



**AusNCP**

Australian National Contact Point  
for Responsible Business Conduct

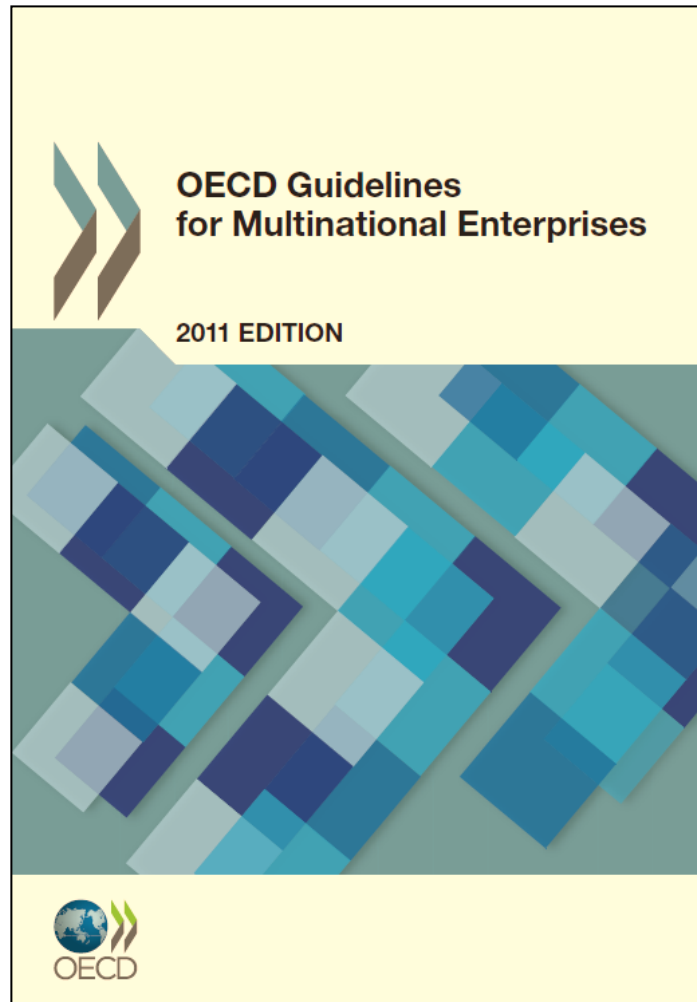
# ***OECD Guidelines and Environmentally Responsible Business Conduct***

