

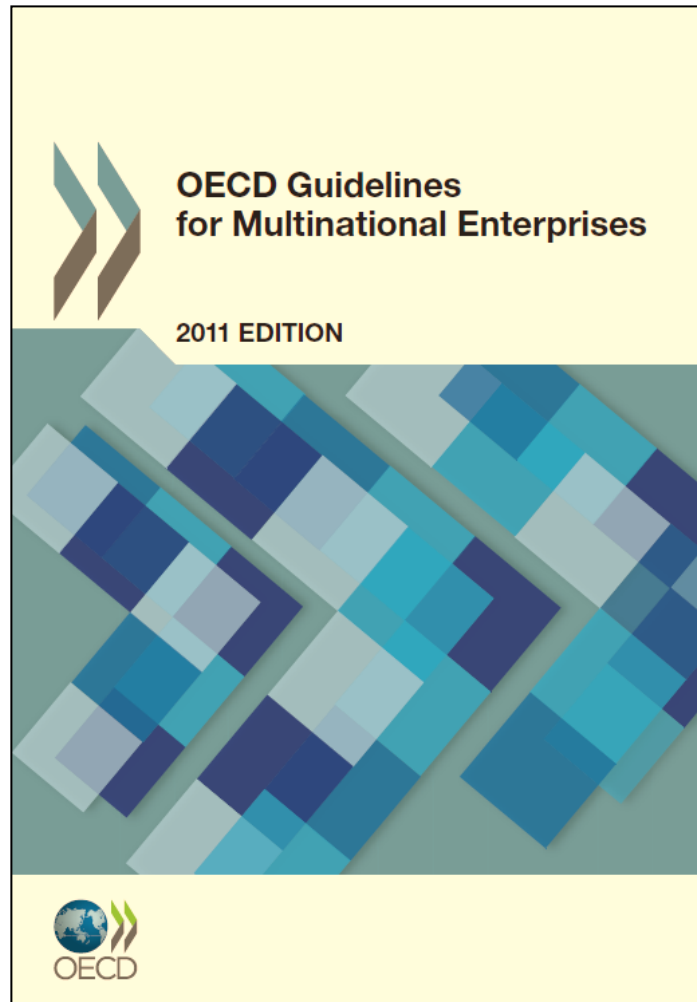


Australian National Contact Point
for Responsible Business Conduct

The OECD Guidelines for MNEs

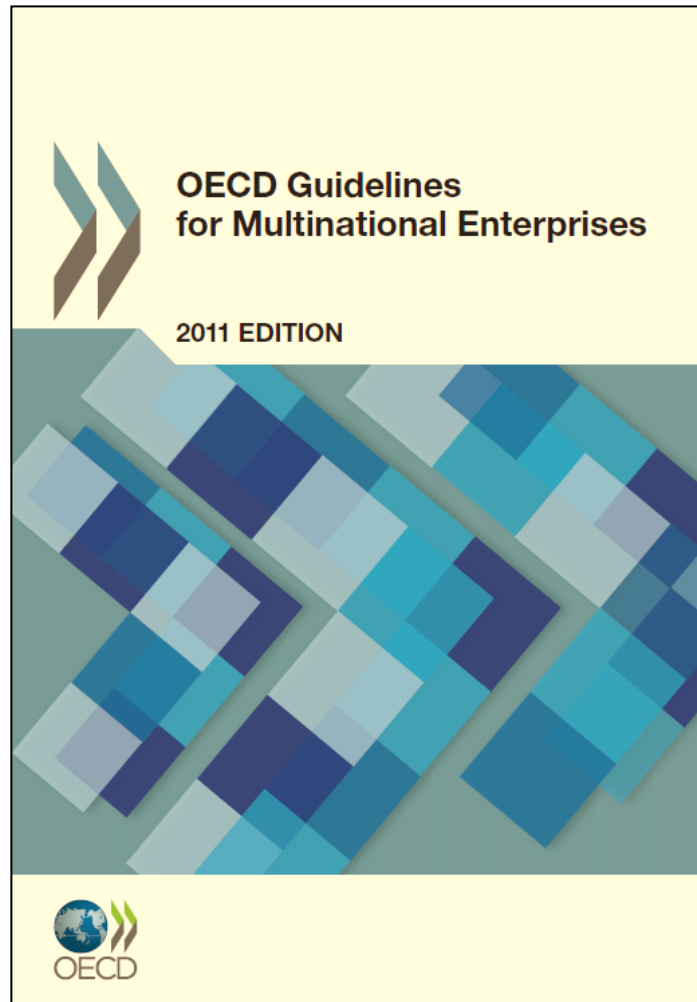
Climate Change & Policy Session
NELA 2022 State Conference
3 November 2022, Perth

