

# Annual Outlook March 2021

# Message from the Secretariat

It is our pleasure to share with you a copy of the AusNCP's annual questionnaire response, which will feed into the next **OECD NCP Annual Report** (www.mneguidelines.oecd.org).

We also take this opportunity to farewell and thank

Ms Kate Lynch for her leadership and support and welcome

Mr Tom Dickson as the AusNCP's new Senior Official in

Treasury's Market Conduct Branch.

In 2019-20 we focused on implementing our reforms, embedding our new procedures and on-boarding our new Governance and Advisory Board members, which now includes representatives from government, business, union and civil society groups. We also welcomed our inaugural Independent Examiner, Mr John Southalan. These new partnerships are enabling us to deliver on our commitments to implement the OECD Guidelines for Multinational Enterprises to a high standard, that align with the NCP core values of transparency, accountability, impartiality and predictability.

We extend our sincere gratitude to John and the Board for their support as we continue to refine elements of this new hybrid and semi-independent NCP structure.

Use of the AusNCP's conciliation services are on the rise, with **five active cases** currently underway. Our procedural review mechanism was also used for the first time in 2019, providing full transparency and accountability on the management of one of Treasury's last cases under the previous structure.

The AusNCP continues to participate in a wide range of stakeholder forums to promote awareness of responsible business conduct policy and the NCP function, domestically and internationally.

The *OECD Guidelines for Multinational Enterprises* remains one of the world's leading standards to support businesses to understand their social responsibilities and shape their conduct accordingly. The Guidelines are broader than other instruments, covering disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation.

Alternative dispute resolution mechanisms also have an important place alongside laws and market regulations that otherwise govern business behaviour. The voluntary nature of the OECD Guidelines and non-judicial conciliation setting combines to offer parties an impartial and less threatening avenue to resolve issues.

Looking forward, a key priority for engagement this year is the **OECD Stocktaking Study**, which aims to assess how the OECD Guidelines have been used to address evolving issues related to RBC since 2011 and their suitability for the future. There will be a full public consultation process as part of the stocktake during 2021.

The AusNCP welcomes any invitations to discuss the Guidelines and NCP services with your organisation or sector.

## Message from the Independent Examiner

It has been busy and encouraging since commencing in August 2019 and I look forward to the year ahead. We currently have five active cases at various stages involving mining and rehabilitation, climate change and Indigenous cultural rights. These cases have enabled me to work with the Secretariat to help refine key concepts and contribute to the AusNCP's work (including representation at the OECD). It has also helped highlight that in Australia, the 'NCP' is not a hat worn by an individual, but an effective team collaboration including the Secretariat and the expertise and assistance of the Governance & Advisory Board.

In early 2020, I conducted the Follow Up stage of the AusNCP's procedures to facilitate an agreed outcome in case 11 between the ANZ Bank and NGOs Equitable Cambodia and Inclusive Development International (on behalf of Cambodian families). While the issues had been examined before, the parties continued to engage and were able to reach agreement through further mediation, recognising harms caused and agreeing to a suite of remedies including financial contributions. This was a significant outcome through the OECD Guidelines, which would not have been achieved without the dedication and perseverance of all parties.

My contributions to the AusNCP's awareness-raising and engagement work has involved a range of presentations, training and panel discussions. In addition to the events listed in the questionnaire response below, it was a pleasure to engage with the Conference Towards a Resilient and Sustainable Economy; the Minerals Council of Australia; and the Corporate Governance Research Symposium in Perth. I extend my thanks to other organisations involved in these events, particularly the Australian Corporate Accountability Network, Australian Human Rights Institute (UNSW), Business & Human Rights Centre (RMIT), and the Human Rights Law Centre.

John Southalan, AusNCP Independent Examiner

# I. NATIONAL CONTACT POINT ANNUAL REPORTING QUESTIONNAIRE (2020)

# A. CONTACT INFORMATION

Please provide the contact information of the person filling in the questionnaire.

