

OFFICIAL: Sensitive

**LEX 9233 - Document 01**  
s 47E(d)



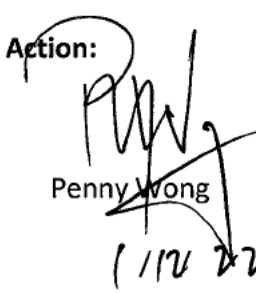
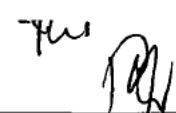
Ministerial Submission

Cleared by: Marc Innes-Brown  
Date sent to MO: 18 November 2022

FOR: Senator the Hon Penny Wong

Action Requested By: 25 November 2022  
Reason for Urgency: Not Applicable

**Hamad Airport incident:** s 33(a)(iii)

<p><b>Key Issues:</b> s 33(a)(iii)</p> <p>Separately, five individuals have brought forward a lawsuit against Qatar Airways and the Qatar Civil Aviation Authority (QCAA) for damage for harm resulting from the Hamad Airport incident. DFAT is actioning a request by the Federal Court to serve the originating motion (i.e. the lawsuit) to the QCAA in Doha.</p>	
<p><b>Recommendation:</b> That you: s 33(a)(iii)</p>	<p><b>Decision:</b></p> <p style="text-align: center;"><u>Noted</u></p> <p style="text-align: center;"><u>Noted</u></p>
<p><b>Domestic/Media Considerations:</b> Any public developments in this matter gain strong media interest. This will be particularly so during the period of the FIFA 2022 World Cup. s 33(a)(iii)</p>	
<p><b>Action:</b></p> <p> Penny Wong 1/12/22</p> <p style="text-align: right;"></p>	
<p><b>From:</b> Gemma Huggins, SGG   MAD   Middle East Branch s 22(1)(a)(ii)</p>	<p><b>Contact:</b> s 22(1)(a)(ii)</p>
<p>Can this proposal be funded from within your existing <u>divisional</u> allocation (departmental/aid)? Not Applicable If the proposal high risk/high value (over \$100m) concept has been approved by the Aid Governance Board? Not Applicable</p>	
<p><b>Consultation:</b> GCL</p>	

**Background:**

The summary findings of the Qatari Government investigation into the 2 October 2020 Hamad Airport incident were provided to DFAT on 25 March 2021 s 47E(d) s 33(a)(iii)

2. On 19 August 2022, Marque Lawyers wrote to DFAT requesting a copy of the report of the investigation, advising they were assisting seven women involved in the incident by lodging a complaint with the Australian National Contact Point (AusNCP) against Qatar Airways (AusNCP examines allegations of non-observance of the OECD Guidelines for Multinational Enterprises and is managed by Treasury). s 47E(d), s 33(a)(iii)

3. On 24 August 2022, AusNCP published its initial assessment of the complaint. The report noted that it was not clear if Qatar Airways 'caused' or 'contributed to' the impacts or was 'directly linked' to them, but suggested Qatar Airways and Marque Lawyers engage further, with a view to finding a solution to the issues raised (full assessment at Attachment B). s 47E(d)

4. On 21 October 2022, Australian media reported that five women were seeking damages from both Qatar Airways and the Qatar Civil Aviation Authority (QCAA) for 'unlawful physical contact' and mental health impacts over the incident. On 15 November DFAT received a request from the Federal Court of Australia to serve Australian legal documents via diplomatic channels on the QCAA. DFAT is tasking Doha Post to forward the documents to the competent authority in Qatar, to effect service.

5. On 1 November, our Ambassador to Qatar met Assistant Foreign Minister Lolwah Al-Khater s 33(a)(iii)

6. s 33(a)(iii)

there is an ongoing legal case currently before the Federal Court. s 33(a)(iii)

Alternatively, the passengers may consider requesting the report directly from the relevant authority in Qatar.

s 33(b)

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s 33(b)

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s 33(b)

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Australian National Contact Point  
for the OECD Guidelines for Multinational Enterprises

# Initial Assessment

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Complaint submitted by Marque Lawyers (on behalf of  
affected individuals) regarding Qatar Airways

(AusNCP case #30)