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

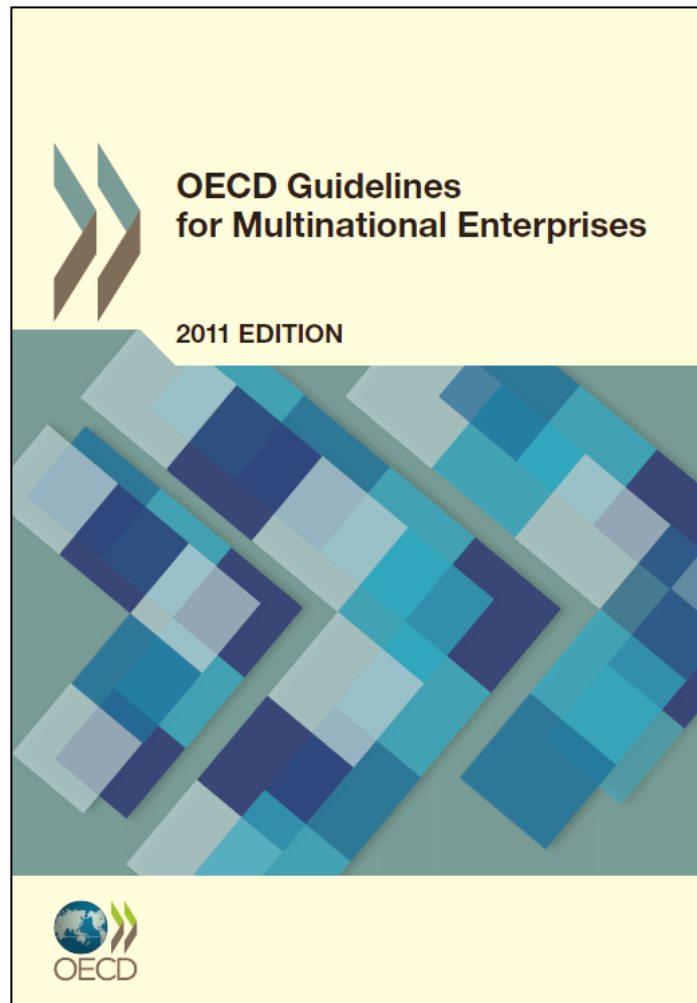


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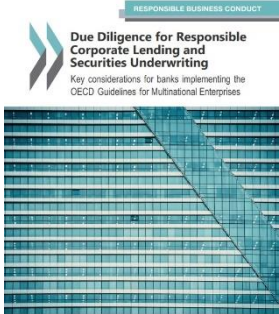



