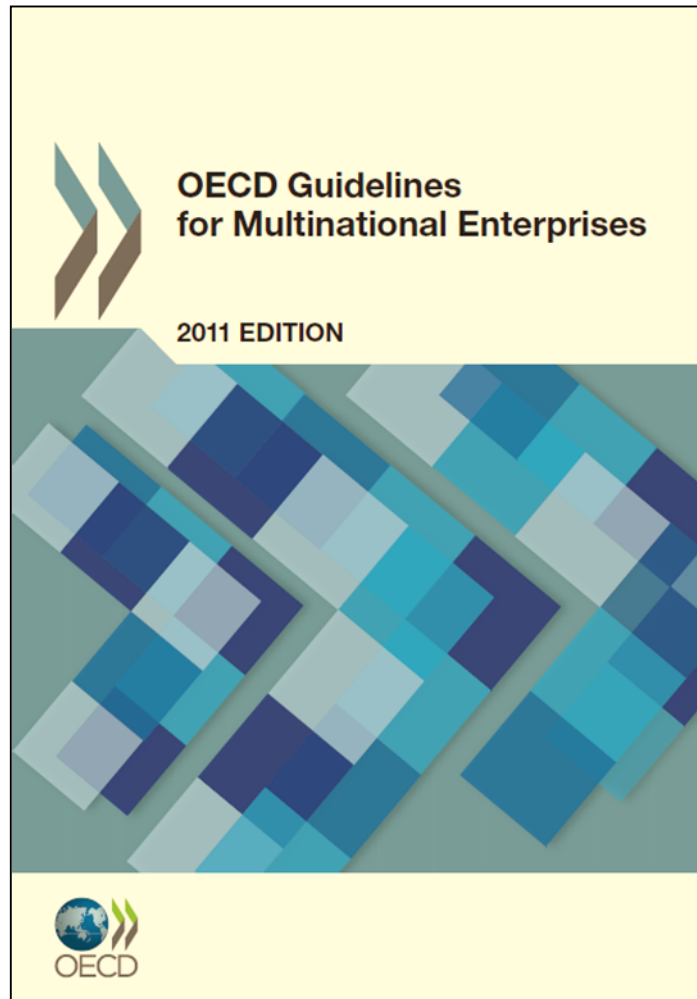




The *OECD Guidelines* and the AusNCP

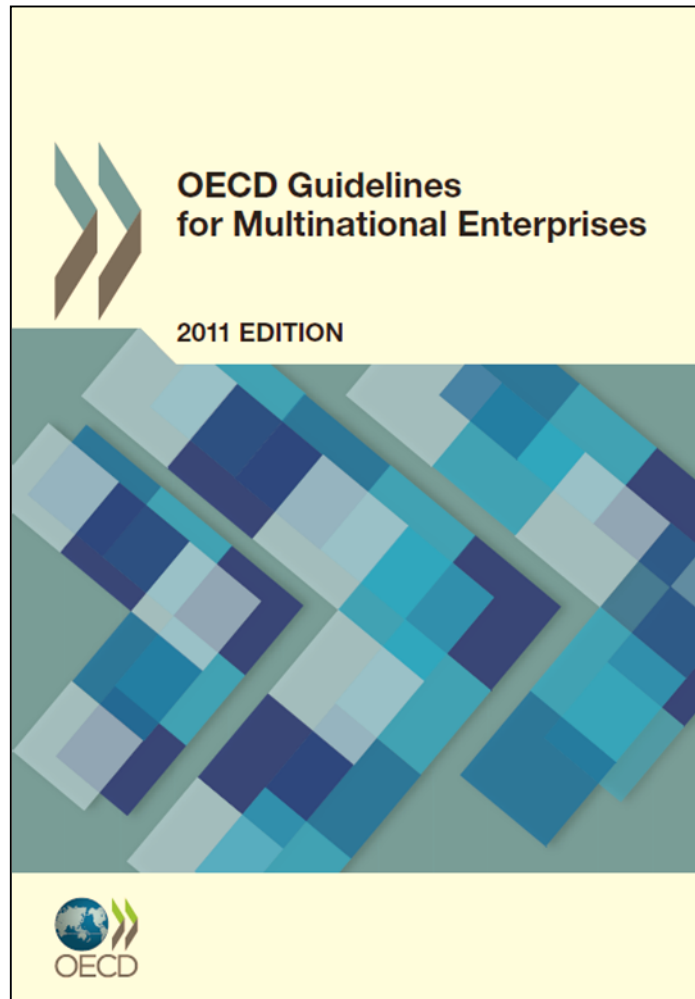
Human Rights Resource and Energy Collaborative
3 March 2023, Perth

The OECD Guidelines



- Internationally agreed standards on responsible business conduct...
- about 'multinational enterprises' operating in (or from) 'adhering country' ...
- includes complaints process about 'implementation'.

Guidelines' source



- From [Declaration on International Investment and Multinational Enterprises](#)
- in which countries ‘...recommend to multinational enterprises operating in or from their territories the observance of the Guidelines’

Guidelines' content

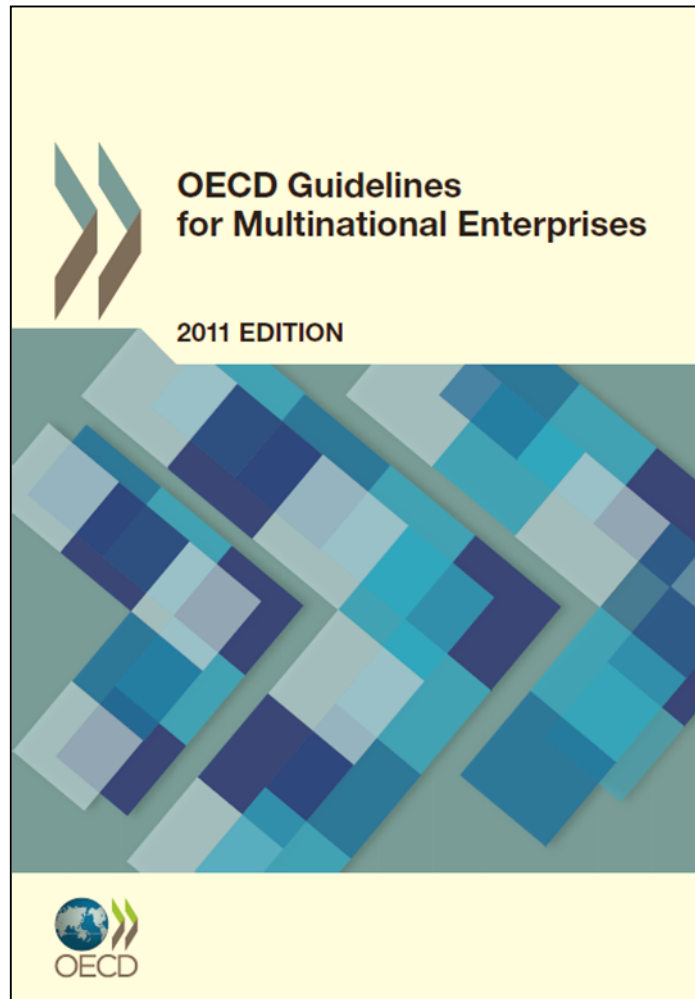


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Part I

OECD Guidelines for Multinational Enterprises

Recommendations for responsible business conduct in a global context

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Part II

Implementation Procedures of the OECD Guidelines for Multinational Enterprises

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Implementation Procedures of the OECD Guidelines for Multinational Enterprises