Published 24 August 2022

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## EXECUTIVE SUMMARY

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1. In December 2021, the Australian National Contact Point (**AusNCP**) received a complaint from Marque Lawyers (on behalf of affected individuals) against Qatar Airways Group QCSC (**Enterprise**).
2. The Complaint relates to events, which have been publicly reported, following the discovery of a new-born baby in Hamad International Airport in Doha. Officials in the airport forced various women to undergo non-consensual physical examinations. The Complaint alleges the Enterprise acted contrary to the human rights requirements of the *OECD Guidelines for Multinational Enterprises* (**OECD Guidelines**), in connection with women being removed from flights being operated by the Enterprise and being subjected to non-consensual physical examinations, and also in the Enterprise's response to women's concerns raised subsequently.
3. An AusNCP Independent Examiner considered the six admissibility criteria of the Initial Assessment process and engaged with the parties. The Independent Examiner has decided the complaint merits further consideration, by offering the AusNCP 'good offices' to facilitate engagement between the parties with the aim of arriving at a mutually agreed resolution consistent with the OECD Guidelines.
4. The following observations were made during the Initial Assessment.
  - 4.1. There is a nexus or connection to Australia relevant to the OECD Guidelines and AusNCP's Complaint Procedures. Therefore, the complaint must be assessed in accordance with the AusNCP Procedures to determine whether it should be accepted, transferred to another NCP, or rejected.
  - 4.2. The admissibility criteria for the Initial Assessment have been met. This includes: the parties' identity and interest in the matter; issues which are material and substantiated; and identifying applicable laws (in the OECD Guidelines and related international standards) relevant to the issues raised.
  - 4.3. It is, however, unclear whether the Enterprise has 'caused' or 'contributed to' the impacts or is 'directly linked' to them (in the OECD Guidelines' understanding and application of those concepts). These are appropriate issues for good offices.
5. The AusNCP proposes a good offices procedure encompassing the following.
  - 5.1. Good offices will not proceed unless both parties agree to engage in good faith. This should include agreement about confidentiality and commitment to genuinely engage with a view to finding a solution to the issues raised in accordance with the OECD Guidelines.

- 5.2. The material provided was sufficient for Initial Assessment, but the connection of the Enterprise with the impacts is unclear on the information to date. An initial focus for good offices would be the extent of the Enterprise's connection with the events.
- 5.3. Another initial focus of good offices would be to understand what action the Enterprise has taken, and is aware of, to prevent reoccurrence of these type of events.
6. This Initial Assessment is not a determination on the merits of the claims presented, nor is it an assessment of whether the Enterprise's actions are consistent with the OECD Guidelines.
7. This statement is available on the AusNCP website at [www.ausncp.gov.au](http://www.ausncp.gov.au).

## INITIAL ASSESSMENT

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### Parties, complaint and outcomes sought

8. On 10 December 2021 a law firm, Marque Lawyers, filed a complaint with the AusNCP about events occurring on two Qatar Airways flights leaving Doha on 2 October 2020 (**Complaint**). Marque Lawyers identified itself as the '**Notifier**' and explained it was acting on behalf of seven women of varying ages and nationalities (**Complainants**), who requested the Complaint not identify them due to privacy concerns.
9. The Complainants allege their human rights were violated when they were subjected to non-consensual physical examinations, and also in subsequent responses to their complaints to the Enterprise about those events. The Complaint relates to events, which have been publicly reported,<sup>1</sup> following the discovery of a new-born baby in Hamad International Airport in Doha. Officials in the airport forced various women to undergo non-consensual physical examinations.
10. The Complaint is filed against the Australian registered foreign company Qatar Airways Group QCSC (ABN 18 105 742 916) (**Enterprise**). The Complaint alleges the Enterprise acted contrary to the human rights requirements of the OECD Guidelines,<sup>2</sup> by virtue of the Enterprise's staff/agents who the Notifiers allege were involved in actions leading to the non-consensual physical examinations of the women. Most of the Complainants had been on a flight to Australia, operated by the Enterprise, which had returned to the terminal. The Complaint also alleges the Enterprise has breached the OECD Guidelines in its 'lack of response to the Complainant's concerns' about the events, and that the women continue to suffer 'psychological harm ... including post-traumatic stress disorder, anxiety, depression and fear of flying'. The Complaint seeks