Name: Job title:

AusNCP Secretariat

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AusNCP Secretariat

Email:

Secretariat@AusNCP.gov.au

Telephone number:

61 2 6263 2224

Submitted to the OECD 25 January 2021

B. INSTITUTIONAL ARRANGEMENTS	
(a) Structure, location and composition of the NCP	
1. What is the structure of the NCP?	Single-agency
2. Who are the members of the NCP?  Please describe the functions of the members of the NCP and the ministry/agency or stakeholder organisation they represent. No names are required.	The AusNCP structure is managed by a Senior Official, and supported by a Secretariat, in the Department of the Treasury. The Senior Official is responsible for all decision-making, except for complaints (specific instances).  In 2020, specific instance decision-making was contracted to an individual Independent Examiner (remunerated, part time 20%). This position, established in 2019, also undertakes promotion activities and is supported by the Secretariat.  The AusNCP structure also includes a Governance and Advisory Board consisting of government nongovernment members, with oversight, advisory
3. If the NCP is not a <u>single-agency NCP</u> , does it have a <u>secretariat</u> ?	and promotional duties.  Yes
If yes, in which ministry or agency?	Department of the Treasury
If yes, in which department of the ministry or agency?  4. Has the NCP been established through a legislative, regulatory	Click here to enter text.
or administrative instrument (e.g. a statute, a decree, a ministerial resolution)?	No
If yes, please provide the name and date of this instrument, and a link if available	Click here to enter text.
Additional comments on Structure, location and composition of the NCP Click here to enter text.  (b) Advisory body	
	Ver
5. Does the NCP have one or several <u>advisory bodies</u> ? One	Yes
If the NCP has several advisory bodies, please specify.	Click here to enter text.
If yes, please describe the advisory body(ies)' functions (e.g. advising on promotion, on specific instance handling in general, on individual cases, providing <u>oversight</u> , etc.)	Please refer to the <u>Governance and Advisory</u> <u>Board Terms of Reference</u> for details.

	1		
If yes, please list the names of organisations that are represented on the advisory body(ies) and the type of organisation. (e.g. government, business, business organisation, NGO, trade union, academia, consumer organisation, etc.)	Please refer to the Governance and Advisory Board Terms of Reference for a full list of members.		
If yes, please indicate how often the advisory body(ies) meets	Twice a year		
6. If an advisory body provides oversight, please describe the oversight procedure	Please refer to the <u>Governance and Advisory</u> <u>Board Terms of Reference</u> for oversight duties, including procedural reviews.		
Additional comments on Advisory body: Click here to enter text.			
(c) Human and financial resources			
7. Does the NCP have dedicated full-time staff?  If yes, please indicate the number.	Yes 2		2
8. Does the NCP have dedicated part-time staff?  If yes, please indicate in the second box the number of part-time staff members and in the third box the percentage of time spent on NCP matters for each part-time staff member.	Yes	3	Senior Executive Officer: 10% Secretariat Director: 100% Secretariat Assistant Director: 80%
9. Have any full-time or part-time staff members joined the secretariat during the year?  If yes, please indicate how many.	Yes, both pand full-tir		4
10. Have any full-time or part-time staff members left the NCP during the year?  If yes, please indicate how many.	Yes, both part-time and full-time staff members		3
11. Did the NCP have a <u>dedicated budget</u> this year?	Yes		
If no, were financial resources for promotional activities allocated on an ad hoc basis when requested by the NCP?	Choose an item.		
If no, were financial resources for specific instances allocated on an ad hoc basis when requested by the NCP?	Choose an item.		
12. During the year, did the human and financial resources available to the NCP allow it to:			
Handle specific instances in an efficient and timely manner	Yes		
Organise promotional events	Yes		
Attend NCP meetings at the OECD	Yes		
Attend events organised by other NCPs	N/A: The NCP was not invited to/chose not to attend such events		
Attend events organised by stakeholders	Yes		
Cover professional mediator fees or in-house mediator fees	Yes	Yes	
Conduct fact-finding research into specific instances	Yes		
If you answered no to any of the above, please specify	Click here	to enter tex	t.

Additional comments on **Human and financial resources**:

Please see comments on structure at A.2.