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Guidelines' expectations

 <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' expectations



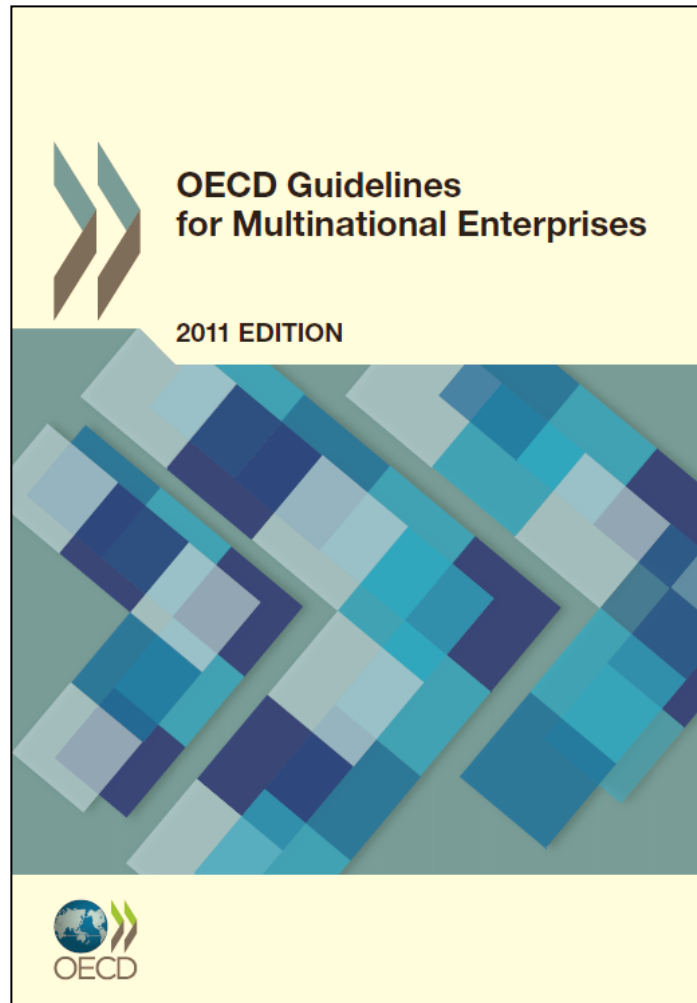
(2021) [RBC and environmental issues](#)



The role of OECD instruments on responsible business conduct in progressing environmental objectives



Guidelines' implementati



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.