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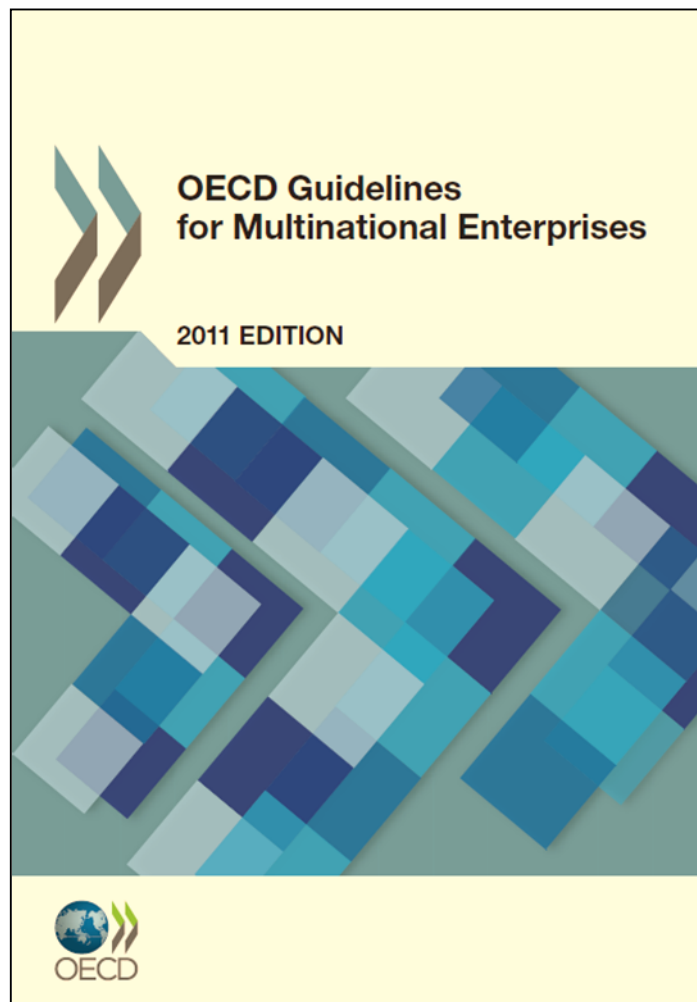
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Guidelines & human rights



IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

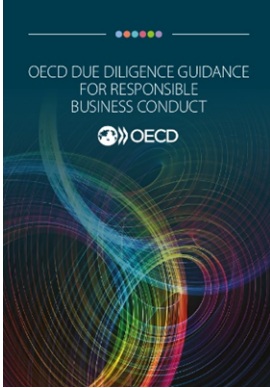






Commentary on Human Rights

36. This chapter opens with a chapeau that sets out the framework for the specific recommendations concerning enterprises' respect for human rights. It draws upon the United Nations Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation.
37. The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size,

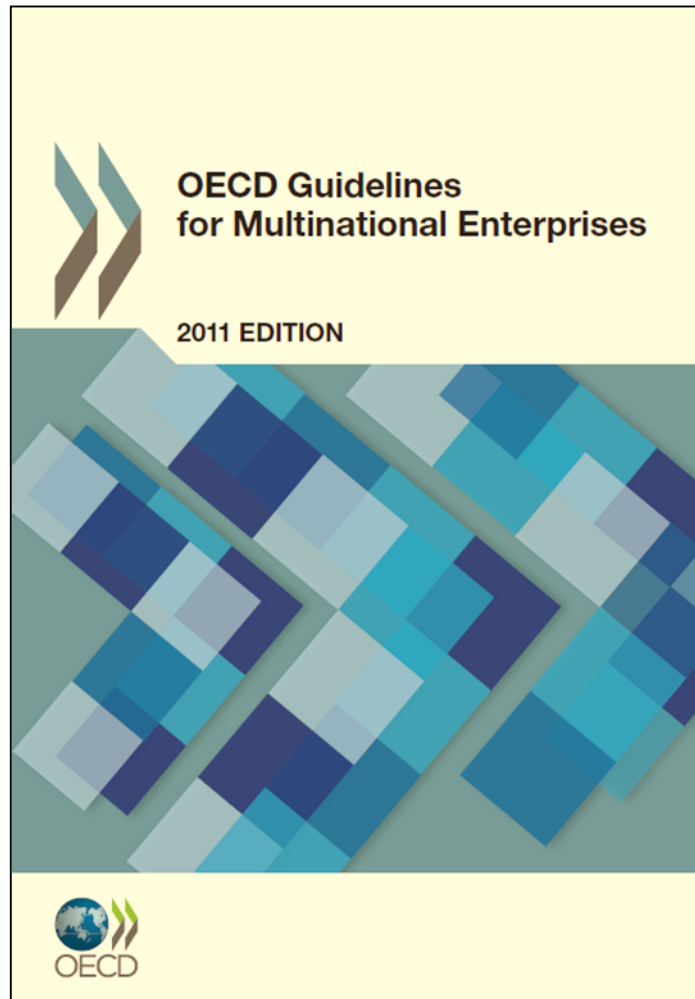
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Guidelines' expectations

 <p>OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT</p> <p>OECD</p>	 <p>RESPONSIBLE BUSINESS CONDUCT</p> <p>Due Diligence for Responsible Corporate Lending and Securities Underwriting</p> <p>Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises</p> <p>OECD</p>	 <p>OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector</p> <p>OECD</p>	 <p>OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector</p> <p>OECD</p>
<p><u>General</u></p>	<p><u>Lenders</u></p>	<p><u>Extractives</u></p>	<p><u>Textiles & Footwear</u></p>
 <p>RESPONSIBLE BUSINESS CONDUCT</p> <p>Responsible business conduct for institutional investors</p> <p>Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises</p> <p>OECD</p>	 <p>OECD-FAO Guidance for Responsible Agricultural Supply Chains</p> <p>OECD</p> <p>Food and Agriculture Organization of the United Nations</p>	 <p>OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas</p> <p>THIRD EDITION</p> <p>OECD</p>	 <p>G20/OECD Principles of Corporate Governance</p> <p>OECD</p>
<p><u>Investors</u></p>	<p><u>Agriculture</u></p>	<p><u>Mining</u></p>	<p><u>Corp. Governance</u></p>

Guidelines' implementation



I. National Contact Points

1. Adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the attached procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.
2. National Contact Points in different countries shall co-operate if such need arises, on any matter related to the *Guidelines* relevant to their activities. As a general procedure, discussions at the national level should be initiated before contacts with other National Contact Points are undertaken.
3. National Contact Points shall meet regularly to share experiences and report to the Investment Committee.
4. Adhering countries shall make available human and financial resources to their National Contact Points so that they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.

