

Strengthening the Australian National Contact Point

for the OECD Guidelines for Multinational Enterprises

Promoting responsible business practice by Australian companies operating overseas

A large number of Australian companies, especially in the mining sector, operate globally. Many of these companies operate responsibly, provide employment opportunities for local people and contribute to economic development. However, Australian companies do not always operate responsibly and their activities can cause harm to people, their livelihoods and environment. Australia's reputation suffers as a result.

The Australian Government needs to do more to promote responsible business practice by Australian companies when they operate overseas. One way to do this is through a strengthened National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises. This mechanism, already in existence in Australia, needs an overhaul so that it can be more effective in promoting responsible business conduct among Australian companies operating overseas, and in responding to grievances when they arise.

The OECD Guidelines for Multinational Enterprises are currently being reviewed. The Australian Government must take this opportunity to reform the NCP.

Strengthening the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises

The current situation

The OECD Guidelines for Multinational Enterprises provide voluntary principles and standards, including standards on human rights, labour rights, disclosure, anti-bribery and the environment. The Guidelines, which Australia supports, apply to companies operating in Australia and Australian companies operating overseas. The Guidelines provide communities (and their representatives) who may be negatively affected by a company's activities resulting from a breach of the Guidelines with the opportunity to raise their concerns, through the NCP, with the Government of the country in which the company is based. The NCP is responsible for promoting the Guidelines and responsible business practice, and for investigating and mediating resolution of community grievances.

International law provides that business has a responsibility to do no harm, and the OECD Guidelines for Multinational Enterprises can help companies understand what this means by outlining principles and standards for responsible business conduct. Despite this, very few Australian companies are aware of the Guidelines even though they are the most comprehensive instrument in existence to promote responsible international business practice and one that Australia and the other OECD countries have endorsed.

International law also provides that States have a duty to protect against human rights abuse by third parties, including business – these protections can be achieved through a variety of legislative and policy mechanisms. This view is supported and promoted by the UN Special Representative of the Secretary General on Business and Human Rights (SRSG). Effective grievance mechanisms play an important role in the State duty to protect. Hence Australia should provide those who may have been harmed by the activities of an Australian company with some form of redress or remedy – the NCP of the OECD Guidelines can provide an important mechanism for redress if properly resourced and structured.

Strengthening the NCP would bring Australia in line with the UK, Dutch and Norwegian Governments

which have well functioning and effective NCPs, Strengthening the NCP would likely result in high praise of the Australian Government from the UN, including the SRSG, and other stakeholders.

Costs attached to reform of the Australian NCP are not excessive. The Dutch NCP consists of four independent experts (part-time) and two full time secretariat staff. They currently have a budget of €300,000 (approximately AUD420,000) per year for three years. The UK NCP is a multi-departmental steering board with four external (multi-stakeholder) representatives and three full time staff. They have a budget of £100,00 (Approximately AUD160,000) per year for five years.

The Australian NCP is currently under-resourced – as a result it has invested very little in promoting the Guidelines and ensuring responsible business practice amongst Australian companies. Currently the position of Australian NCP is the Executive Manager of the Foreign Investment Review Board – this is very inappropriate as it raises many serious questions of a potential conflict of interest.

Recommendations:

The Australian Government should reform its National Contact Point such that it is:

- Strengthened including through the provision of additional resources to enable greater promotion of the OECD Guidelines for Multinational Enterprises, and implementation of joint fact-finding and improved mediation services, disclosure and determination when grievance are forthcoming
- Restructured so that it becomes independent of those parts of Government whose role it is to promote and fund international business activity

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