



# Governance and Advisory Board Meeting

Australian National Contact Point for the OECD Guidelines for MNEs

## MINUTES

Thursday, 11 April 2019, 9.00 – 1.30 pm

Venue: Room CG.39, Treasury Building, Langton Crescent, Parkes ACT 2600

### Attendance

**Chairperson: Ms Victoria Anderson**, Australian National Contact Point, Department of the Treasury (Treasury)

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

**Ms Andrea Maksimovic**, Associate Director of International and Civil Society, Australian Council of Trade Unions (ACTU)

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

**Ms Mary Wood (proxy member)**, Head of Member Engagement and Corporate Citizenship, Business Council of Australia, for part of the meeting.

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

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

**Ms Julia Galluccio**, A/g Assistant Secretary, Integrity Law Branch, Attorney-General's Department (AGD)

**Ms Christine Sawczuk**, A/g First Assistant Secretary, Trade and Customs Division, Department of Home Affairs (Home Affairs)

**Mr Alan Copeland**, A/g Assistant Secretary, Australian Competitiveness and Business Engagement Branch, Department of Foreign Affairs and Trade (DFAT)

**Mr Stephen Farmer**, Head of Legal and Board Secretary, Export Finance and Insurance Corporation

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

### Teleconference

**Mr Peter Colley (proxy member)**, National Research Director, Mining and Energy Division, CFMEU, Australian Chamber of Commerce and Industry (ACCI)

**Ms Vanessa Zimmerman**, Chief Executive Officer, Pillar Two and Board Member and Chair, Human Rights, Global Compact Network Australia

**Ms Kylie Porter (proxy member)**, Executive Director, Global Compact Network Australia (GCNA)

### Apologies

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

### AusNCP Secretariat

**Ms Gillie Kirk**, Australian National Contact Point, Treasury

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

**Mr John Burch**, Australian National Contact Point, Treasury

**Ms Leanne Thomas**, Markets Secretariat, Treasury

**Ms Natalie Hitchenson**, Markets Secretariat, Treasury

## Agenda

### 2. Opening remarks, apologies and introductions

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

Members discussed arrangements around the confidentiality of items considered as part of the Board's duties and sought clarification on what information and messaging could be shared.

Members were invited to introduce themselves and provide a brief background about their interest in the AusNCP work and responsible business conduct matters more broadly.

#### *Actions:*

Ms Anderson undertook that Treasury would develop and circulate advice on the handling of confidential information.

### 3. About the AusNCP

Ms Anderson provided the Board with an overview on the *OECD Guidelines for Multinational Enterprises* (the Guidelines) the concept of a National Contact Point (NCP) and Treasury's relationship with the NCP Network through its seat on the OECD Investment Committee.

Ms Anderson explained that the establishment of the Independent Examiner and Board are direct responses to the 2017 Independent Review of the AusNCP, commissioned by Treasury.

Ms Anderson outlined the specific instance process and presented Members with OECD and AusNCP data on the nature of specific instances globally and in Australia.

Members requested further statistics on cases internationally, where possible including the breakdown of acceptances, rejections and transfers by country, industry and issue.

#### *Actions:*

Ms Anderson undertook that Treasury would provide further international data on cases and their handling where it was available.

### 4. Establishment matters

#### 4.1. Terms of Reference

Ms Anderson presented the Terms of Reference for agreement, noting key changes include a better blend of oversight, advisory and promotional support functions. Ms Anderson clarified that Members are only required to provide advice to the Independent Examiner in an individual capacity and not on consensus as a Board.

Members shared suggested amendments, including emphasis around specific instance outcomes being the responsibility of the Independent Examiner and not the Board; clarity around language used to characterise the relationship between the Independent Examiner and the Board (e.g. reporting to or observing); and reviewing the Terms of Reference annually.

#### *Actions:*

Ms Anderson undertook to update and circulate the document for approval out of session.

#### **4.2. Independent Examiner**

Ms Anderson reported on the recruitment process currently underway for the Independent Examiner role. The position is advertised on AusTender and applications close 9 May. Treasury will form a selection panel which is likely to include one non-Treasury member.

Ms Anderson asked Members to encourage suitable candidates known to them to apply for the role directly through AusTender.

#### **4.3. Other administrative matters**

Ms Anderson noted matters relating to Board administration, confirming details around Member travel entitlements, publication of minutes and exploring a digital platform for Board collaboration with the Secretariat and Examiner.

### **5. Specific instance procedures**

Ms Anderson invited Members to provide feedback on the revised AusNCP Specific Instance procedures, noting the inclusion of new content to reflect the Independent Examiner, Board and appeal process.

Members raised issues around timing of publication of names of parties to a complaint, the need for confidentiality, transparency and accountability, timing of responses, the need for plain language, and the degree of specificity required in relation to the Independent Examiner's conduct and resolution of a specific instance.

Treasury agreed to consider, and where possible incorporate, Members' comments into the draft procedures before making them available for public consultation. Ms Anderson noted that Members would be able to make additional submissions about the procedures once they were published for public consultation.

### **6. Specific instance case work**

Ms Anderson provided Members with an update on specific instance case work and Members discussed the handling process. Clarification was provided on role of the Independent Examiner, Board and Secretariat throughout each stage (Initial Assessment, Good Offices and Conclusion) including the scope, sequence and accountability for decisions and advice.

The Board also discussed the consequences for an enterprise unwilling to engage with the process; how information from parties can be verified; the definition of a multinational-enterprise; NCP collaboration; investment risks faced by enterprises relative to economic benefits to local communities.

### **7. Stakeholder engagement and promotion**

Ms Kirk described early thinking on AusNCP approaches to outreach and promotion of the Guidelines, focusing on the differing communication objectives relating to stakeholder groups.

Ms Burke updated Members on key initiatives recently undertaken to promote the services of the AusNCP and the OECD Guidelines, including the AusNCP Annual Outlook; new AusNCP website to improve accessibility; reference to the OECD Guidelines in advice to investors under Australia's Foreign Investment Review Board framework; and reference to the OECD Due Diligence and sector-specific Guidance in the new Modern Slavery Act reporting guidelines.

Ms Burke outlined key upcoming events for the AusNCP:

- Global Compact Network Australia Conference (30 April-1 May); OECD Global Forum on Responsible Business Conduct, Bangkok (12-13 June);
- OECD Working Party on Responsible Business Conduct and NCP Network Meetings, Paris (19-20 June) (Australia will co-chair)

- Reviewer or observer on the Korean NCP Peer Review, 2019;
- AusNCP Peer Review, March 2020

Members were encouraged to promote the Guidelines and the services of the AusNCP using their own networks, events and publications, and were offered access to brochures and other material.

Members discussed opportunities for stakeholder outreach and requested further information on the mechanics of the Peer Review process, particularly expected involvement from the Board.

*Actions:*

Treasury undertook to bring a more developed outreach strategy to the Board at the next meeting for Member input.

## **8. Reflections and policy connections**

Ms Anderson asked Members to provide reflections on the meeting and any relevant policy connections. Members identified a range of opportunities to work together to enhance services and information supporting responsible business conduct.

Members confirmed their commitment to Board and identified a number of promotional opportunities.

*Actions:*

Treasury will follow up with Members on opportunities presented.

## **9. Close**

Ms Anderson thanked Members for their support and emphasised the importance of consistent attendance at the meetings for the ongoing success of the Board.

The next meeting is scheduled for October 2019, however an earlier meeting may be convened to introduce the new Independent Examiner.

*Actions:*

Treasury will follow up with Members regarding a suitable date, noting Member preferences for an afternoon session.