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<sup>1</sup> For example, Australian Broadcasting Corporation, 2020, 'Qatar official say mother of abandoned baby was a 'convict; who fled the country,' 24 November, viewed 27 March 2022, <<https://www.abc.net.au/news/2020-11-24/qatar-officials-say-mother-of-abandoned-baby-identified-fled/12913702>>; British Broadcasting Corporation, 2021, 'Australian women sue over Qatar airport strip-searches,' *British Broadcasting Corporation*, 15 November, viewed 27 March 2022, <<https://www.bbc.com/news/world-australia-59288177>>; The New York Times, 2020, 'Qatar expresses 'Regrets' but defends invasive exams of women on 10 flights,' *The New York Times*, 30 October, viewed 27 March 2022, <<https://www.nytimes.com/2020/10/27/world/middleeast/qatar-airport-baby.html>>; Plesse, G 2021, 'Never again': Australian woman searched in Doha airport over abandoned baby set to sue Qatar,' *SBS News*, 23 November, viewed 27 March 2022, <[Never again': Austr...~https://www.sbs.com.au/language/french/en/article/never-again-australian-woman-searched-in-doha-airport-over-abandoned-baby-set-to-sue-qatar/4m15tnz37](https://www.sbs.com.au/language/french/en/article/never-again-australian-woman-searched-in-doha-airport-over-abandoned-baby-set-to-sue-qatar/4m15tnz37)>.

<sup>2</sup> Adhering Governments, *OECD Guidelines for Multinational Enterprises* (2011 Edition, 25 May 2011) OECD Publishing (**OECD Guidelines**).

commitments from the Enterprise to:

*'provide a meaningful apology for the hurt and distress caused ... and the Enterprise's failure to acknowledge the Complainants' experiences...*

*engage in ... dialogue regarding the Complainants' concerns ... [and]*

*provide assurances to both the Complainants and the international community that this kind of conduct will never happen again'.*

11. Consistent with *AusNCP Complaint Procedures*,<sup>3</sup> on 20 December 2021, the Enterprise was notified that a complaint had been made and provided with a copy of the Complaint, without identifying information of the women involved.
12. Subsequent to filing the Complaint, the Notifiers stated in the media that legal proceedings were shortly to be commenced regarding the events.<sup>4</sup>
13. A preliminary issue is to clarify whether the OECD Guidelines and AusNCP Procedures apply to the Complaint, given the events mostly occurred in Qatar, and Qatar Airways Group describes 'the airline's home' as Hamad International Airport in Qatar.<sup>5</sup>
  - 13.1. The OECD Guidelines are directed at multinational enterprises,<sup>6</sup> a term which it gives broad application.<sup>7</sup>
  - 13.2. The AusNCP Procedures indicate complaints can be made to the AusNCP, about 'a foreign or Australian multinational enterprise operating in Australia; or an Australian multinational enterprise operating overseas'.<sup>8</sup>
  - 13.3. Various NCPs, in assessing a complaint under the OECD Guidelines, have examined the extent of business connection to that NCP's country. Most cases involve enterprises incorporated in the NCP's country, but there are examples

<sup>3</sup> Department of Treasury, Australian National Contact Point, *Complaint Procedures*, September 2019, [4.8] & [4.9] (**AusNCP Procedures**).

<sup>4</sup> Bourke, L 2022, 'Big Mistake': Qatari minister mum on compensation for Australian women searched at airport,' *The Sydney Morning Herald*, 17 February, viewed 8 April, <<https://www.smh.com.au/world/europe/big-mistake-qatari-minister-mum-on-compensation-for-australian-women-searched-at-airport-20220217-p59x6p.html>>.

<sup>5</sup> For example, Qatar Airways (2021), 'Qatar Airways issues legal proceedings against Airbus in the Technology and Construction Division of the High Court in London,' [Press release], 20 December, <<https://www.qatarairways.com/en/press-releases/2021/December/qatar-airways-issues-legal-proceedings-against-airbus-in-the-tec.html?activeTag=Press-releases>>.

<sup>6</sup> 'Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate': OECD *Guidelines* (above n 2), ch I, [3].

<sup>7</sup> 'A precise definition of multinational enterprises is not required for the purposes of the Guidelines. ... The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines': OECD *Guidelines* (above n 2), ch I, [4].

