

AUSTRALIA FAILING TO PROPERLY POLICE COMPLIANCE WITH THE OECD GUIDELINES

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Legal Briefings - By **Antony Crockett**

An independent review has concluded that the Australian Government is "falling short" in regard to its commitments as an OECD member to establish a properly resourced National Contact Point (**NCP**) to police compliance with the [OECD Guidelines for Multinational Enterprises](#).

The OECD Guidelines are intended to promote responsible business conduct among multinational enterprises and include recommendations regarding standards of conduct in relation to employment and industrial relations, human rights, environment, information disclosure, bribery, consumer interests, science and technology, competition and taxation.

The OECD Guidelines are not legally binding. However, OECD Governments (and a number of non-OECD Governments adhering to the OECD Guidelines) have set up NCPs which, in addition to promoting the OECD Guidelines, are entrusted with the resolution of complaints regarding the conduct of individual enterprises in specific instances.

As we noted in a previous [post](#), there has been a steady increase in the number of complaints submitted to NCPs worldwide, particularly in relation to human rights issues following the 2011 revision of the OECD Guidelines. According to [OECD Watch](#) (an consortium of civil society organisations), more than 280 cases have been filed with NCPs since 2001.

Australia's NCP (the **ANCP**) has handled relatively few complaints, and has been criticised for its handling of a number of cases, including for bias and lack of independence. In August 2017 the Chair of the OECD Working Party on Responsible Business Conduct criticised the ANCP as "*ranked among the poorest performing NCPs internationally*".

In response to these criticisms, the Australian Government commissioned an independent review of the ANCP, the findings of which are summarised in a [report](#) published this week. The report concludes that measured against the OECD's effectiveness criteria for NCPs

(including visibility, accessibility, transparency and accountability) the ANCP is "significantly lacking".

The independent review also identified a number of other effectiveness criteria, including impartiality, predictability, resourcing and expertise (both in terms of substantive subject matter and complaints handling) and identified that in each case the ANCP has been the target of criticism.

Australia's current NCP is a senior executive within the Foreign Investment Division of the Treasury. The key recommendation of the independent review calls for the establishment of an independent NCP comprising an expert panel of three to five members, supported by a secretariat of full time staff based within the Department of Foreign Affairs and Trade. A "quadripartite" NCP comprising representatives from government, corporates, civil society and trade unions is suggested as an alternative to the expert panel model. The independent review further recommends the development of revised operating procedures for handling complaints and increased stakeholder engagement to promote the ANCP and to encourage compliance with the OECD Guidelines.

Adoption of the independent reviewer's recommendations is likely to increase the number of complaints submitted to the ANCP.

The Government is yet to comment on the findings of the independent review other than to say that they are being considered.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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