## At the end of 2020, Ministry\* staff comprised of:

X1 Senior Executive official (part-time)

X1 Communication and Event Coordinator (full time)

X1 Secretariat Director (part time)

X2 Secretariat Assistant Directors (one full time, one part time)

\*Excludes the Independent Examiner (counted as 'Yes' in professional/in-house mediator fees).

#### (d) Reporting

13. Does the NCP <u>report</u> to the executive on its activities?	Yes
If yes, how often?	On an ongoing basis
14. Does the NCP report to the legislative body on its activities?	Yes
If yes, how often?	Three times a year
15. Please indicate any other relevant transparency requirement (e.g. access to information or disclosure laws) applicable to the NCP in your country	Freedom of Information

 ${\it Additional\ comments\ on\ Reporting:}$ 

Information about the AusNCP is also provided in the Treasury's Annual Report and Annual Budget Statement.

C. INFORMATION AND PROMOTION		
(a) NCP website <sup>1</sup>		
16. Does the NCP have a website? If yes, please provide the link in the second box.	Yes	https://ausncp.gov.au/
If yes, was the website created/renovated this year?	Yes	
17. Are the following items available on the NCP website?		
Information about the Guidelines and the role of the NCP		
The text of the Guidelines	Yes	
A description of the Guidelines	Yes	
The OECD Due Diligence Guidance Documents	Yes	
Explanatory text about due diligence	No	
Information on the NCP and its mandate	Yes	
The NCP Annual Report submitted to the OECD	Yes	
The NCP's Report to the executive and/or legislative (if applicable)	Yes	
The NCP's peer review report (if applicable)	N/A: The NCP does not have a peer review report	
Information about specific instances		
Information on how to submit a specific instance	Yes	_

This includes dedicated NCP webpages as part of the Ministry's website.

An online form to submit a specific instance	Yes
The NCP's rules of procedure	Yes
All final statements since 2011	Yes
Information on promotional activities	
The NCP's promotional plan	No
Information on upcoming events promoting the Guidelines	No
Information on past events promoting the Guidelines	Yes
Contact information	
Information on how to make an enquiry to the NCP	Yes
A phone number to reach the NCP directly	Yes
An email address to reach the NCP directly	Yes
Additional comments on NCP website: Click here to enter text.	
(b) Promotional activities <sup>2</sup>	
18. Does the NCP have a promotional plan for the coming year(s)?	Yes
19. Did the NCP organise or co-organise events to promote the Guidelines and/or the NCP during the year?  If yes, please provide details in table 1 in Annex 1.	Yes
20. Did the NCP make a presentation to promote the Guidelines and/or the NCP in events organised by others?  If yes, please provide details in table 2 in Annex 1.	Yes
21. Did the NCP make use of social media to communicate on NCP promotional activities during the year?	No
22. Did the NCP hold a <u>stakeholder meeting</u> during the year?	Yes
23. Did the NCP promote the Guidelines among the business community during the year?	No
24. Did the NCP carry out any training on the Guidelines aimed at businesses during the year?	No
25. Did the NCP promote the Guidelines among NGOs during the year?	Yes
26. Did the NCP promote the Guidelines among trade unions during the year?	No
27. Did the NCP promote the Guidelines among government agencies during the year?	Yes
28. Did the NCP promote the Guidelines among embassies abroad during the year?	Yes

 $<sup>{\</sup>small 2} \\ \\ \text{Attendance of NCP meetings held at the OECD and other OECD events such as the Global Forum on Responsible Business Conduct are not considered to be promotional activities.}$ 

29. Did the NCP promote the Guidelines to investment promotion agencies during the year?	No
30. Did the NCP focus on any of the following during promotional activities during the year:	
OECD Due Diligence Guidance for Responsible Business Conduct	Yes
OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector	No
Due Diligence for Responsible Corporate Lending and Securities Underwriting and/or Responsible Business Conduct for Institutional Investors	Yes
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	Yes
OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector	Yes
OECD-FAO Guidance for Responsible Agricultural Supply Chains	No
Additional comments on the section <b>Promotional activities</b> : Click here to enter text.	