Workshop

NELA(WA) / Curtin Law School

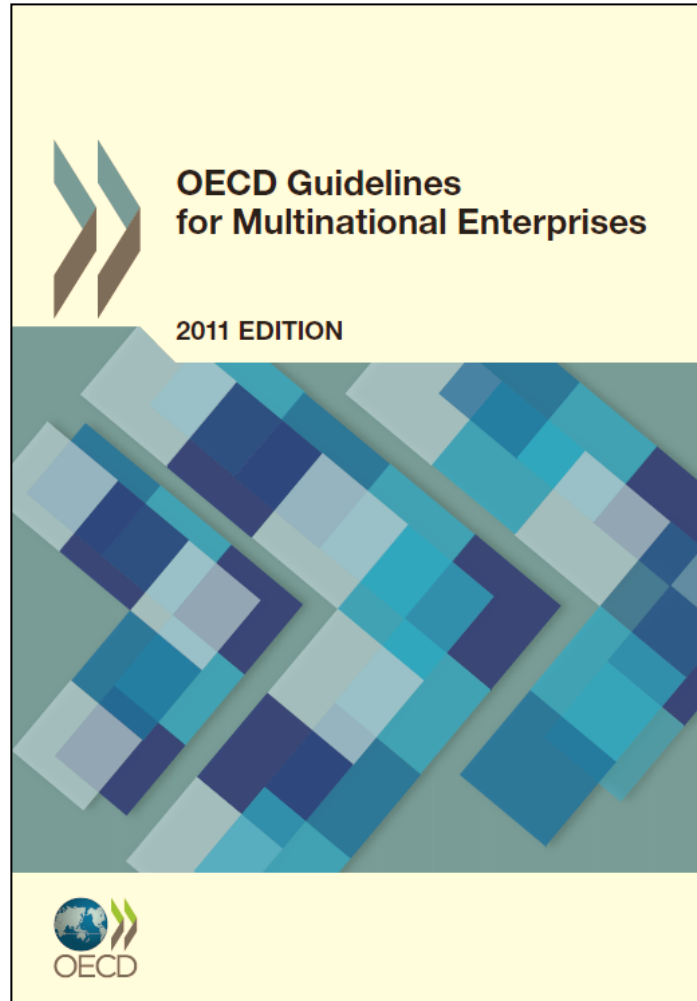
17 November 2022, Perth

# The OECD Guidelines



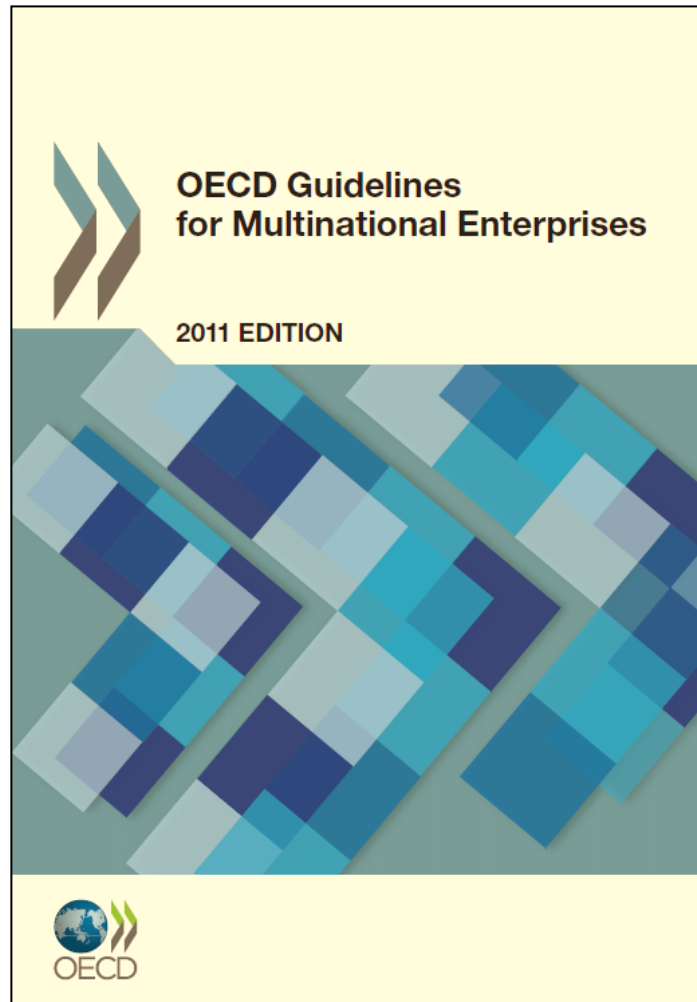
- Internationally agreed standards on responsible business conduct...
- about 'multinational enterprises' operating in (or from) 'adhering country' ...
- includes complaints process about 'implementation'.

# 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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*Part I*

**OECD Guidelines for Multinational Enterprises**

**Recommendations for responsible business conduct in a global context**

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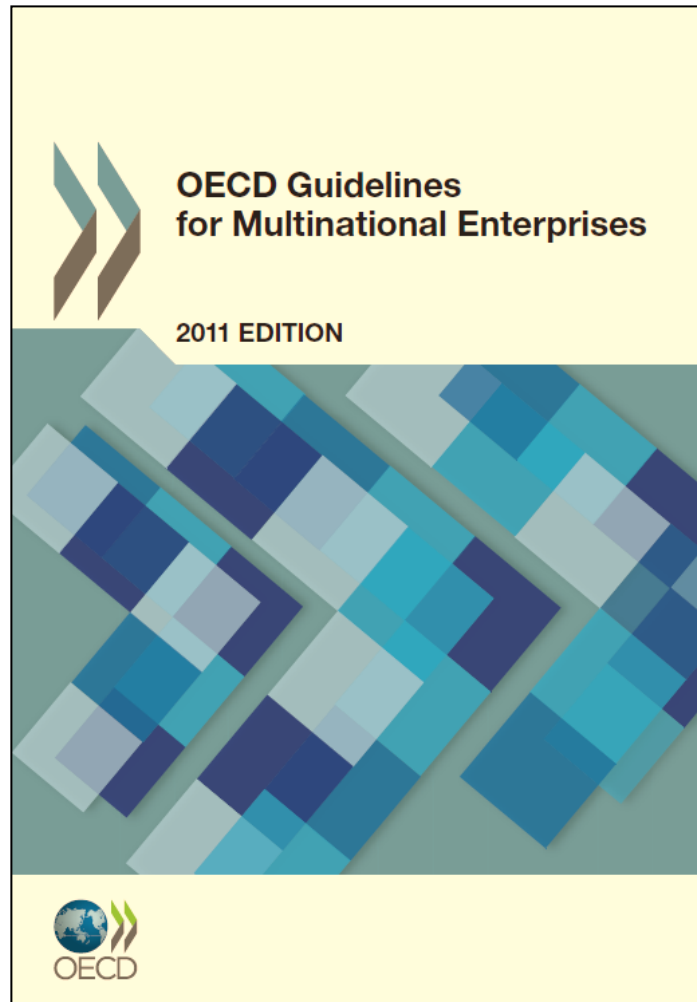
**Commentary on the Implementation Procedures ..... 77**