Australian NCP



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

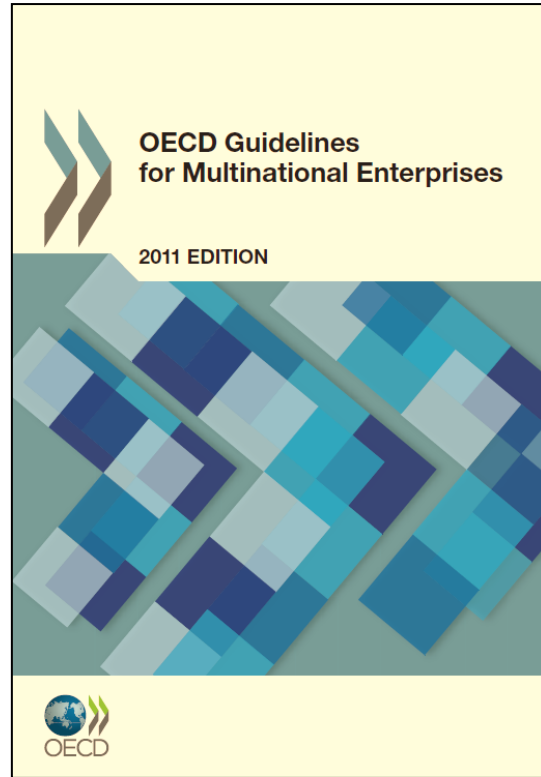
Secretariat

Overall management, support services and international representation

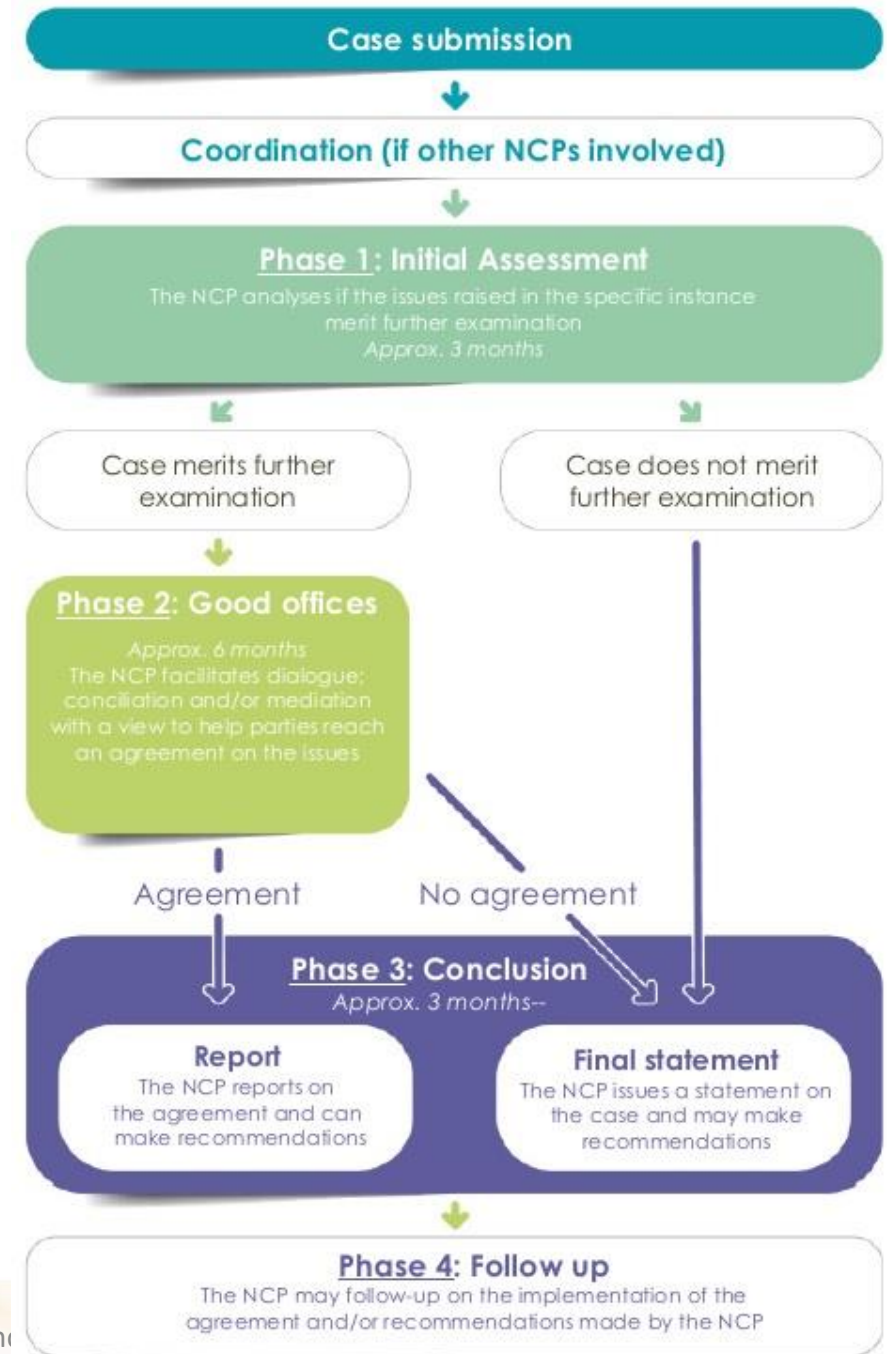
Independent Examiners – manage complaints against multinational enterprises and promotes the Guidelines