D. SPECIFIC INSTANCES	
(a) NCP rules of procedure for handling specific instances	
31. Does the NCP have rules of procedure describing the handling of specific instances?	
32. Are the rules of procedure available online?  If yes, please provide a link in the second box. If no, please attach a copy of the rules of procedure to this questionnaire	
33. Were the NCP's rules of procedure modified this year?	
Additional comments on the section <b>Rules of procedure</b> : Click here to enter text.	
(b) Specific instance practicalities  34. Does the NCP confirm receipt of a specific  Yes	
instance submission?	
35. Does the NCP request feedback from the parties on the procedure following the conclusion of a specific instance?	
36. Has the NCP staff undergone training in dispute resolution or problem solving (e.g. mediation)?	

37. Did the NCP engage professional mediators during the year?	Yes
38. Did the NCP staff or members conduct mediation this year?	Yes
Additional comments on the section Specific instance practicalities: Click here to enter text.	
(c) Reporting specific instances	
39. Did the NCP receive new specific instance submissions during the year?  If yes, please also provide details in Annex 2	Yes
40. Did the NCP close specific instances during the year?  If yes, please also provide details in Annex 2	No
41. Of the specific instances that were already in progress at the start of the year, are there any that are still ongoing at the end of the year? If yes, please also provide details in Annex 2	No
42. Did the NCP follow up on a case during the year?  If yes, please also provide details in Annex 2	Yes
43. Is the OECD <u>case database</u> accurate and up to date with regard to cases handled by the NCP? If not, please provide details (missing cases, out of date entries, broken links, etc.) in the additional comments section below.	Yes
Additional comments on the section <b>Reporting</b> specific instances: Click here to enter text.	

E. PEER LEARNING AND PEER REVIEWS	
44. Did the NCP take part in the following activities with other NCPs during the year:	
Host a peer learning activity	No
Participate in peer learning activities hosted by other NCPs	N/A: The NCP was not invited to such an activity this year
Co-operate with other NCPs in handling specific instances	Yes
Provide mentoring/capacity building to another NCP	No
45. Is the NCP interested in hosting an NCP learning/experience-sharing event in 2020?	Yes in 2022

46. Which topic would the NCP consider to be a priority to cover in a peer learning event?	Any updates of the 2011 Guidelines and new guidance material
47. Is the NCP interested in participating in developing tools for use by NCPs?	Yes
48. Is the NCP interested in acting as a peer reviewer in the future?	No
If yes, please specify the semester and the year	Click here to enter text.
Additional comments on the section Peer-learning and peer reviews:  Australia was grateful to participate in the 2019-21 Peer Review of the Korean NCP, in preparation for its own review.	

F. POLICY COHERENCE <sup>3</sup>		
49. Have the Guidelines been referred to in relevant national legislation/regulations/policies adopted during the year? (e.g. on responsible business conduct; non-financial reporting, export credits regulation, public procurement)	Yes	
If yes, please provide a short summary and a link to the legislation.  If a link is not available, please attach a copy of the legislation to this questionnaire.	Modern Slavery: OECD DD Guidance for RBC https://www.homeaffairs.gov.au/criminal-justice/Pages/modern-slavery.aspx	
50. Did your country adopt a National Action Plan (NAP) this year? If yes, please indicate which type of NAP.	No	Choose an item.
If yes, please provide a link.	Click here to enter text.	
If yes, does the NAP make reference to the Guidelines?	Choose an item.	
If yes, does the NAP make reference to the NCP?	Choose an item.	
51. Was a NAP in development this year?  If yes, please indicate which NAP.	No	Choose an item.
If yes, did the NCP participate in the development of the National Action Plan?	No	
52. Did the NCP inform officials responsible for trade missions of its relevant statements and reports?	Yes	
53. Did the NCP inform officials responsible for foreign trade and investment incentives of its relevant statements and reports?	Yes	
54. Did the NCP inform officials responsible for public procurement of its relevant statements and reports?	Yes	
55. Does your national legislation or policy on public procurement refer to the Guidelines and/or OECD due diligence instruments and/or to the NCP process?	No	

Paragraph 37 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises: "Statements and reports on the results of the proceedings made publicly available by the NCPs could be relevant to the administration of government programmes and policies. In order to foster policy coherence, NCPs are encouraged to inform these government agencies of their statements and reports when they are known by the NCP to be relevant to a specifics agency's policies and programmes [...]."