I. Commentary on the Procedural Guidance for NCPs ..... 78

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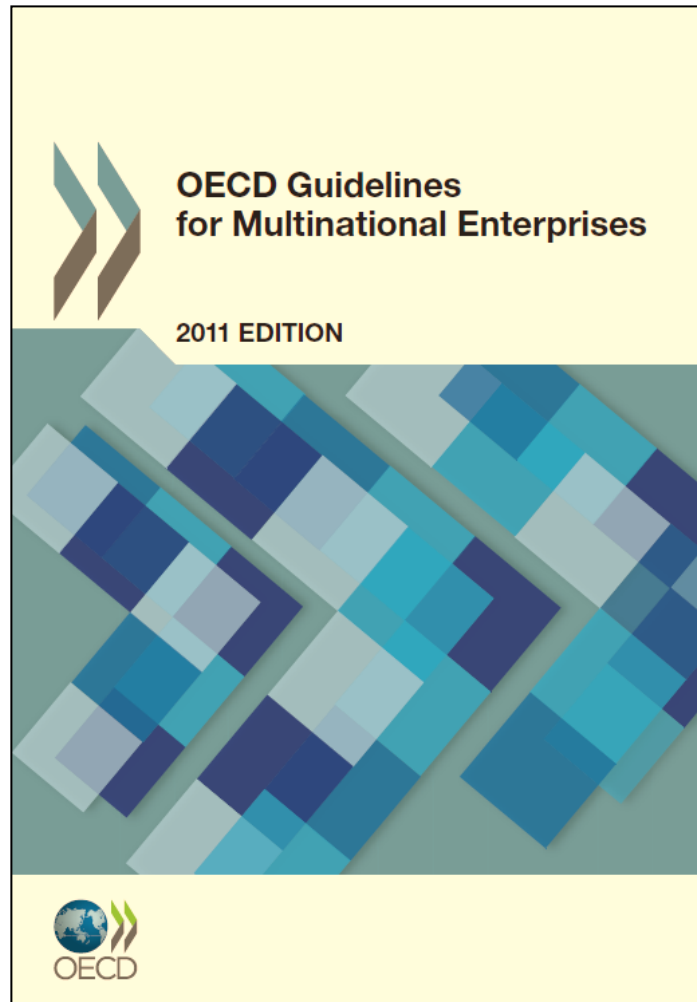


# Ch VI: Environment (summary)



- [1] **Establish and maintain a system of environmental management** [including]
  - contingency plans for accidents and mechanisms for immediate reporting to authorities: [5]
  - adequate education and training to workers in environmental health and safety matters: [7]
- [2] **Provide** the public and workers with **information on potential environment[al] impacts** of [Enterprise's] activities
- [3] **Assess and address foreseeable environmental impacts** “associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them”.

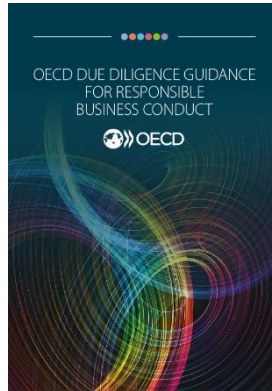
# Ch VI: Environment (summary)



- [4] **not use** the **lack of full scientific certainty as a reason for postponing** cost-effective measures to prevent or minimise damage
- [5] continually **seek to improve corporate environmental performance**, at the level of the enterprise and, where appropriate, of its supply chain
- [8] **contribute to development of environmentally meaningful** and economically efficient **public policy**



