



Rights and  
Accountability  
in Development



Human Rights  
Law Centre

Human Rights  
Law Centre Ltd  
ABN 31 117 719 267

Level 17, 461 Bourke Street  
Melbourne VIC 3000  
Australia

P: + 61 3 8636 4450  
F: + 61 3 8636 4455  
admin@hrlc.org.au  
www.hrlc.org.au

2 July 2015

Robert Donnelly

The Australian National Contact Point  
c/- Foreign Investment Review Board  
The Treasury  
Langton Crescent  
CANBERRA ACT 2600

By email: [Robert.Donnelly@TREASURY.GOV.AU](mailto:Robert.Donnelly@TREASURY.GOV.AU)

Copy:

UK National Contact Point: [uk.ncp@bis.gsi.gov.uk](mailto:uk.ncp@bis.gsi.gov.uk)

Professor Gillian Triggs, President, Australian Human Rights Commission: c/-  
[Sarah.McGrath@humanrights.gov.au](mailto:Sarah.McGrath@humanrights.gov.au)

Roel Nieuwencamp, Chair of the OECD Working Party on Responsible Business Conduct:  
[Roel.Nieuwenkamp@minbuza.nl](mailto:Roel.Nieuwenkamp@minbuza.nl)

Brian Pontifex, Australian Ambassador to the OECD: [brian.pontifex@dfat.gov.au](mailto:brian.pontifex@dfat.gov.au)

Kevin Playford, Director, Human Rights and Indigenous Issues Section, Department of Foreign Affairs  
and Trade: [Kevin.Playford@dfat.gov.au](mailto:Kevin.Playford@dfat.gov.au)

### **Specific Instance complaint – G4S Australia Pty Ltd**

We refer to the Statement of the Australian National Contact Point (ANCP) regarding the Specific Instance complaint against G4S Australia Pty Ltd.<sup>1</sup> The Statement advises that the ANCP has decided not to investigate the specific instance.

The Human Rights Law Centre (HRLC) and Rights and Accountability in Development (RAID), authors of the complaint against G4S, consider that the ANCP's initial assessment misconceives and misapplies the OECD Guidelines for Multinational Enterprises and undermines the ANCP's purpose of promoting compliance with the OECD Guidelines.

The purpose of the initial assessment phase is to determine whether a complaint merits further examination and whether it raises a bona fide issue that is relevant to the implementation of the Guidelines. The ANCP's statement notes the six specific criteria that NCPs should take into account when conducting initial assessments, but goes on to reject the complaint on the basis of three additional factors unrelated to those criteria.

### **The role of G4S in giving effect to Government policy**

The ANCP states that:

‘aspects of the complaint could be interpreted as commentary on government policy. However, G4S as service provider is not accountable for government policy and other mechanisms exist for review and scrutiny of policy...It is not the role of the ANCP to issue commentary, whether intended or otherwise, on government policies or law.’

Corporate responsibility for upholding the OECD Guidelines exists independently of government policy and companies are not exempt from the application of the OECD Guidelines on the basis that their activities are consistent with domestic law. The OECD Guidelines state that where there is a conflict between a state's law and the Guidelines, enterprises should find ways to honour the principles of the Guidelines ‘to the fullest extent which does not place them in violation of domestic law.’

The role of the ANCP is to advise companies as to whether their activities are in compliance with the Guidelines, regardless of Government policy and practice.

### **Existing reviews of the conduct of G4S staff**

The ANCP notes that two reviews of incidents at the Manus Regional Processing Centre (MRPC) have already taken place and considers that ‘there is unlikely to be any new information that can be brought to light on [G4S] operation of the MRPC’.

We disagree that there is no new evidence that could be uncovered through the resolution of the specific instance. Specifically, the outcomes of G4S' internal investigations and disciplinary actions taken against staff involved in the violence at the MRPC, the company's complete training package for personnel, including subcontractors, engaged at the MRPC and its records with respect to the

---

<sup>1</sup> Available at [http://www.ausncp.gov.au/content/Content.aspx?doc=publications/reports/general/G4S\\_Aus.htm](http://www.ausncp.gov.au/content/Content.aspx?doc=publications/reports/general/G4S_Aus.htm).

violence have not yet been disclosed. Further, the reviews cited are limited in scope and do not consider the issues around arbitrary detention and conditions in detention that are detailed in the complaint.

Regardless of whether additional information could be uncovered through the specific instance, the procedure is also intended to assess G4S' compliance with the OECD Guidelines, to examine ways in which breaches might be remedied and to reach agreement as to how such breaches might be prevented in the future. These functions have not been fulfilled by any of the previous reviews and the rejection of the specific instance on this basis unnecessarily limits the effectiveness of the NCP system.

### **Legal liability for events at the MRPC**

We recognise the existence of ongoing legal proceedings. However, there has been no suggestion that consideration of the specific instance would prejudice those proceedings. While arising out of the same factual context, those proceedings raise issues separate and distinct from G4S's compliance with the OECD Guidelines.

Further, the OECD's position is that complaints should not be dismissed on the basis of 'parallel processes'. As commentary to the Guidelines makes clear:

When assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation. In making such an evaluation, NCPs could take into account practice among other NCPs and, where appropriate, consult with the institutions in which the parallel proceeding is being or could be conducted. Parties should also assist NCPs in their consideration of these matters by providing relevant information on the parallel proceedings.

### **Timing and transparency**

The ANCP took over 8 months to conduct its initial assessment. The OECD Guidelines' Procedural Guidance provides that initial assessments should be conducted within three months. Further, the ANCP failed to respond to several requests from the HRLC and RAID for information about G4S's response to the complaint and the extent of the NCP's contact with the company.

Overall, the ANCP's response to the specific instance complaint against G4S evinces a lack of understanding of and commitment to the OECD Guidelines. It is also at odds with the ANCP's initial assessment, acceptance and mediation of the 2006 complaint against G4S's predecessor, Global Solutions Limited.

Accordingly, the HRLC and RAID request that the ANCP:

- reconsider the specific instance complaint against G4S on the exclusive basis of the six criteria specified in the OECD procedural guidance; and
- adhere to the timelines set out in the OECD's procedural guidance and ensure that any information provided to the ANCP and relied on to formulate initial assessments be available to both parties, including the ANCP's correspondence with G4S regarding the complaint. We are prepared to keep any correspondence disclosed confidential.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachel Ball', with a stylized, cursive script.

**Rachel Ball**

Director of Advocacy

Human Rights Law Centre

A handwritten signature in black ink, appearing to read 'Patricia Feeney', in a cursive script.

**Patricia Feeney**

Executive Director

Rights and Accountability in Development