	<del>-</del>
If yes, please provide a link to the legislation.	Australia's Commonwealth Statement on Modern
If a link is not available, please attach a copy of the legislation to	Slavery addresses public procurement due
this questionnaire.	diligence https://modernslaveryregister.gov.au/
56. Have public procurement officials/practitioners consulted the	
NCP on the Guidelines and OECD due diligence instruments or	Yes
involved the NCP in specific public procurement opportunities?	
57. Were public procurement officials involved in any of your training/outreach activities?	No
58. What tools or activities does the NCP develop to support public procurement practitioners on RBC and OECD due diligence?	Policy dialogue between relevant agencies
59. Please identify any specific initiatives/good practices involving public procurement and RBC in your country.	Transparency through Australia's Commonwealth Statement on Modern Slavery addresses public
, , , , , , , , , , , , , , , , , , , ,	procurement due dilligence'
	The AusNCP routinely provides input to various
60. Please include any other examples of policy coherence	RBC-related policy initiatives and dialogues across
activities.	Government, including via members of its
	Governane and Advisory Board.
Additional comments on Policy Coherence: Click here to enter text.	

G. CHALLENGES	
61. Has the NCP faced any particular challenge(s) it would like to highlight this year?	Yes. The restrictions and priorities relating to the management of Covid-19 has impacted some of our events, specific instance timeframes and other engagement activities.
Additional comments on <b>Challenges</b> :	
The AusNCP published an OECD Guidelines summary checklist tool	
for businesses to use in this time.	
https://ausncp.gov.au/sites/default/files/inline-	
files/Checklist OECD GME.pdf	
Staff undertook specialist training in online mediation to facilitate new ways of working with parties.	

# **Annex 1: NCP PROMOTIONAL ACTIVITIES**

Please provide information on the events organised or co-organised by the NCP (Table 1), and events in which the NCP has participated to promote the Guidelines (Table 2). Please select the event type, size and type of audience as well as the theme from the dropdown menus for each event. Please add additional lines if needed.

# Table 1

NCP-organised	NCP-organised and co-organised events to promote the Guidelines and/or the NCP									
Title	Date (dd/mm/yyyy)	Location	Type of event	Size of audience	Organised or co- organised?	Targeted audience e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc.	Theme e.g. the OECD Guidelines, the NCP activities on sector due diligence guidance documents, etc.			
Overview of OECD Guidelines and AusNCP: Content and processes	8/09/2020	Webex	Webinar	50-100	Co-organised	Academia	The OECD Guidelines			
Click here to enter text.	Click here to enter text.	Click here to enter text.	Choose an item.	Choose an item.	Choose an item.	Click here to enter text.	Click here to enter text.			
Tota	l number=	1				·	·			

Table 2

Title	<b>Date</b> (dd/mm/yyyy)	Location	Type of event	Size of audience	Targeted audience e.g. Business representatives, NGOs, Trade unions, Academia, General public, Government representatives, etc	Organiser(s)	Type of intervention	Theme of the intervention
UWA: Modern Slavery Reporting	26/08/2020	Online	Webinar	Choose an item.	Lawyers	University of Western Australia Law School	Click here to enter text.	Click here to enter text.
Diplomacy Training Program – Accountabi lity mechanis ms	27/10/2020	Online	Webinar	10-50	Private sector, government	Unniversity of New South Wales	Online session	OECD National Contact Point,OECD Guidelines
1 <sup>st</sup> UN Pacific Foum on Business and Human Rights	02/12/2020	Online	Webinar	Choose an item.	Business	Associate Professor Shelley Marshall, RMIT	Panel	Access to remedy- available forums for resolving human rights grievances s.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Choose an item.	Choose an item.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

#### **Annex 2: SPECIFIC INSTANCES**

#### Please provide details of the following in the table below:

- 1. Specific instances in progress during the year (specific instances received and found to merit further examination after the initial assessment, and under consideration by the NCP).
- 2. Specific instances **concluded** during the year (specific instances that the NCP found to merit further examination after the initial assessment and that have subsequently been closed).
- 3. Specific instances not accepted during the year (specific instances that the NCP found not to merit further examination).
- 4. Specific instances for which **follow up** was performed during the year (the NCP monitored whether the agreement reached by the parties or its recommendations to the parties have been implemented)

Please add additional lines if needed.