II. The Investment Committee

1. The Investment Committee ("the Committee") shall periodically or at the request of an adhering country hold exchanges of views on matters covered by the *Guidelines* and the experience gained in their application.
2. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC), and the Trade Union Advisory Committee to the OECD (TUAC) (the "advisory bodies"), OECD Watch, as well as other international partners to express their views on matters covered by the *Guidelines*. In addition, exchanges of views with them on these matters may be held at their request.
3. The Committee shall engage with non-adhering countries on matters covered by the *Guidelines* in order to promote responsible business conduct worldwide in accordance with the *Guidelines* and to create a level playing field. It shall also strive to co-operate with non-adhering countries that have a special interest in the *Guidelines* and in promoting their principles and standards.

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Australian NCP



(within The Treasury, where responsibility resides for managing the Australian Government's obligations under the declaration)

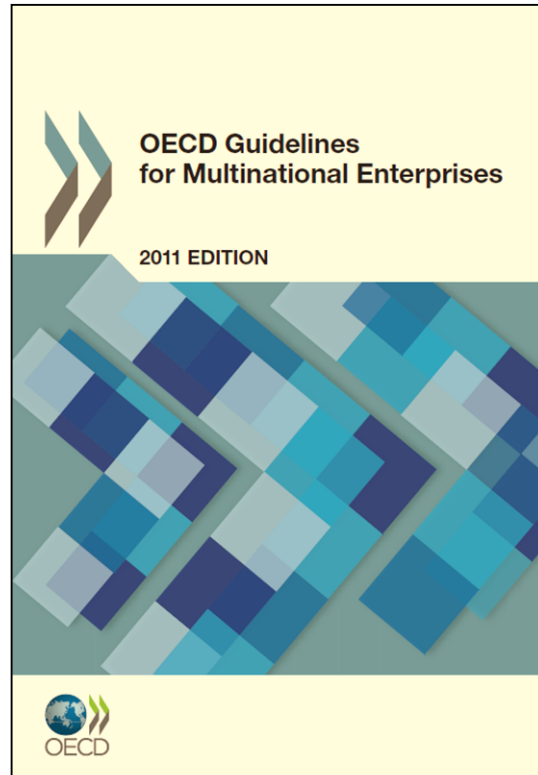
Secretariat

Overall management, support services and international representation

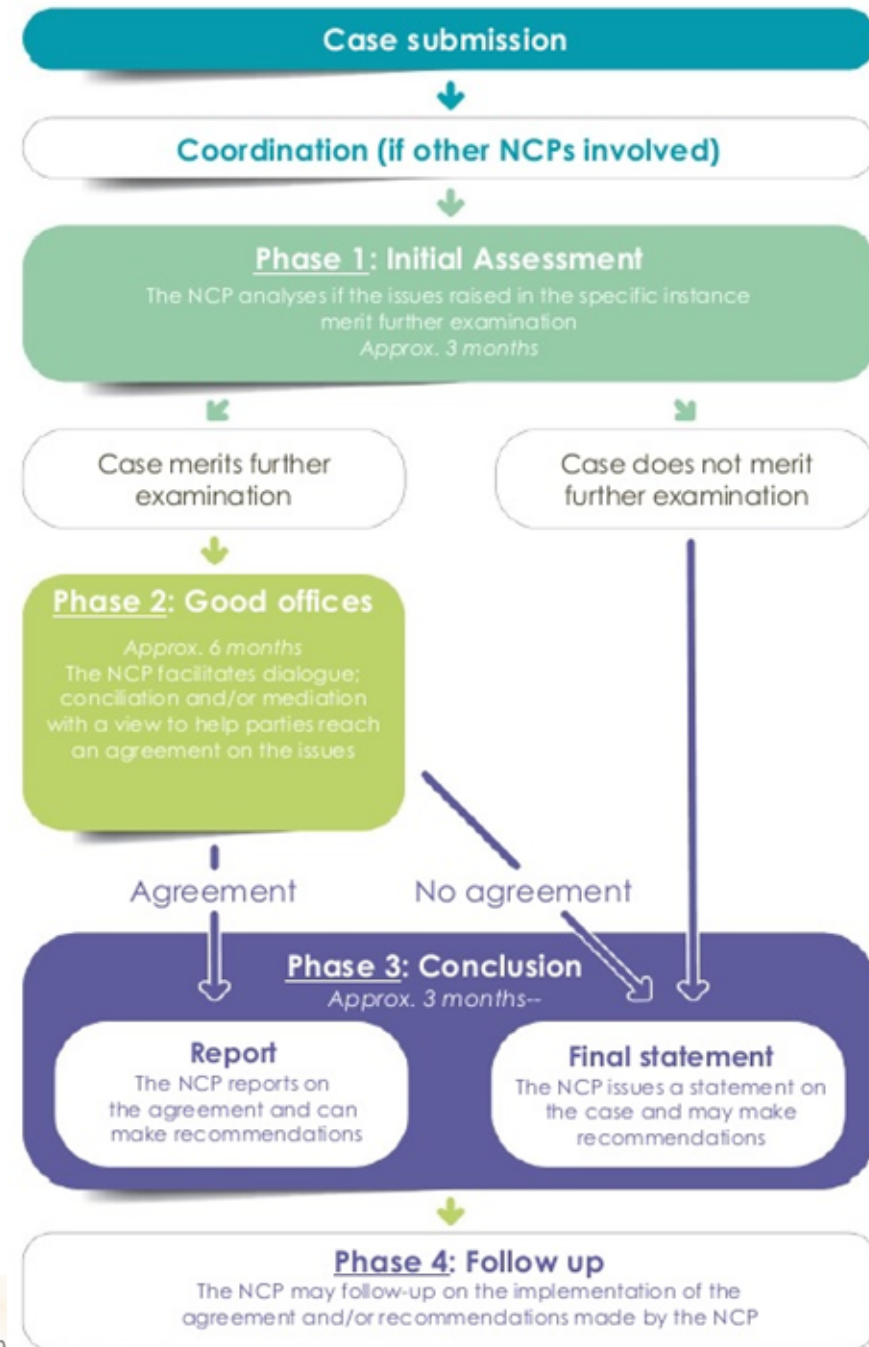
Independent Examiners – manage complaints against multinational enterprises and promotes the Guidelines