# Guidelines' expectations



General



Lenders



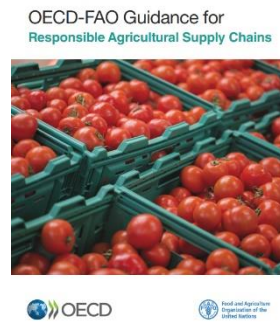
Extractives



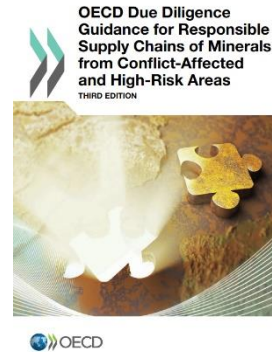
Textiles & Footwear



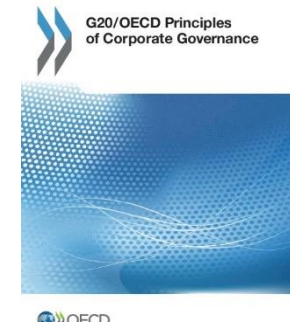
Investors



Agriculture



Mining



Corp. Governance

# Guidelines' expectations



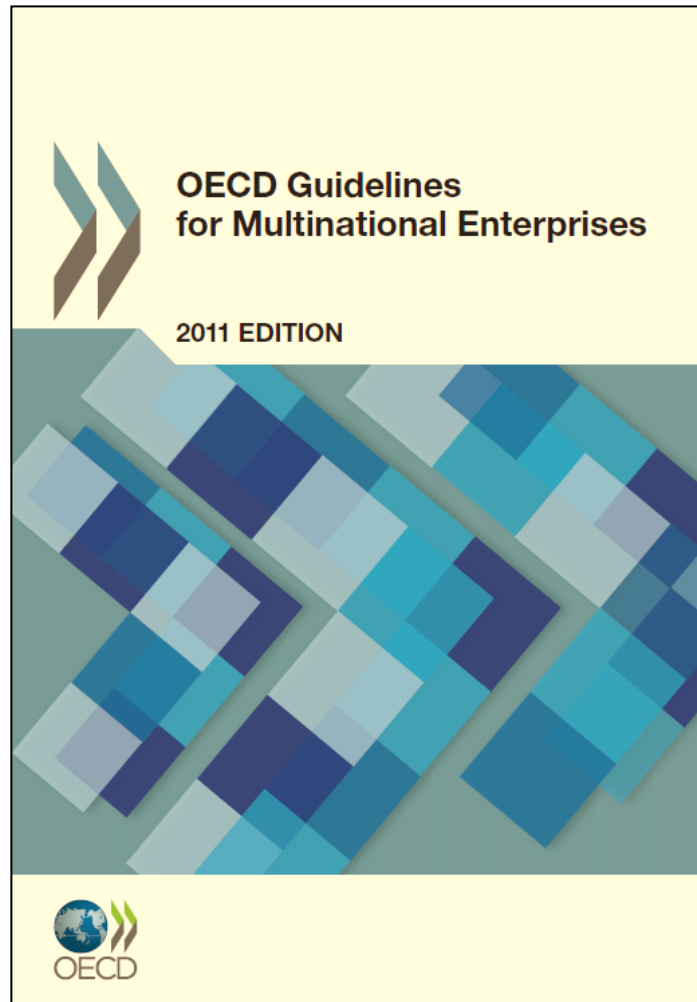
(2021) [RBC and environmental issues](#)



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.