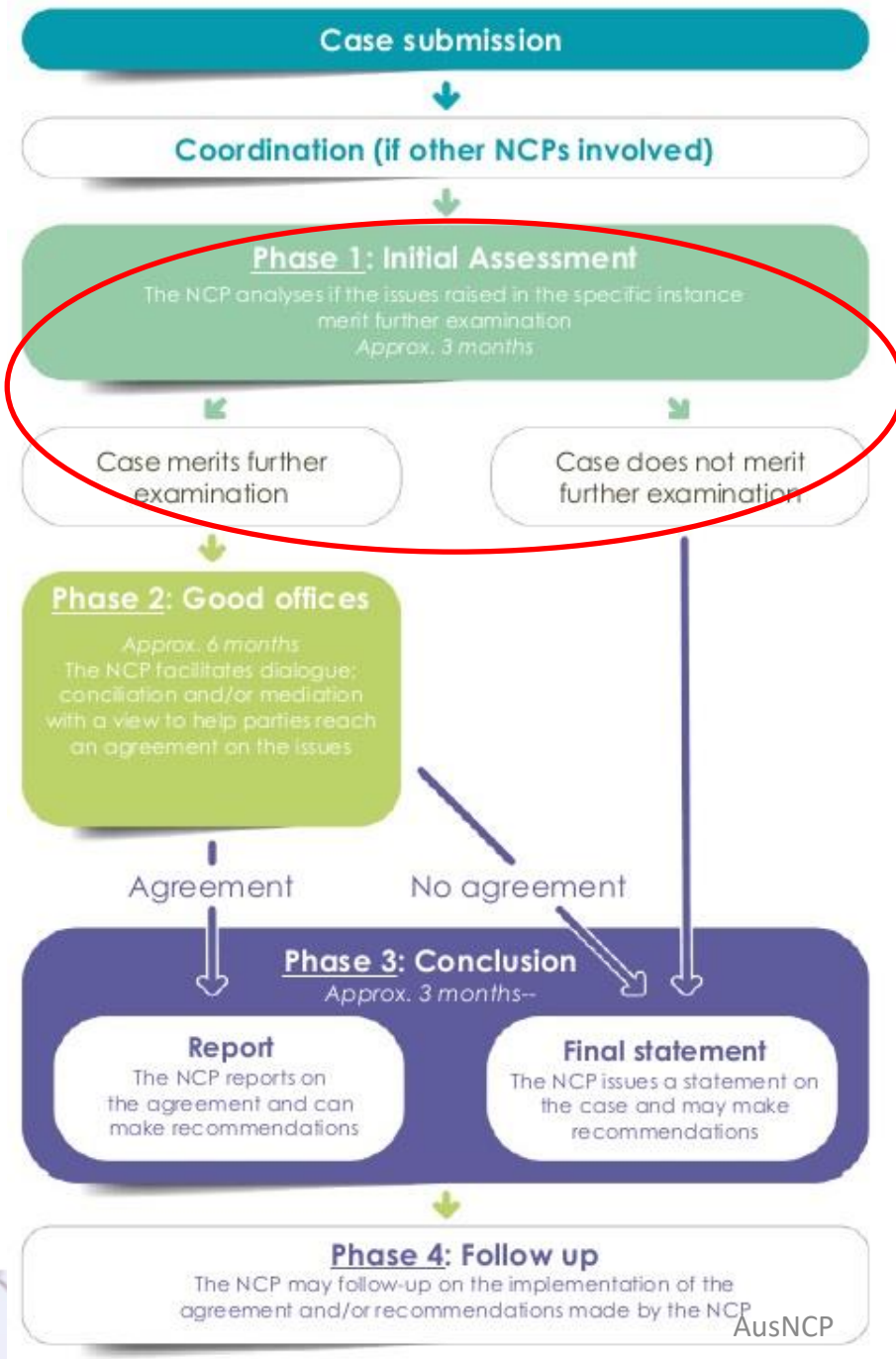
Governance and Advisory Board – external and government members provide advice on management of complaints and promote the Guidelines