<sup>8</sup> AusNCP Procedures (above n 3), [3.2].

of NCPs accepting cases where the NCP's country is neither the company's headquarters nor where most impacts occurred.<sup>9</sup>

- 13.4. The Enterprise's registration in Australia indicates it is an enterprise operating in or from Australia.<sup>10</sup> Six of the seven Complainants were on a flight to Australia. Some allegations raised in the Complaint (the non-response to the events, the ongoing psychological harm) have occurred in Australia. There is a sufficient nexus or connection to Australia for the OECD Guidelines and AusNCP Procedures. Accordingly the Complaint must be assessed in accordance with the AusNCP Procedures to determine whether it should be accepted, transferred to another NCP, or rejected.<sup>11</sup>

## Assessment criteria

14. The OECD Guidelines require an NCP, when it receives a complaint, to conduct an 'initial assessment'. The Initial Assessment is to determine whether the issues raised by the Notifier are 'bona fide' (in other words real or authentic) and related to the OECD Guidelines' implementation (in other words within the OECD Guidelines' scope of coverage).<sup>12</sup> The AusNCP has procedures,<sup>13</sup> mirroring the OECD Guidelines, which specify that in deciding whether to accept a complaint, six admissibility criteria are assessed:
- 14.1. the identity of the party concerned and its interest in the matter;
  - 14.2. whether the issue is material and substantiated;
  - 14.3. whether there seems to be a link between the enterprise's activities and the issue raised in the complaint;
  - 14.4. the relevance of applicable law and procedures, including court rulings;
  - 14.5. how similar issues have been, or are being, treated in other domestic or international proceedings; and
  - 14.6. whether the consideration of the complaint would contribute to the purposes and effectiveness of the OECD Guidelines.<sup>14</sup>

<sup>9</sup> For example, Department for Business, Innovation & Skills, UK National Contact Point, *UK Lawyers for Israel complaint about PwC*, Final Statement, 11 March 2020, [38]-[39], a complaint against a network that is not single entity, about actions of Palestine-based company; Ministry of Foreign Affairs, Dutch National Contact Point, *International Alliance of App-Based Transport Workers vs Uber Technologies*, Initial Statement, 15 June 2022, 3, 5 – 6, 8, a complaint regarding US head-quartered company, about impacts in countries outside The Netherlands (**Dutch NCP Uber**).

<sup>10</sup> There may be other facts establishing the Enterprise operates in or from Australia (eg. employing workers, or providing goods/services in Australia), but given the registration, this is unnecessary to consider.

<sup>11</sup> AusNCP Procedures (above n 3), [4.1].

<sup>12</sup> OECD (2019), *Guide for National Contact Points on Coordination when handling Specific Instances*, OECD Guidelines for Multinational Enterprises, 5. (**OECD Initial Assessments Guide**).

<sup>13</sup> AusNCP Procedures (above n 3).

<sup>14</sup> AusNCP Procedures (above n 3), [4.10].

15. In December 2021 and January 2022, the AusNCP engaged with the Notifier and the Enterprise to gather more information and invite submissions on various aspects of the Complaint relevant to the six admissibility criteria. The Enterprise provided no information to the AusNCP addressing the six admissibility criteria.
16. The AusNCP is also aware of the following statement from the Qatari Government Communications Office on 30 October 2020.

*The preliminary investigation into ... a newborn baby found in a very serious condition at Hamad International Airport (HIA), and the subsequent procedures taken by the authorities at the airport, including examining a number of female passengers, revealed that standard procedures were violated. Those responsible for these violations and illegal actions have been referred to the Public Prosecution Office.*

*Following the directives of His Excellency Sheikh Khalid bin Khalifa bin Abdulaziz Al Thani, the Prime Minister and Minister of Interior, specialised task forces are reviewing and identifying any potential gaps in the procedures and protocols followed at Hamad International Airport, in order to address them and ensure that any violations are avoided in the future.*

*His Excellency the Prime Minister and Minister of Interior expressed the Government of the State of Qatar's sincerest apology for what some female travelers went through as a result of the measures.*

*This incident is the first of its kind at HIA, which has served tens of millions of passengers without any issues like this before. What took place is wholly inconsistent with Qatar's culture and values. Qatar is fully committed to the safety and security of all travelers arriving to or transiting through HIA.<sup>15</sup>*

17. Similar observations were made in a *Joint Communique by the Foreign Ministry of the State of Qatar and the Department of Foreign Affairs and Trade of Australia*.<sup>16</sup> In that statement, the Qatari "Deputy Prime Minister and Minister of Foreign Affairs expressed his deepest sympathies with the women impacted by the search at the airport and renewed the State of Qatar's apology to them, stating that the incident is considered a violation of Qatar's laws and values, and that the officials involved have been

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<sup>15</sup> Government Communications Office (2020) 'Government Communications Office Statement on the preliminary findings of the Hamad International Airport Investigation,' [Press release], 30 October, <<https://www.gco.gov.qa/en/2020/10/30/government-communication-office-statement-on-the-preliminary-findings-of-the-hamad-international-airport-investigation/>>.