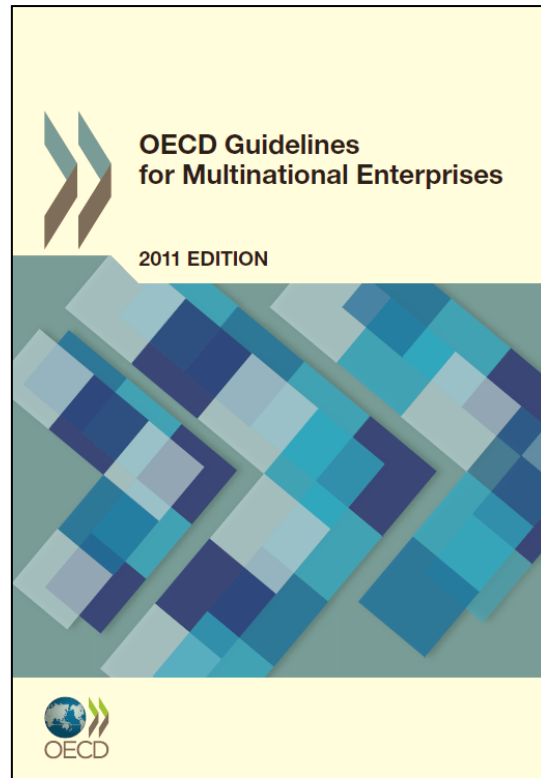


## I. National Contact Points

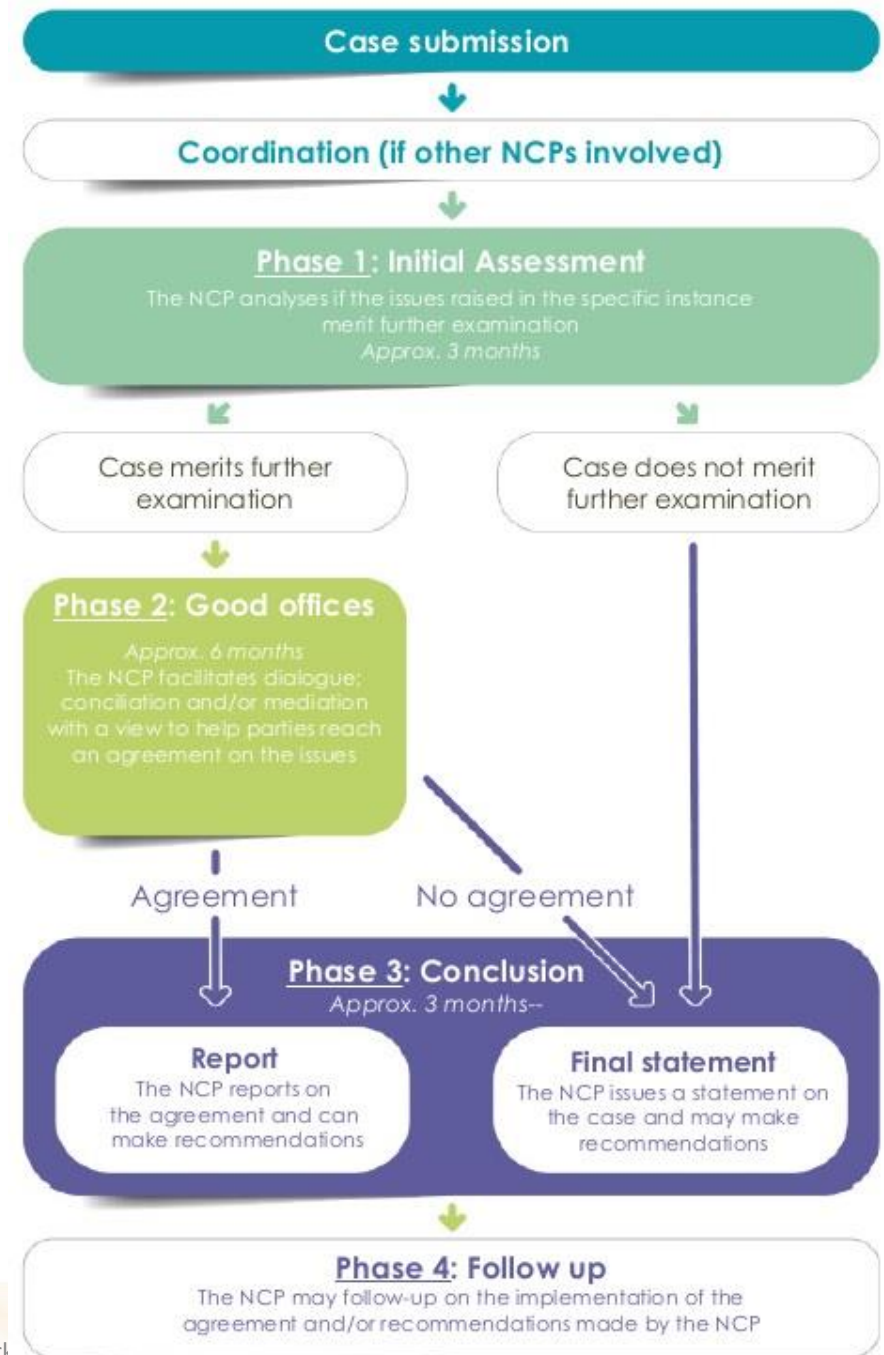
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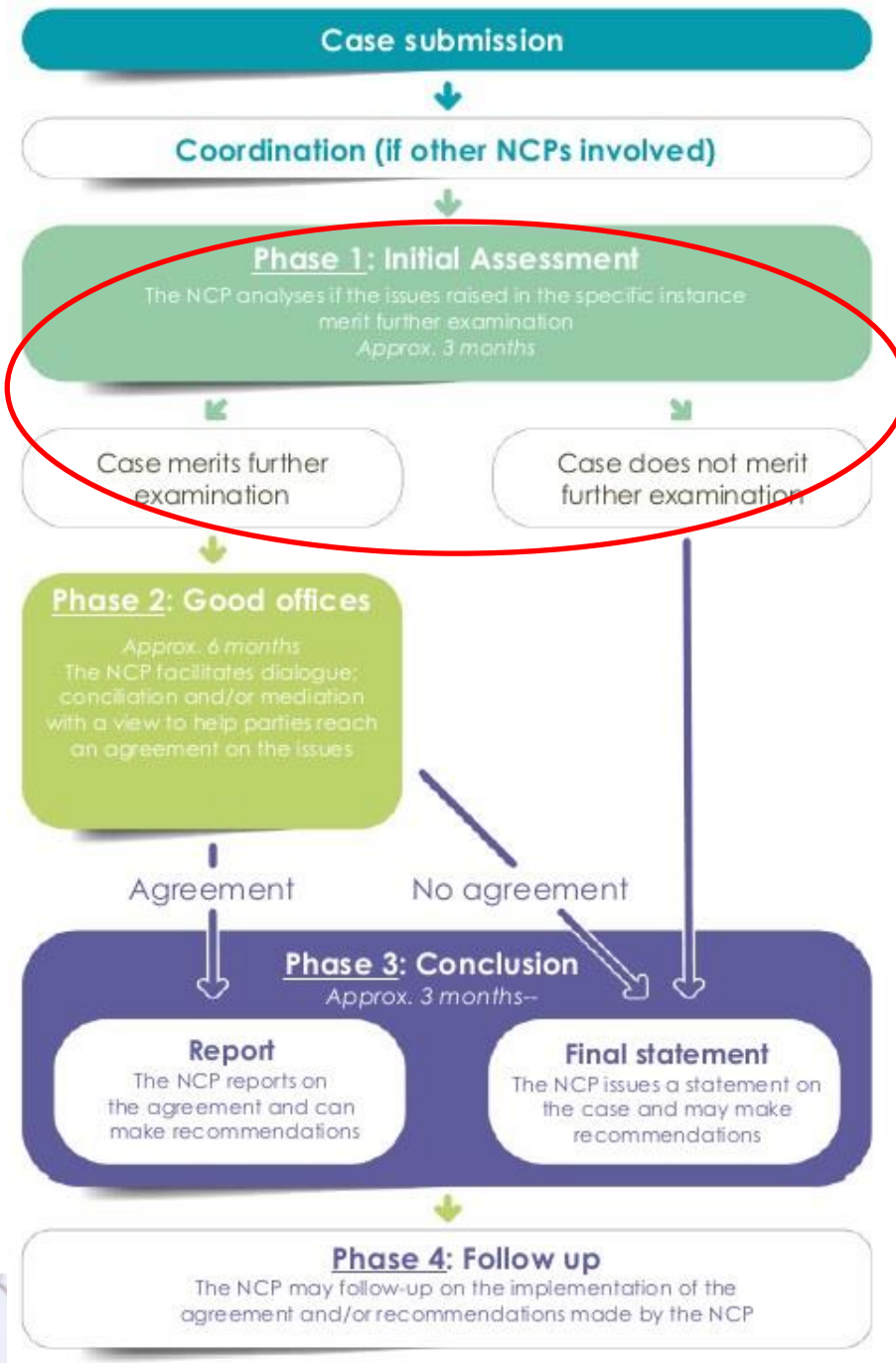