The 'specific instance' process



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

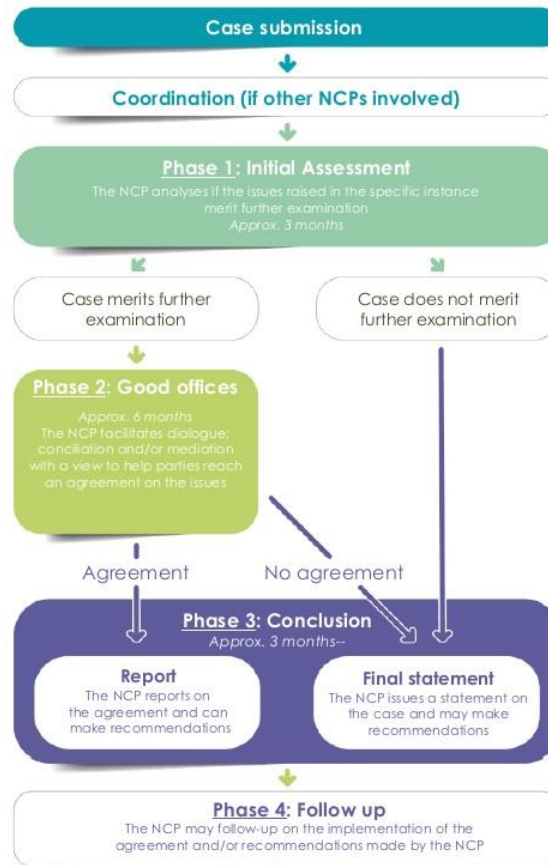





Initial Assessment – issues merit further examination?

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’?