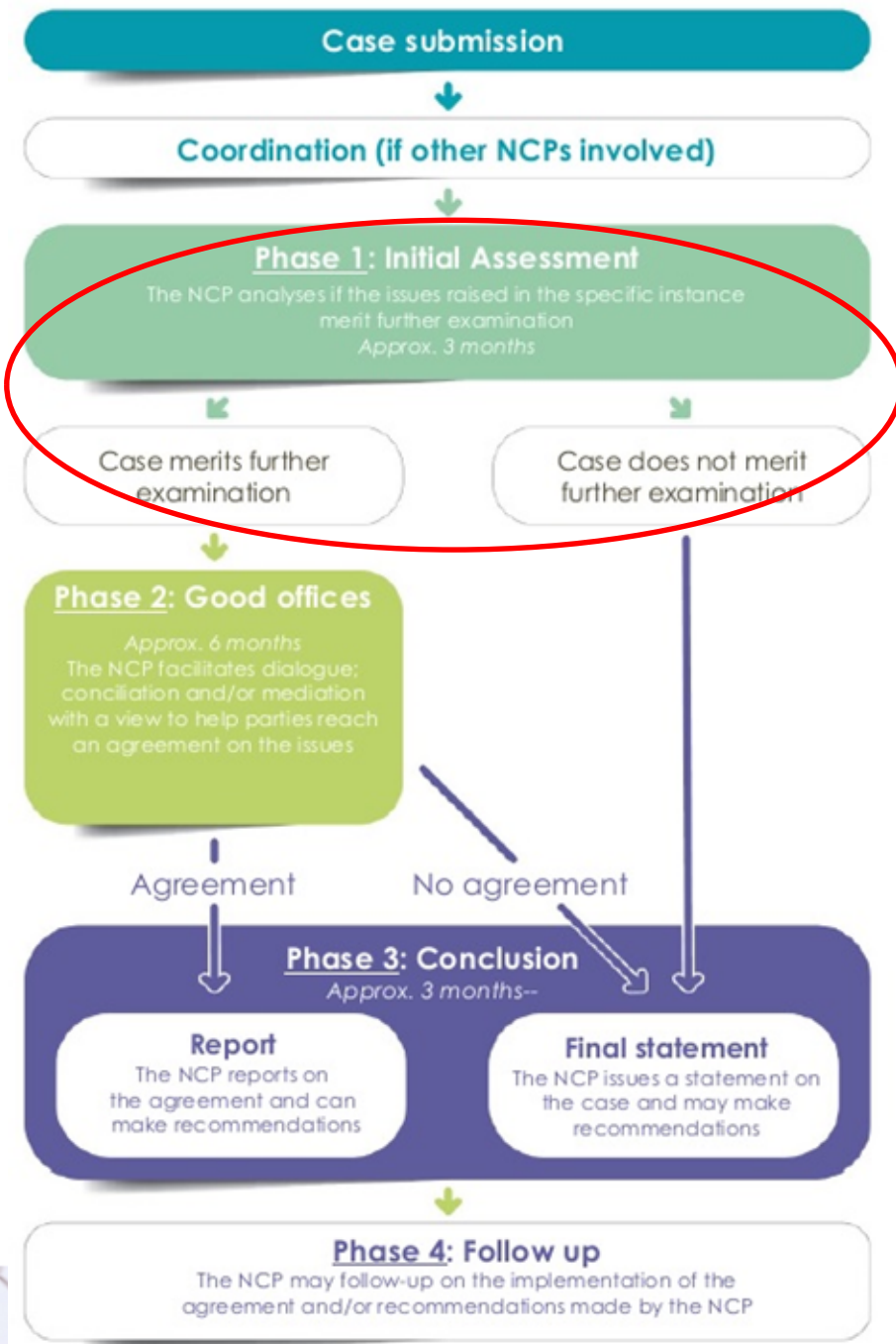
Governance and Advisory Board – external and government members provide advice on management of complaints and promote the Guidelines

The 'specific instance' process



p17 of [Providing access to remedy: 20 years and the road ahead](#) (OECD 2020)

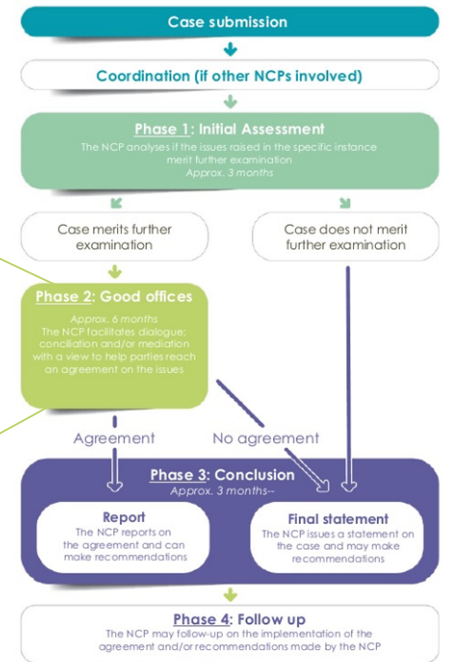
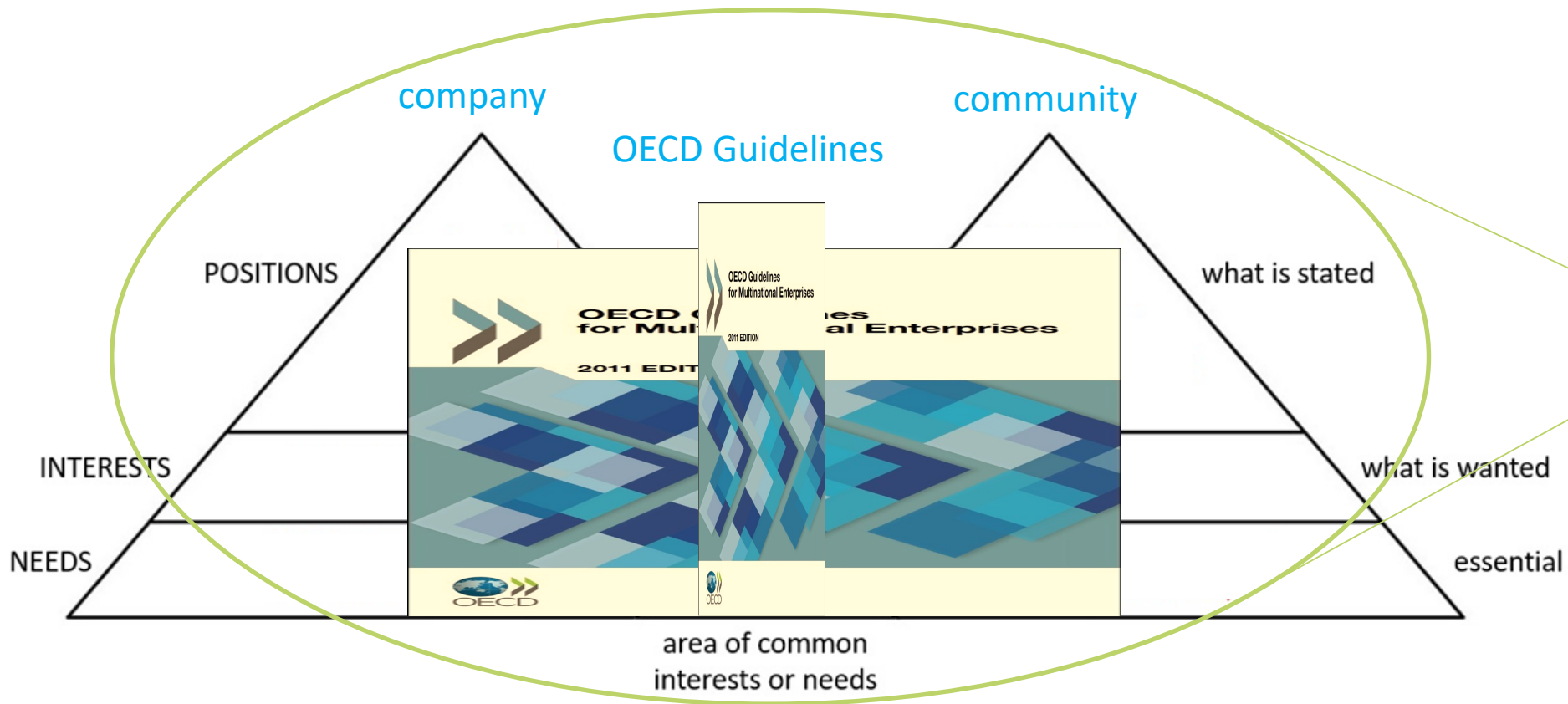