# The 'specific instance' process



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



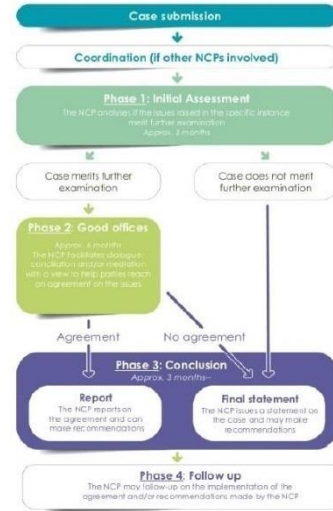
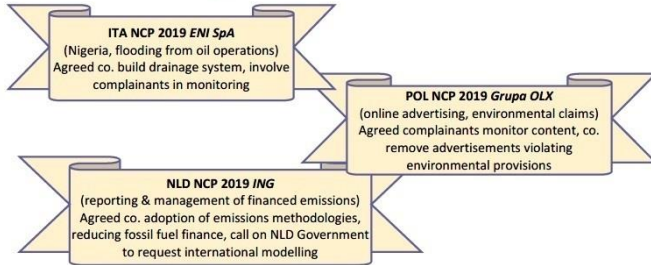


## Initial Assessment – issues merit further examination?

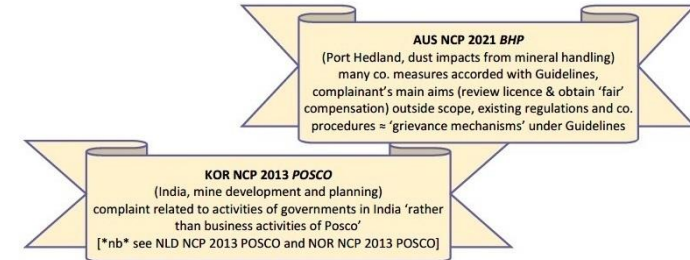
1. identity & interest of ‘notifier’ [complainant]
2. issue(s) material and substantiated?
3. link between enterprise’s activities and issue(s)?
4. relevance of applicable law & procedures
5. treatment of similar issues in domestic/international proceedings
6. would considering ‘contribute to the purposes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

# Examples of 'environment' cases

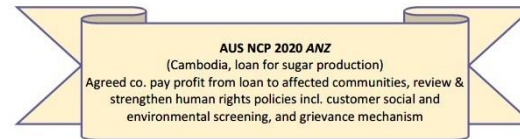
## Agreed Outcomes



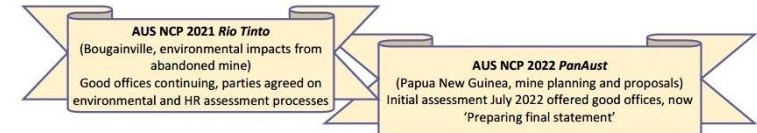
## IA decision: 'not merit'



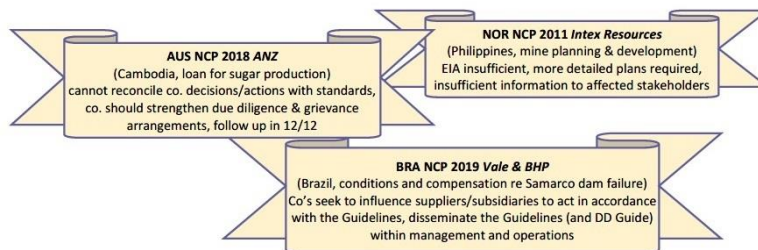
## Follow-Up Agreement



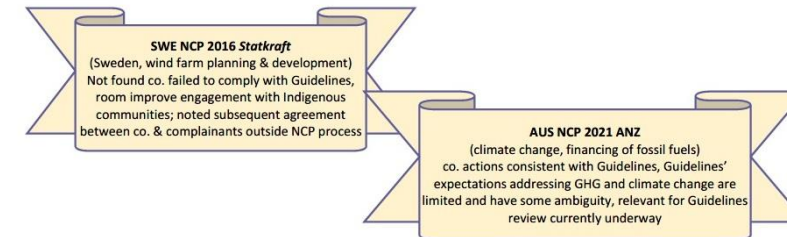
## AusNCP 'in progress'