<sup>16</sup> Ministry of Foreign Affairs, *Joint Communique by the Foreign Ministry of the State of Qatar and the Department of Foreign Affairs and Trade of Australia on the Hamad International Airport (Doha) Incident*, 31 October 2020, <[https://mofa.gov.qa/en/statements/joint-communique-by-the-foreign-ministry-of-the-state-of-qatar-and-the-department-of-foreign-affairs-and-trade-of-australia-on-the-hamad-international-airport-\(doha\)-incident](https://mofa.gov.qa/en/statements/joint-communique-by-the-foreign-ministry-of-the-state-of-qatar-and-the-department-of-foreign-affairs-and-trade-of-australia-on-the-hamad-international-airport-(doha)-incident)>.

referred to the Public Prosecution Office".<sup>17</sup> It has since been reported, in the media, that one official has been convicted (and given a suspended sentence).<sup>18</sup>

18. Detailed observations regarding each of the six admissibility criteria have been provided to the parties, so that they are aware of the reasoning and detail. This ensures the parties' submissions and material are addressed to the full extent necessary in conducting the Initial Assessment, while maintaining appropriate confidentiality. For broader transparency and predictability,<sup>19</sup> however, the key points of the Initial Assessment are summarised in the paragraphs below.
19. Most of the admissibility criteria for Initial Assessment have been met. This includes: the Notifiers (and Complainants') identity and interest in the matter; issues which are material and substantiated; and identifying applicable laws (in the OECD Guidelines and related international standards) relevant to the issues raised by the Complainants.
20. Two admissibility criteria, however, required closer analysis. These are: (1) the link between the Enterprise's activities and the issues raised in the Complaint, and (2) whether the consideration of the Complaint would contribute to the purposes and effectiveness of the OECD Guidelines.
21. In relation to the link between the Enterprise and the issues:
  - 21.1. a company can be connected with an adverse impact in three ways (cause, contribute, or directly linked<sup>20</sup>), each of which 'has different implications for the nature of an enterprise's responsibilities';<sup>21</sup>
  - 21.2. on the information provided in the Complaint, and what is publicly available, it seems the direct cause of the initial impacts was by official(s) in Hamad International Airport subjecting the Complainants to non-consensual physical examinations, described by the Qatari Government as 'violations and illegal actions' and, as has been reported, an official has been convicted;
  - 21.3. the Complaint also alleges the Enterprise's 'lack of response to the Complainant's concerns demonstrates a breach of the OECD Guidelines' provisions regarding due-diligence and remediation; and that there is ongoing

<sup>17</sup> Joint Communiqué (above n 16).

<sup>18</sup> 'Following the incident, a Qatari prosecutor said an unspecified number of airport security staff responsible for carrying out examinations of female passengers were charged. One officer was given a suspended sentence, according to CNN affiliate 7 News': Regan, H and Maruyama, M 2021, 'Australian women to sue Qatar over forced invasive examinations at Doha airport,' 16 November, viewed 29 March 2022, <<https://edition.cnn.com/travel/article/australian-women-sue-qatar-examinations-intl-hnk/index.html>>.

<sup>19</sup> The OECD Guidelines state NCPs should deal with complaints 'in a manner that is Impartial ... Predictable ... Equitable ... [and] Compatible with the Guidelines': OECD Guidelines (above n 2), Implementation Procedures, Commentary, [22].

<sup>20</sup> OECD Guidelines (above n 2), Ch IV, [2]-[3].

<sup>21</sup> Office of the UN High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (UN doc HR/PUB/12/02, June 2012) United Nations (**Interpretative Guide**), 15.



psychological harm 'including post-traumatic stress disorder, anxiety, depression and fear of flying';

21.4. it is unclear whether the Enterprise has 'caused' or 'contributed to' any of these alleged impacts or is 'directly linked' to them (in the OECD Guidelines' understanding and application of those concepts);

21.5. it is not necessary, in Initial Assessment, to make a determination on these issues, and these are appropriate issues for good offices.

