [Doing business with Australia](#), 2025.

- (b) enterprises have demonstrated a commitment to complying with the OECD Guidelines when seeking Australian Government support.
 - 27.4. undertaking feedback surveys from government attendees that are provided training on the OECD Guidelines by the AusNCP, and
 - 27.5. identifying which relevant government agencies and departments have not attended training or do not presently demonstrate a commitment to the OECD Guidelines and specifically targeting those for future awareness raising.
28. This Follow Up statement will be published on the AusNCP website and shared with the notifiers, members of the AusNCP board and relevant government agencies for their consideration.

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Appendix A: AusNCP implementation activities

Awareness raising within Australian Government agencies

1. Since October 2024 - Implementing an RBC e-learning module for the Australian Trade and Investment Commission (Austrade) trade and investment commissioners, developed in collaboration with Austrade, DFAT and the Attorney-General's Department. This includes an explanation of the term 'risk-based due diligence' and links to a range of OECD due diligence guidance.
2. Since September 2023 - Providing pre-posting briefings to DFAT heads of mission (e.g. ambassadors) about the OECD Guidelines and the AusNCP, including the Government's expectations of Australian enterprises overseas and the role Australian diplomatic posts can play in promoting awareness of the OECD Guidelines, AusNCP and RBC more generally.
3. In October 2023 - Sending a cable to all overseas diplomatic posts explaining the importance of the OECD Guidelines, providing resources and outlining key messages for posts to convey to Australian businesses operating overseas regarding the importance of RBC.
4. In March 2022, June 2022 and November 2023 with further opportunities under discussion - Presenting to DFAT staff on the AusNCP and OECD Guidelines, including at the Diplomatic Academy's business literacy and engagement course and a November 2023 seminar for staff from the human rights, anti-people trafficking and trade areas.
5. Since 2022 - Using the cable network to provide information on individual complaints and RBC developments to Australian Government staff working on international matters, including those at Australian missions overseas.
6. Since July 2023 - Engaging frequently with a wide range of Australian Government areas with interests in RBC policy and promotion, building on the momentum and awareness raised through AusNCP's coordination of Australia's contribution to the 2023 update of the OECD Guidelines.

Awareness raising through Australian Government agencies

1. Since September 2022 - Requesting Australian diplomatic missions include a summary of, and a link to, the OECD Guidelines on their mission's webpages. Approximately 40 missions have done so to date, generating ongoing traffic to www.ausncp.gov.au.
2. Since June 2022 - Providing social media packages promoting the OECD Guidelines to managers of relevant Australian Government social media accounts, including Treasury, Austrade, EFA, DFAT's *TradeTalk* channel and local accounts managed by overseas diplomatic posts.
3. In September 2023 - Publishing material about the OECD Guidelines and the AusNCP in DFAT's *Business Envoy* magazine.
4. Various examples in 2023 and 2024 - Supporting Australian Government speakers to cross-promote the OECD Guidelines and the AusNCP, where appropriate. For example, EFA's presentation on [supply chain transparency](#) and speeches by Australian ambassadors.

5. February 2023 - Austrade launched the 'Go Global Toolkit' (the Toolkit). The Toolkit contains guidance on all 246 of its [Markets Insights pages](#) (all pages updated by October 2023) and highlights that all organisations operating in Australia or overseas should be aware of and adhere to the OECD Guidelines and conduct necessary due diligence to ensure all parties they work with adhere to the OECD Guidelines.
6. September 2023 - The landing pages for Austrade's Trade and Investment services all contain statements to inform visitors that all Australian companies operating domestically or internationally should adhere to the OECD Guidelines. Example landing pages include: [What we do and why](#), [Australian exporters](#) and [International investors and buyers](#).
7. Since mid-2024 - At the start of the COVID-19 pandemic, the Austrade paused charging clients for services to focus on supporting Australian businesses, thereby pausing Engagement Agreements. On 1 October 2024 Austrade recommenced charging clients for services, thereby reintroducing Engagement Agreements. Engagement Agreements include a requirement that clients adhere to the OECD Guidelines, with failure to do so seeing the Agreement and partnership with Austrade terminated.
8. 2025 - Austrade's offshore contracting template will be updated to include the requirement for all suppliers to adhere to the OECD Guidelines.