## Not agree → inconsistent

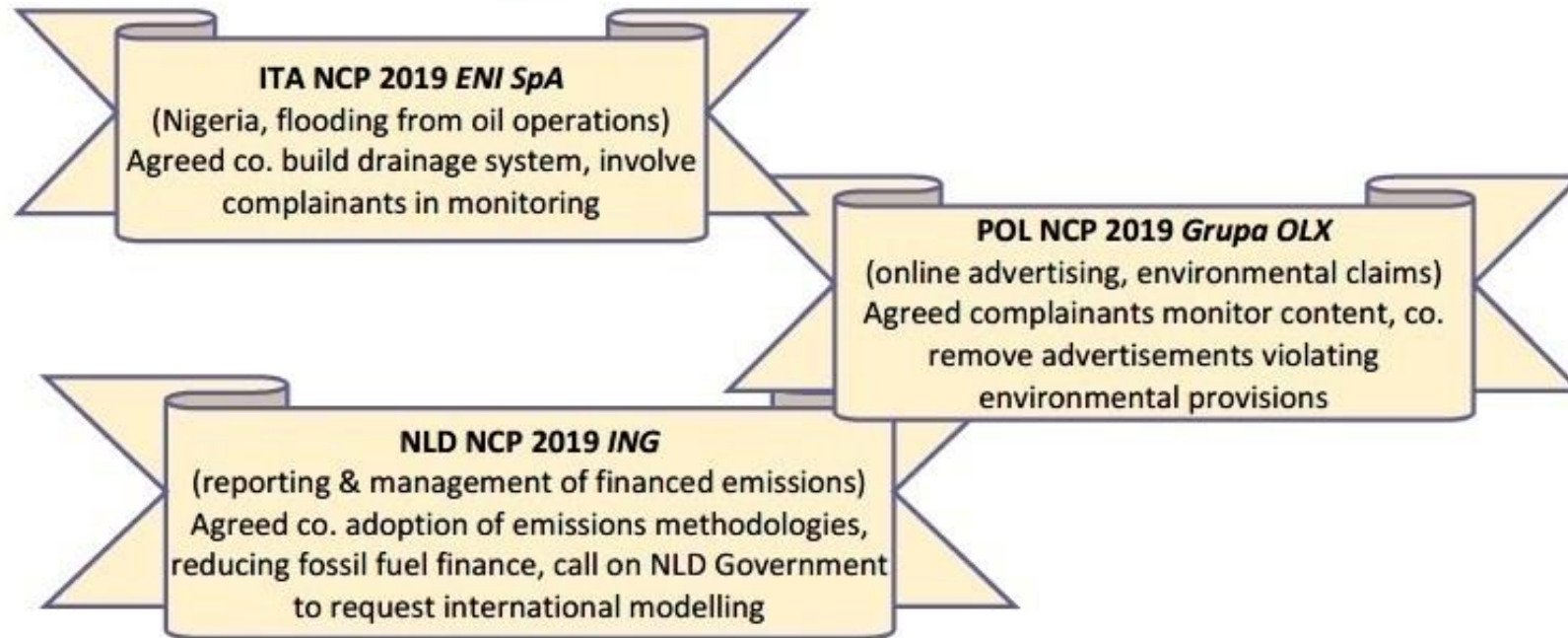


## Not agree → consistent



# Examples of 'environment' cases

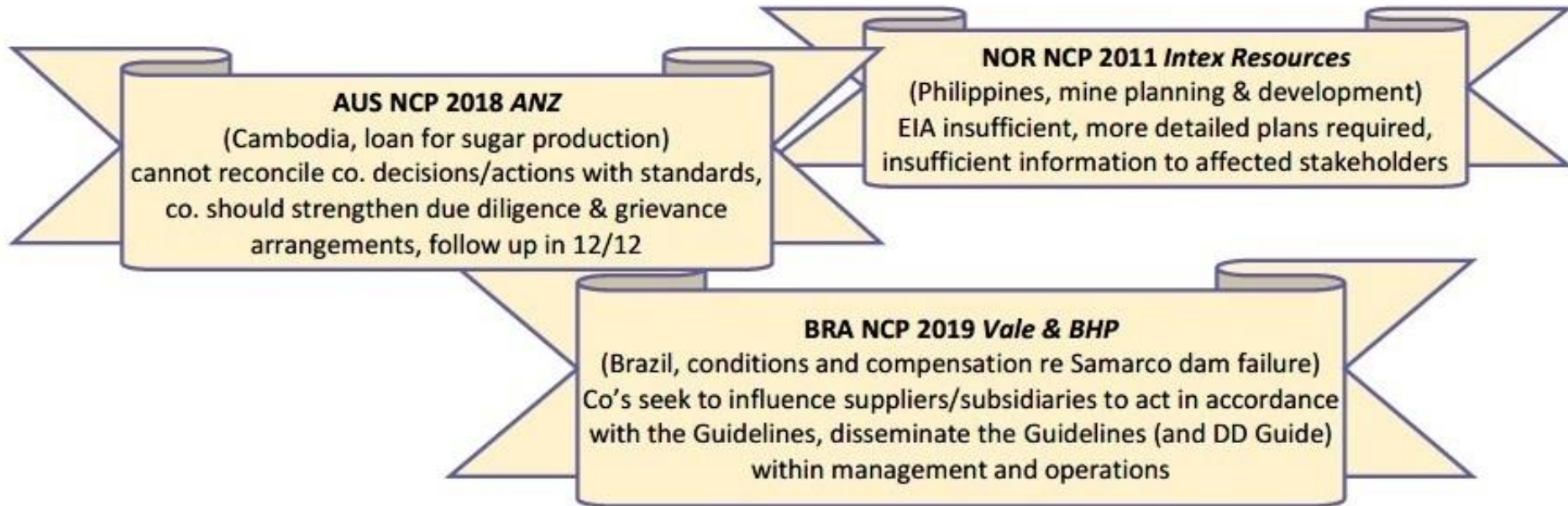
## Agreed Outcomes





# Exempl

**Not agree → inconsistent**



#### Phase 4: Follow up

The NCP may follow-up on the implementation of the agreement and/or recommendations made by the NCP