22. Whether good offices here would contribute to the OECD Guidelines' purpose and effectiveness, raises two matters: (1) the proposed legal proceedings, and (2) scope of good offices.

22.1. Litigation, or its threat, is relevant in considering whether good offices would support or encourage resolution of the issues. OECD Guidelines' good offices is a process '*with the agreement of the parties involved, [to] facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues*'.<sup>22</sup> For good offices to occur, both parties are expected to engage in good faith and to demonstrate that commitment to the other. Litigation does not necessarily preclude any good offices (because the two proceedings may address different issues<sup>23</sup>) but does raise questions of timing. Good offices are not feasible where they may 'create serious prejudice for parties in' in other proceedings.<sup>24</sup>

22.2. The scope of good offices depends on what a complaint raises within the OECD Guidelines. The OECD Guidelines' due diligence expectations of a company depend on the company's connection with the adverse impacts. For impacts which a company causes or contributes - the company is expected to remediate.<sup>25</sup> For 'impacts that are directly linked to the [company's] business operations, products or services by a business relationship', a company should use leverage (influence) to encourage those who caused or contributed to the impact to prevent or mitigate recurrence.<sup>26</sup> Even where a company has not caused/contributed to an impact, the company may take a role in providing

<sup>22</sup> OECD Guidelines (above n 2), Implementation Procedures, Procedural Guidance, I C [2(d)] (emphasis added).

<sup>23</sup> 'For example, legal proceedings may focus on injunctions or financial compensation while good offices can assist parties in developing joint solutions. ...[and] provide an opportunity for parties to discuss issues that were not open for discussion before other processes.': OECD *Initial Assessments Guide* (above n 7), 9. See also Dutch NCP Uber (above n 9), 10-11.

<sup>24</sup> OECD *Initial Assessments Guide* (above n 7), 10.

<sup>25</sup> GP 15(c) of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (Annex to UN doc A/HRC/17/31), 21 March 2011) United Nations Human Rights Council (**UNGPs**). Remediation can include 'apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition': UNGPs, GP25, commentary.

<sup>26</sup> *Interpretive Guide* (above n 21), 18 (see also 66-67).

remediation where adverse impacts are directly linked to its operations, products or services by a business relationship.<sup>27</sup> Accordingly, an early focus of good offices ought be to understand the connection between the Enterprise and the impacts.

## Conclusion

23. The Independent Examiner has decided the complaint merits further consideration. This involves the offer of AusNCP 'good offices', within the OECD Guidelines, to facilitate the exchange of information between the parties (which can include conciliation, formal mediation or facilitated discussions) with the aim of arriving at a mutually agreed resolution.
24. The proposed good offices would encompass the following.
  - 24.1. Good offices will not proceed unless both parties agree to engage in good faith. This should include agreement about confidentiality and commitment to 'genuinely engag[e] in the procedures with a view to finding a solution to the issues raised *in accordance with the Guidelines*',<sup>28</sup>
  - 24.2. The material provided was sufficient for Initial Assessment but the connection of the Enterprise with the impacts is unclear on the information to date. An initial focus for good offices could be the Enterprise's connection with the events (see paragraph 21 above).
  - 24.3. Another early focus of good offices could be to understand what action (if any) the Enterprise has taken, and is aware of, to prevent reoccurrence of these type of events.
25. If the Enterprise does not wish to engage in good offices, then the proceedings move to the examination stage,<sup>29</sup> and then a final statement by the AusNCP (which could include a determination on the Enterprise's consistency with the OECD Guidelines).<sup>30</sup> That would occur *after* giving both parties fair process to provide materials and submissions. If the Notifiers do not wish to engage in good offices, then the proceedings would move to final statement without further assessment of issues.<sup>31</sup>
26. The Independent Examiner consulted with the AusNCP's Governance and Advisory Board regarding this Initial Assessment, as required by the AusNCP's Procedures.<sup>32</sup> The parties to the Complaint were provided a draft of this Initial Assessment and invited to make any comments/corrections. While the Independent Examiner considered all

<sup>27</sup> UNGPs (above n 25), GP22, commentary.