We encourage all NCPs to inform the OECD Secretariat on received specific instances and to provide a final statement as soon as it becomes available, in order to keep the OECD database updated at all times. For all specific instances that have not yet been reported to the OECD Secretariat, please complete and send this form to ncp-specific-instances@oecd.org4.

#### For all specific instances that are currently IN PROGRESS:

Names of parties	Date received (dd/mm/yyyy)	Is the initial assessment publicly available?	Link to OECD database if available	Did the NCP co-operate with other NCPs during the handling of this specific instance? If yes, please describe.
20: Friends of the Earth, Egan, Dodds and Simons and ANZ Banking Group	30/01/2020	Yes	http://mneguidelines.oecd.org/datab ase/instances/au0016.htm	Click here to enter text.
21: Human Rights Law Centre on behalf of affected individuals and Rio Tinto	28/09/2020	No	http://mneguidelines.oecd.org/datab ase/instances/au0017.htm	Click here to enter text.
22: Mr John Podgorelec on behalf of Messrs	28/10/2020	No	http://mneguidelines.oecd.org/datab ase/instances/au0018.htm	Click here to enter text.

According to paragraph 42 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, "[...] NCPs will report to the Investment Committee in order to include in the Annual Report on the OECD Guidelines information on all specific instances that have been initiated by parties, including those that are in the process of an initial assessment, those for which offers of good offices have been extended and discussions are in progress, and those in which the NCP has decided not to extend an offer of good offices after an initial assessment".

Andrew and Robert				
Starkey and an				
Australian-based				
enterprise (energy				
sector)				
23. Global Legal				
Action Network and				
Anglo American Plc,	c, 19/01/2021	/2021 No	N/A	The AusNCP is consulting with the NCPs of Colombia, Ireland, Switzerland and the Unite
BHP Group Ltd and	19/01/2021	NO	IN/A	Kingdom on coordination of this case.
Glencore				
International AG				
Total no	umber= 4			

For all specific ins	For all specific instances that were CONCLUDED during the year:							
Title	Date received (dd/mm/yyyy)	Date concluded (dd/mm/yyyy)	Link to OECD database if available	Outcomes achieved	Does the final statement plan for follow up?	Did the NCP co-operate with other NCPs during the handling of this specific instance? If yes, please describe.		
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Choose an item.	Choose an item.	Click here to enter text.		
Total n	number= 0							

For all specific instances that were NOT ACCEPTED during the year:							
Title	Date received (dd/mm/yyyy)	Link to OECD database if available	Reasons for not accepting the specific instance	Did the NCP co-operate with other NCPs during the handling of this specific instance? If yes, please describe.			
Click here to enter text.	Click here to enter text.	Click here to enter text.	Choose an item.	Click here to enter text.			
Total number= 0							

Title	Date concluded (dd/mm/yyyy)	Date of follow up	Was a public follow up statement issued?	Link to the follow up statement, if applicable
11: Inclusive Development International and Equitable Cambodia and ANZ Banking Group	27/02/2020	05/07/2019	Yes	https://ausncp.gov.au/sites/default/files/2020-02/Complaint 11 statement.pdf
15: National Justice Project for Australian Women Without Borders on behalf of an affected individual	22/07/2020	29/02/2020	Yes	https://ausncp.gov.au/sites/default/files/inline-files/Complaint-15 Follow Up Statement.pdf
Click here to enter text.	Click here to enter text.	Click here to enter text.	Choose an item.	Click here to enter text.

For all specific ins	For all specific instances for which a REVIEW was performed during the year:							
Title	Date appealed (dd/mm/yyyy)	Date review concluded (dd/mm/yyyy)	Was a public review statement issued?	Link to the review statement, if applicable				
Deutsche Bank	21/12/2019	14/05/2020	Yes	https://ausncp.gov.au/sites/default/files/inline-files/ausncp-complaint-19.pdf				