AusNCP 'complaint' process



AusNCP Complaint Procedures



Australian National Contact Point Complaint Procedures

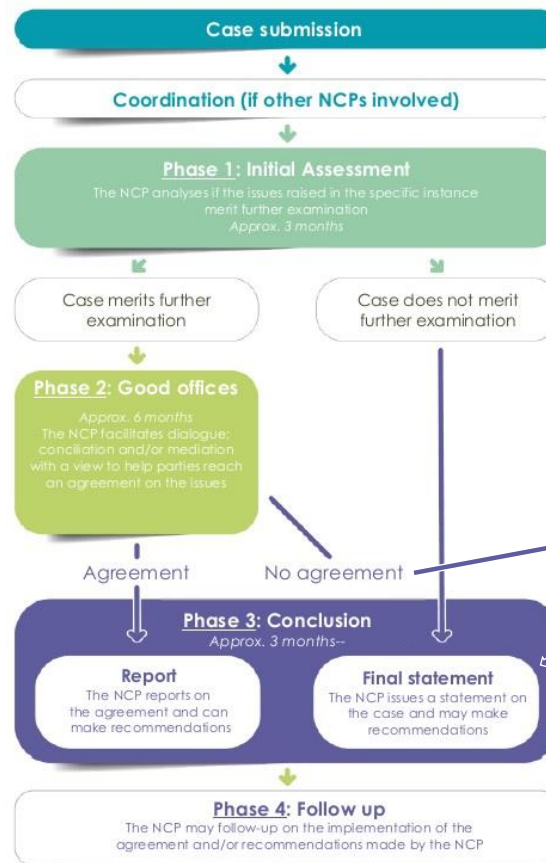
July 2022

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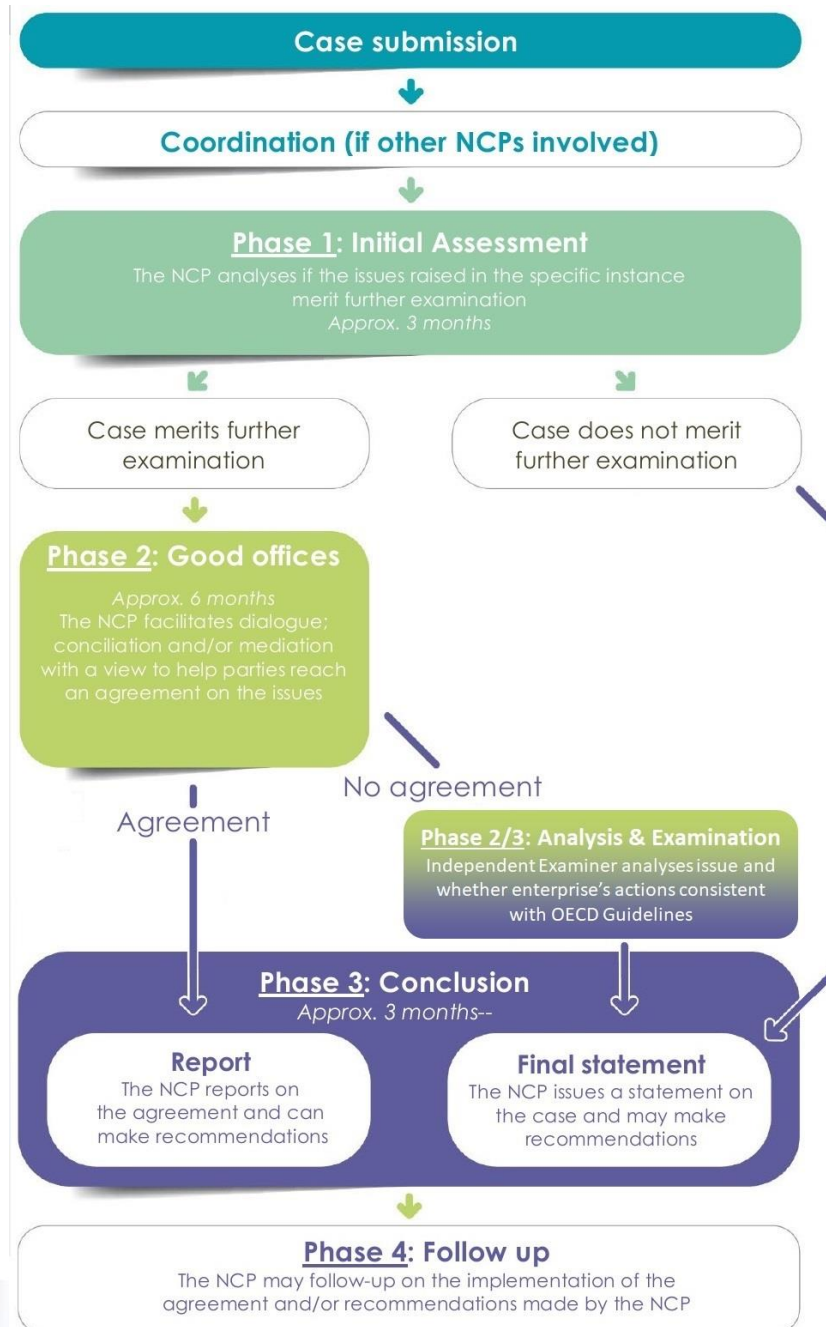
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AusNCP [Complaint Procedures](#) (2022)