<sup>28</sup> OECD *Guidelines* (above n 2), Implementation Procedures, Commentary, [21].

<sup>29</sup> AusNCP Procedures (above n 3), [5.5c], [5.8]-[5.11].

<sup>30</sup> AusNCP Procedures (above n 3), [6.1]-[6.4].

<sup>31</sup> As required by *AusNCP Procedures* (above n 3), [5.5].

<sup>32</sup> AusNCP Procedures (above n 3), [4.12].

comments received on the draft, the Initial Assessment decision remains his responsibility.<sup>33</sup>

27. The AusNCP Procedures specify that 'acceptance or rejection of a complaint is not an assessment of whether the enterprise's actions are consistent with the OECD Guidelines'.<sup>34</sup>

John Southalan

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Email: [IndependentExaminer@AusNCP.gov.au](mailto:IndependentExaminer@AusNCP.gov.au)

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<sup>33</sup> AusNCP Procedures (above n 3), [1.1] (definition of 'Independent Examiner') and [4.10], see also [6.6] – [6.7].

<sup>34</sup> AusNCP Procedures (above n 3), [4.16].

## INSTITUTIONAL ARRANGEMENTS

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28. The Australian Government is committed to promoting the use of the OECD Guidelines and implementing them effectively and consistently. Through business cooperation and support, the OECD Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.
29. The OECD Guidelines are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. Importantly, while the OECD Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law. They represent standards of behaviour that supplement Australian law and therefore do not create conflicting requirements.
30. Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines and to perform to — at minimum — the standards they recommend.
31. The OECD Guidelines can be seen as:
  - 31.1. a useful aid to business in developing their own code of conduct (they are not aimed at replacing or preventing companies from developing their own codes)
  - 31.2. complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery
  - 31.3. providing an informal structure for resolving issues that may arise in relation to implementation of the OECD Guidelines in complaints.

## GOVERNANCE

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32. Countries adhering to the OECD Guidelines have flexibility in organising their National Contact Points for responsible business conduct (NCPs) and in seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.
33. Accordingly, the OECD Guidelines stipulate that NCPs:
  - 33.1. will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the OECD Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government
  - 33.2. can use different forms of organisation to meet this objective. An NCP can consist of senior representatives from one or more ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included
  - 33.3. will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the OECD Guidelines.
34. The [AusNCP Governance and Advisory Board](#) (the Board), which includes representatives from Australian Government agencies, business, civil society and unions, provides advice and assistance to the AusNCP Secretariat in relation to the handling of complaints. The Board was consulted in the development of this statement.
35. The Board helps to ensure that the AusNCP is visible, accessible, transparent and accountable, in accordance with its obligations under the OECD Guidelines. Members may be called on to conduct procedural reviews of AusNCP complaints and may be consulted on various operational and administrative matters as needed.
36. From September 2019, all new cases are managed by Independent Examiners, who are supported by the AusNCP Secretariat and the Board. The Australian National Contact Point, held by a Senior Executive official in the Treasury, retains responsibility for current cases submitted prior to September 2019.

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LEX 9233 - Document 02



Australian Government  
Department of Foreign Affairs and Trade

s 47E(d)

**Senator the Hon Penny Wong meeting with Marque Lawyers**  
**12.10pm, Tuesday, 5 September 2023,**

**Purpose:**

- Advise Marque Lawyers that the Australian Government continues to engage with Qatari authorities on the 2020 Hamad Airport incident, including in support of requests made by the affected women.

s 33(a)(iii), s 47E(d), s 47C(1)

**Background**

s 33(a)(iii)

s 33(b)

Prepared by: s 22(1)(a)(ii)

Cleared by Ridwaan Jadwat, ISG | MAD | Middle  
East BranchDate cleared: 5 September  
2023

Consultation: LGD

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s 47E(d)

s 33(b)

The Australian Federal Police (AFP) was the Government's primary point of engagement with the affected passengers. s 47E(d)

On 19 August 2022, Marque Lawyers wrote to DFAT advising they were assisting seven of the victims and requested a copy of the report into the investigation. Marque advised they lodged a complaint with Australian National Contact Point (AusNCP) against Qatar Airways (QA). AusNCP examines allegations of non-observance of OECD Guidelines for Multinational Enterprises and is managed by Treasury. s 33(a)(iii), s 47E(d), s 47C(1)