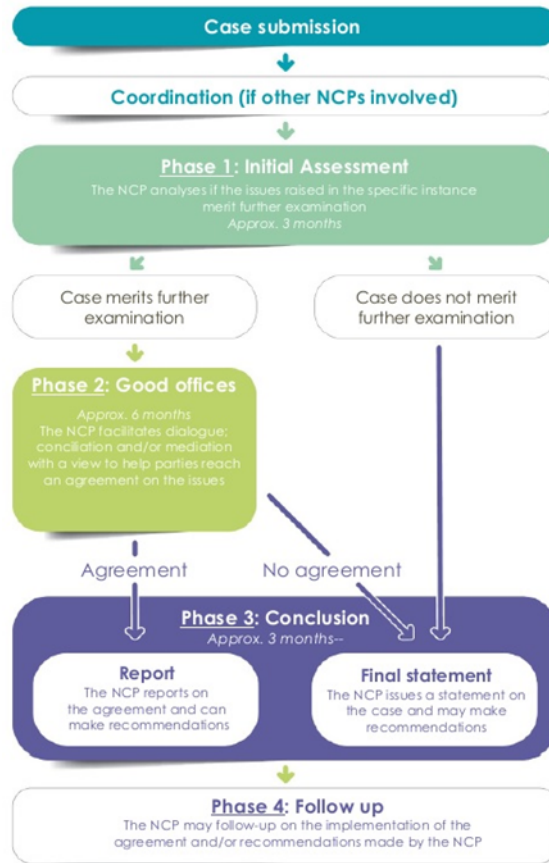
Initial Assessment – issues merit further examination?

1. identity & interest of ‘notifier’ [complainant]
2. issue(s) material and substantiated?
3. link between enterprise’s activities and issue(s)?
4. relevance of applicable law & procedures
5. treatment of similar issues in domestic/international proceedings
6. would considering ‘contribute to the purposes and effectiveness of the OECD Guidelines’?