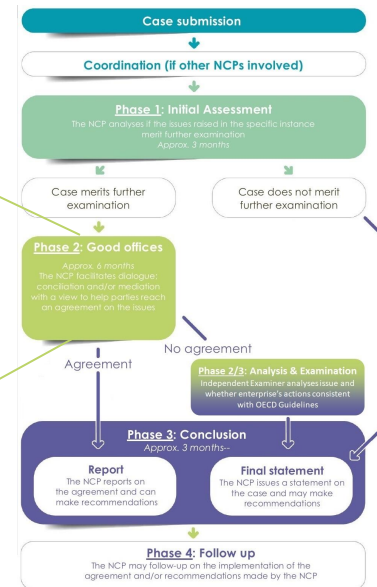
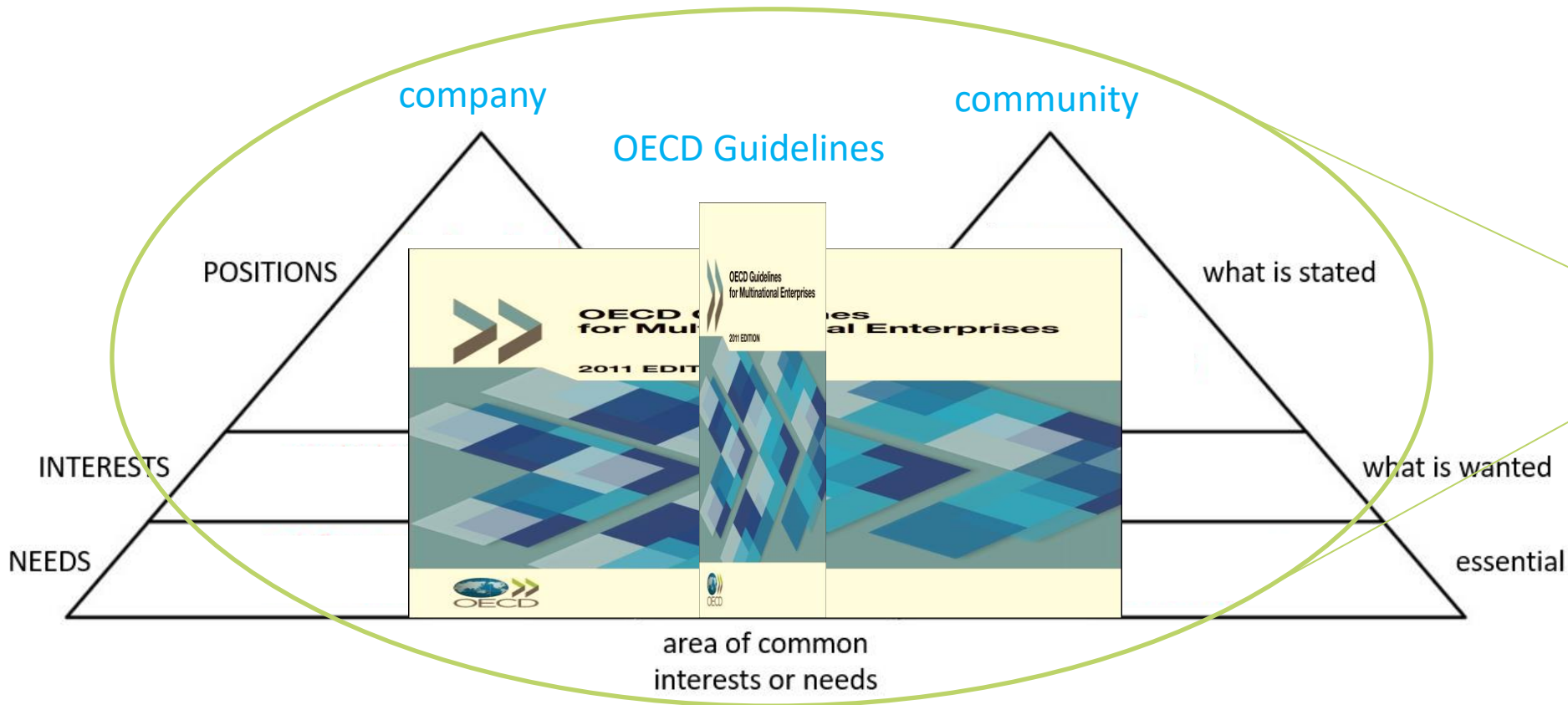
AusNCP 'complaint' process



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



NCP 'good offices' and mediation

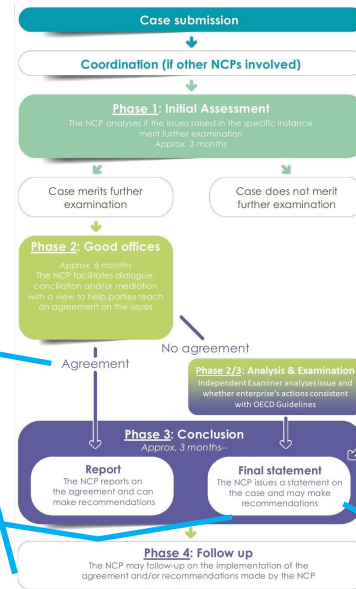


AusNCP complaints & remedy

Examples of agreements through GO:
[ANZ \(Cambodia\) US](#), [4]-[6]; [Ansell Ltd](#), p9

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]



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 GO don't agree) can include observations, eg:

- **Company's actions 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]

Current and recent AusNCP cases

The screenshot shows the AusNCP website interface. At the top, there is a logo for the Australian National Contact Point and a search bar. Below the logo is a navigation menu with links for Home, About, Guidelines, Complaints, and Contact Us. The main content area is titled 'Track an open complaint' and includes a brief description of the AusNCP's role. Below this is a section for 'Active Complaints' which contains a table with the following data:

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>

Takeaways: AusNCP & environment / climate change

- Complainants:
 - Identify alleged non-compliance *within Guidelines* (reducing potential rejection in Initial Assessment)
- Companies:
 - Engage *or* show how 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



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Thank you

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