On 24 August 2022, AusNCP published its initial assessment of the complaint. The report noted that it wasn't clear if QA 'caused' or 'contributed to' the impacts or was 'directly linked' to them, but suggested QA and Marque Lawyers continue to engage to find a solution. s 47E(d)

s 33(a)(iii)

s 47E(d), s 33(a)(iii)

In October 2022, five of the affected women instigated action seeking damages from both QA and QCAA for 'unlawful physical contact' and mental health impacts. On 15 November 2022 DFAT received a request from the Federal Court of Australia to serve Australian legal documents via diplomatic channels on the QCAA. s 47E(d)

s33(a)(iii)

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s 22(1)(a)(ii)

**From:** s 22(1)(a)(ii)  
**Sent:** Tuesday, 5 September 2023 4:11 AM  
**To:** s 22(1)(a)(ii)  
**Cc:** Ridwaan Jadwat; s 22(1)(a)(ii)  
**Subject:** RE: s 22(1)(a)(ii) s 47E(d) - Senator the Hon Penny Wong meeting with Marque Lawyers [SEC=OFFICIAL]  
**Attachments:** Reply to Marque Lawyers\_Flight QR 908\_29 August 2022.docx

**OFFICIAL**

Hi s 22(1)(a)(ii)

s 47E(d) please find attached letter sent to Marque Lawyers in August 2022 in response to their letter regarding access to the reports.

Regards  
s 22(1)(a)(ii)

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**From:** s 22(1)(a)(ii)  
**Sent:** Tuesday, 5 September 2023 10:07 AM  
**To:** s 22(1)(a)(ii) @dfat.gov.au>  
**Cc:** Ridwaan Jadwat <Ridwaan.Jadwat@dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>; s 22(1)(a)(ii) @dfat.gov.au>  
**Subject:** s 22(1)(a)(ii) s 47E(d) - Senator the Hon Penny Wong meeting with Marque Lawyers [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1)(a)(ii)

Given timeframe, please find attached FAS MAD cleared brief for meeting with Marque Lawyers at 12.15. This has been submitted in PDMS.

As requested, Marque Lawyer timeline of events attached to the package in PDMS and to this email.

s 47E(d)

Please let me know if you wish to discuss.

Kind regards  
s 22(1)(a)(ii)

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a/g Director

Gulf States Section  
Middle East and Africa Division

Department of Foreign Affairs and Trade  
T s 22(1)(a)(ii) | M s 22(1)(a)(ii)



### Hamad Airport Incident – Marque Lawyer timeline of events

**December 2021** - Marque Lawyers on behalf of seven women, lodged a complaint with The Treasury's Australian National Contact Point (AusNCP) for Responsible Business Conduct, alleging Qatar Airways breached their human rights in relation to their role in the incident, and its subsequent handling.

**19 August 2022** - Marque requested DFAT provide a copy of the Qatar Investigation report, s 47E(d)

**24 August 2022** - AusNCP published their independent Examiners initial assessment of the complaint; the report noted it was unclear whether Qatar Airways has 'caused' or 'contributed to' the impacts or is 'directly linked' to them, but suggests it would be useful for Qatar Airways and Marque Lawyers to engage on finding solutions to the issues raised.

**29 September 2022** - The complainants filed legal action in the Federal Court of Australia (New South Wales Registry) on. The case name is DHI22 & ORS v QATAR AIRWAYS GROUP Q.C.S.C & ANOR. s 47E(d)

**January 2023** - Documents related to the complaint were provided to the AusNCP independent examiner by Marque Lawyers and Qatar Airways. s 47E(d)

s 33(a)(iii), s 47E(d)

s 47E(d)

**23 May 2023** - Justice Halley grants the applicants leave to join Qatar Company for Airports Operation and Management (MATAR) to the proceeding.

**24 May 2023** - MATAR is listed as a third respondent.

**8 June 2023** - Justice Halley provides a practice and procedure judgement related to the serving of documents on MATAR, enabling the statement of claim to be emailed to MATARs solicitors.

**4 August 2023** - Reports in the Guardian claim that Qatar Airways and MATAR lawyers are seeking to provide that the order for the removal of passengers was made by the Qatari Ministry of Interior. Barristers for Qatar Airways are also arguing that the incident does not fall under the Montreal convention.

s 47E(d), s 47C(1)