NCP 'good offices' and mediation



AusNCP 'complaint' process



AusNCP Complaint Procedures



Australian National Contact Point Complaint Procedures

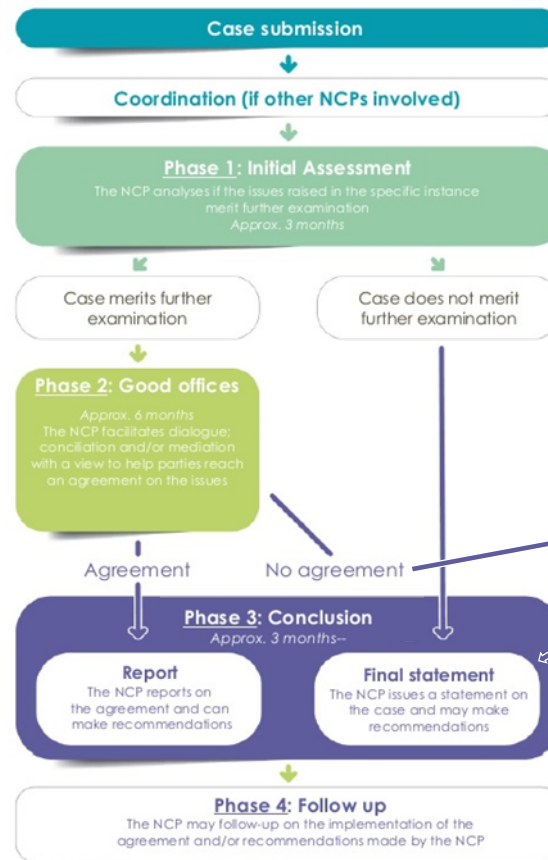
July 2022

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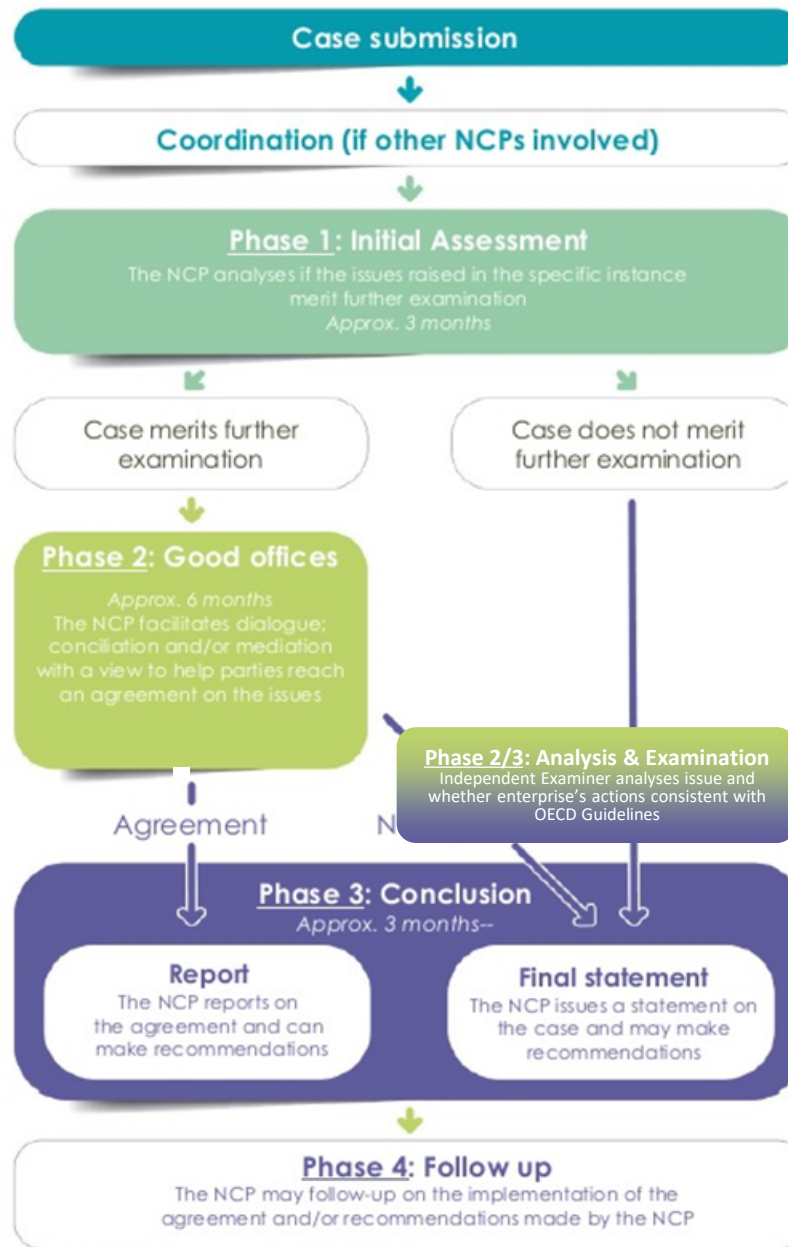
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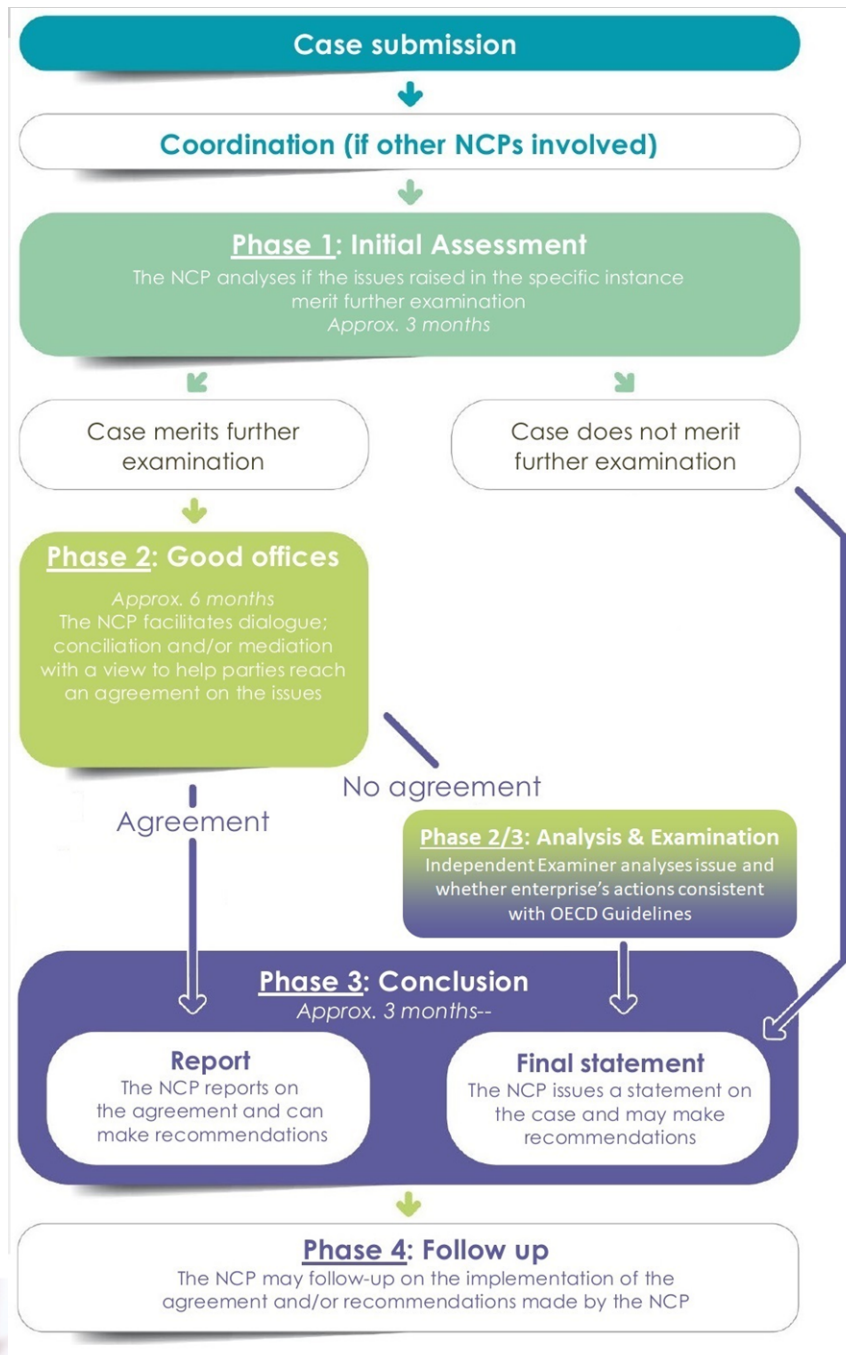
AusNCP [Complaint Procedures](#) (2022)

AusNCP 'complaint' process



Phase 2/3: Analysis & Examination
Independent Examiner analyses issue and whether enterprise's actions consistent with OECD Guidelines





Examples from AusNCP

Parties reach agreement outside GO:

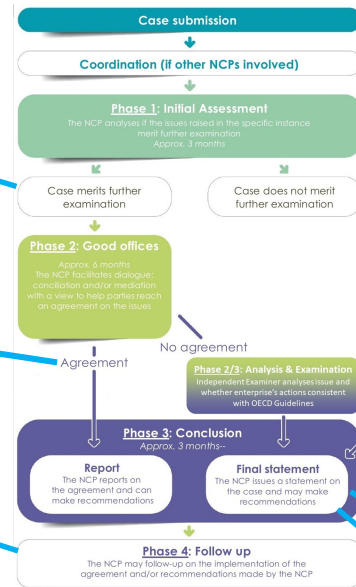
[Parella Law](#), [33]-[35]

Parties reach agree through GO, eg:

- [Ansell Ltd](#), p9
- [ANZ \(Cambodia\) US](#), [4]-[6]

Final Statement (where GO don't agree) can include observations, eg:

- recommend company improve governance & procedures: [ANZ \(Cambodia\) FS](#), [46]-[48]
- Company's actions were consistent with Guidelines: [ANZ \(FoE\) FS](#), [64] & [70]-[72]; [AusLabS](#), [54]-[57]
- Other information contrary to complaint, so no conclusions made on company's compliance: [ElectraNet FS](#), [62]



Reasons against further examination can include:

- Notifier not shown how company caused harm: [Deutsche Bank](#), [7.3.1]
- Position and statements of notifier: [BHP \(Hedland\)](#), [52]
- Notifier not demonstrated adequate interest/connection with issues under Guidelines, or not substantiated them: [BHP \(Hedland\)](#), [17], [19], [23] & [52]
- Company is addressing everything within Guidelines, so little relevant for GO: [BHP \(Hedland\)](#), [27] & [36]
- Issues about government policy and not appropriate for GO: [BHP \(Hedland\)](#), [49]-[50]
- Notifier not raised issues materially different from previous NCP matter: [Coca Cola](#), [25]-[28]

Final Statement (where company not engage) can include observations, eg:

- failure to engage/show Guidelines compliance is inconsistent w Guidelines: [ElectraNet FS](#), [54] & [61]
- company's actions inconsistent with Guidelines: [Mercer PR](#), [40]
- encourage company apology & compensation: [Mercer PR](#), [49]
- recommend company training & procedures: [Mercer PR](#), [50];
- recommend company familiarise with Guidelines: [ElectraNet FS](#), [63]

Current and recent AusNCP cases

Australian National Contact Point

Home About Guidelines **Complaints** Contact Us

Complaints / Track an open complaint

Track an open complaint

The AusNCP handles complaints about alleged non-observance of the OECD Guidelines for Multinational Enterprises. A list of active cases currently being handled by the AusNCP is available below. [View closed complaints.](#)

Active Complaints

ID	Received	Notifier	Enterprise	Location of activity	Status (August 2022)	Statements
21	September 2020	Human Rights Law Centre on behalf of affected individuals	Rio Tinto	Papua New Guinea	Good Offices – Panguna mine impact assessment Examiner: John Southalan	AusNCP Update Statement December 2021 AusNCP Update & Parties' Joint Statement July 2021
22	October 2020	Mr John Podgorelec on behalf of Messrs Andrew and Robert Starkey	ElectraNet Pty Ltd	Australia	Follow-up Examiner: Shiv Martin	Final Statement – June 2021 (535KB) Initial Assessment – February 2021 (926KB)
23	January 2021	Global Legal Action Network	Anglo American Plc, BHP Group Ltd and Glencore International AG	Colombia	Good Offices Examiner: to be assigned following Swiss NCP good offices	Initial Assessment – January 2022
25	August 2021	Parella Law on behalf of an affected individual	Australian-based enterprise (property and infrastructure sector)	United States	Good Offices Examiner: Shanta Martin	Initial Assessment – December 2021

<https://ausncp.gov.au/complaints/track-open-complaint>

Databases of NCP cases

OECD RESPONSIBLE BUSINESS CONDUCT
OECD Guidelines for Multinational Enterprises

Home | MNE Guidelines | Due Diligence | National Contact Points | Global Forum | Resources | Global Partnerships

Database of specific instances

Use the keyword and/or filtering options below to access a list of all specific instances of alleged misconduct brought to NCPs.

The specific instances mechanism has been part of the Guidelines since the 2000 review. Over 450 specific instances have been treated by country NCPs in over 100 countries and territories since then. Download an overview of cases handled from 2000-2019.

Access a full description of how the specific instances mechanism works and how the database is constructed.

MOST RECENTLY NOTIFIED

- UNITE HERE Local 11 & Fédération Internationale de Football Association (FIFA)
- Indira Betskejeva & Amadeo Central Asia LLP
- National Union of Bank Employees (NUBE) and UNI Global & HSBC Bank Malaysia Berhad (HBMV)
- An NGO & an international professional services firm
- Marque Lawyers on behalf of affected individuals & Qatar Airways

BY THEME

Combating bribery, bribe solicitation and extortion	8%
Competition	3%
Concepts and principles	11%
Consumer interests	7%
Disclosure	21%
Employment and industrial relations	51%
Environment	22%
General policies	22%
Human rights	42%
Science and technology	1%
Taxation	3%

BY INDUSTRY SECTOR

Accommodation and food service	4%
Activities of extraterritorial organisations and bodies	0%
Administrative and support service activities	1%
Agriculture, forestry and fishing	7%
Arts, entertainment and recreation	1%
Construction	5%
Education	0%
Electricity, gas, steam and air conditioning supply	0%
Financial and insurance activities	12%
Human health and social work activities	2%
Information and communication	5%
Manufacturing	23%
Mining and quarrying	1%
Other service activities	5%
Professional, scientific and technical activities	2%
Public administration and defence	1%
Real estate activities	1%
Transportation and storage	4%
Water supply, sewerage, waste management and remediation activities	1%
Wholesale and retail trade	0%

Select any or all of the fields below for results containing:

NCP

All
Argentina
Australia

Theme

All
Combating bribery, bribe solicitation and extortion
Competition

Date

All
2022
2021

Host country

All
Albania
Algeria

Source of case

All
Business
Individuals

Status

All
Concluded
In progress

Industry sector

All
Accommodation and food service
Activities of extraterritorial organisations and bodies

search clear

<https://mneguidelines.oecd.org/database/>

Home > Complaints database

Complaints database

Please scroll down and use the search box and/or filters below to find a specific Complaint.

Search for a complaint

Search...

Filter

355 complaints

Date filed: 4 April 2022

FOCSIV and others vs. Stellantis Italy Rejected

Issue
Stellantis Italy fails to disclose information about its DRC cobalt suppliers

Date filed: 9 December 2021

Rohingya refugees supported by Victim Advocates International vs. Facebook Filed

Issue
Facebook acts and omissions in Myanmar contribute to persecution, human rights violations of Rohingya

Date filed: 9 December 2021

Project Sepik Inc. and Jubilee Australia Research Centre vs PanAust Limited Filed

Issue
PanAust Limited and subsidiary violate environmental and human rights in Sepik River, PNG

<https://www.oecdwatch.org/complaints-database/>

NCP 'resources' cases - completed

- *Victoria Oil & Gas* (GBR NCP; human rights, environment and labour issues re gas project in Cameroon; [Final Statement Jan 2023](#) – company met some Guidelines but not others, recommendations to company re procedures and engagement)
- *Anglo American & o'rs* (various NCPs @ final statement; coal mining in Colombia, alleged human rights & environmental impacts, [Swiss NCP Final Statement Dec 2022](#) – NGO withdrew)
- *Minera Candelaria* (CHL NCP; environmental issues from operations in Chile; [Final Statement Aug 2022](#) - recommendations to company re procedures and engagement)
- *Chevron Netherlands & o'rs* (NLD NCP; disclosure and taxation issues; [Final Statement Mar 2022](#) – ‘none of the 14 corporate entities of Chevron seem to observe paragraphs 1-3 of the Disclosure chapter [ensure ... timely and accurate information is disclosed on all material matters regarding their activities]’ other findings and recommendations)
- *B2Gold & ano'r* (CAN NCP; property and environmental issues from alleged illegal mining in Nicaragua; [Final Statement Nov 2021](#) - insufficiently substantiated)
- *BHP* (AusNCP; dust issues from mineral processing; [Final Statement Sep 2021](#) - issues unsubstantiated and falling outside Guidelines)
- *ElectraNet* (AusNCP; heritage impacts from electric line construction; [Final Statement Jun 2021](#) – company not acted consistently with the Guidelines, by neither engaging in good faith nor showing how otherwise complied with the Guidelines’ expectations, recommendation re familiarity with Guidelines)

NCP 'resources' cases - current

- *Human Rights Law Centre and Rio Tinto* (AusNCP @ good offices; legacy issues in Bougainville, [Update Statement Dec 2021](#))
- [Evangelical Church PNG & o'rs and Newcrest Mining and Harmony Gold](#) (AusNCP @ initial assessment; gold/copper mine plans and deep sea tailings placement)
- *Project Sepik & o'rs and PanAust Limited* (AusNCP @ final statement; copper/gold project in PNG, FPIC and disclosure, [Initial Assessment Jul 2022](#))
- [Justicia y Reparación and Australian-based enterprise](#) (AusNCP @ final statement; water issues from copper mining in Chile)
- *Publish What You Pay & o'rs and Mallee Resources* (AusNCP @ final statement; divestment issues from Myanmar operations; [Initial Assessment Aug 2022](#))
- [Douglas Linares Flinto & ENI SpA](#) (BRA NCP @ examination; alleged reprisals following resignation from company; Initial Assessment Oct 2020, 'Brazilian NCP accepted the case considering the issues merited further examination')
- [Rights and Accountability in Development & o'rs and Glencore UK](#) (GBR NCP @ good offices; environmental and human rights issues re oil operations in Chad; [Initial Assessment Jan 2021](#), 'NCP offered mediation but has since made the decision to suspend the case due to parallel proceedings')

Takeaways: AusNCP & resources sector

- Complainants:
 - Identify alleged non-compliance *within Guidelines* (reducing potential rejection in Initial Assessment)
- Companies:
 - Engage *or* show how have addressed *consistent with Guidelines* (reducing potential Initial Assessment proposing ‘good offices’, or Final Statement identifying improvements needed)
- All:
 - ‘Good offices’ process can help parties reach mutual agreement
 - Provides flexible, confidential forum
 - Familiarity with Guidelines useful

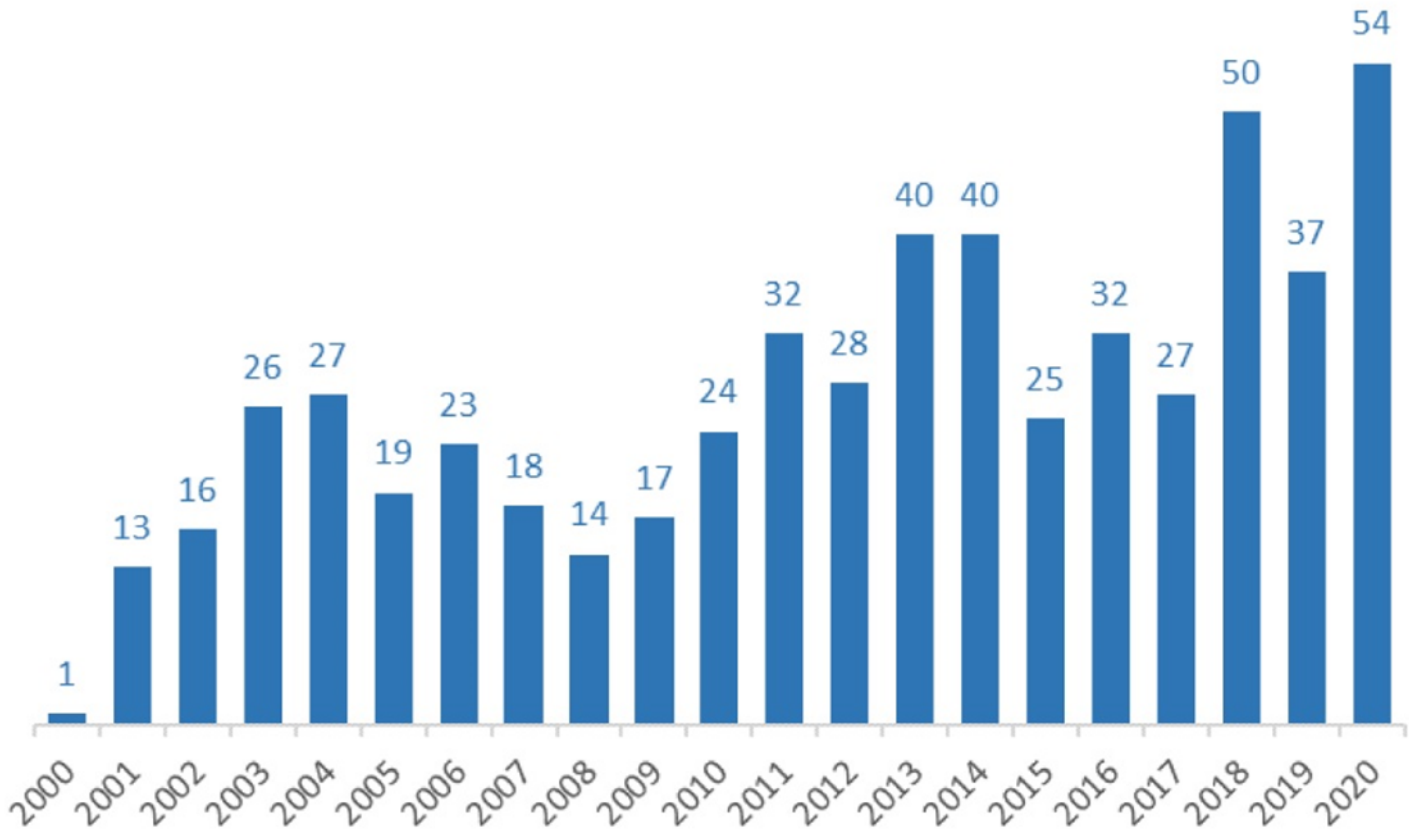


Thank you

Human Rights Resource and Energy Collaborative
3 March 2023, Perth

NCP complaints by year

Number of specific instances submitted annually 2000-2020



p21 of [Annual Report on the OECD Guidelines for Multinational Enterprises](#) (OECD 2021)