# Follow-Up Agreement

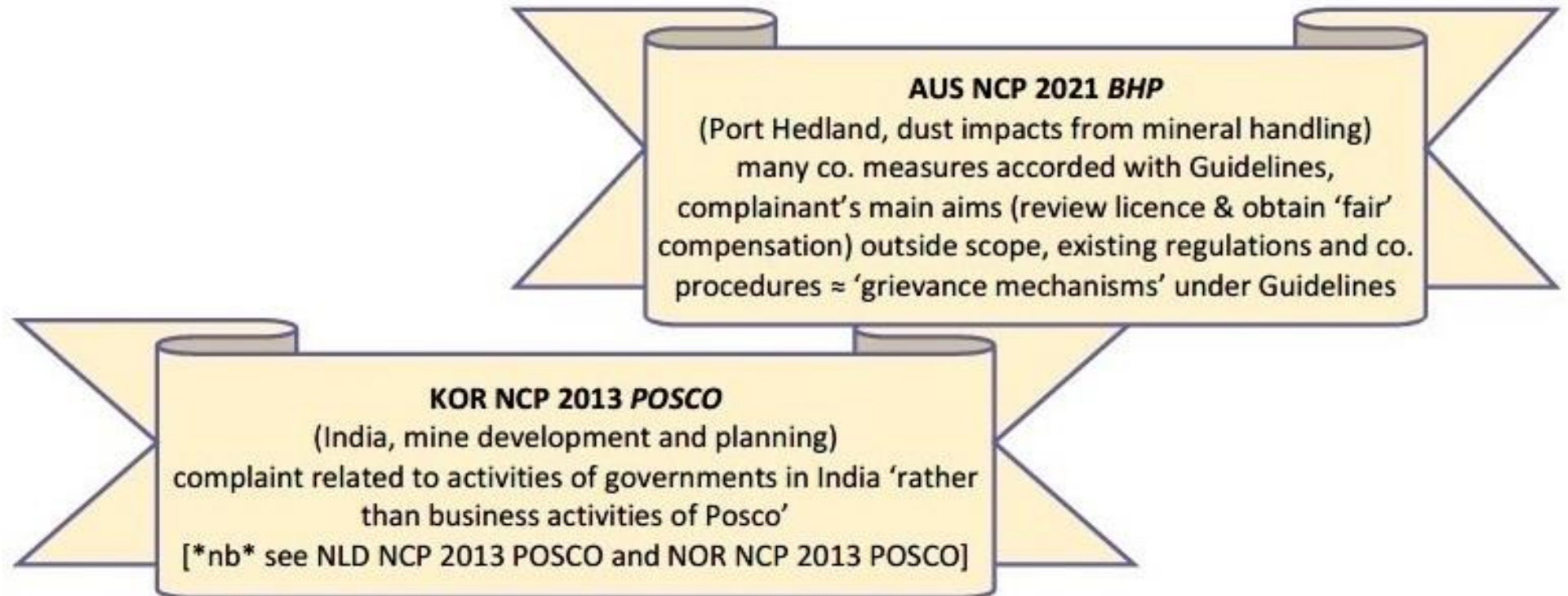
## **AUS NCP 2020 ANZ**

(Cambodia, loan for sugar production)

Agreed co. pay profit from loan to affected communities, review & strengthen human rights policies incl. customer social and environmental screening, and grievance mechanism

# Examples of 'environment' cases

## IA decision: 'not merit'



# Not agree → consistent

## **SWE NCP 2016 *Statkraft***

(Sweden, wind farm planning & development)  
Not found co. failed to comply with Guidelines,  
room improve engagement with Indigenous  
communities; noted subsequent agreement  
between co. & complainants outside NCP process

## **AUS NCP 2021 ANZ**

(climate change, financing of fossil fuels)  
co. actions consistent with Guidelines, Guidelines'  
expectations addressing GHG and climate change are  
limited and have some ambiguity, relevant for Guidelines  
review currently underway



[\*nb\* see NLD NCP 2013 POSCO and NOR NCP 2013 POSCO]

## AusNCP 'in progress'

### **AUS NCP 2021 *Rio Tinto***

(Bougainville, environmental impacts from abandoned mine)

Good offices continuing, parties agreed on environmental and HR assessment processes

### **AUS NCP 2022 *PanAust***

(Papua New Guinea, mine planning and proposals)  
Initial assessment July 2022 offered good offices, now 'Preparing final statement'

**Not agree → consistent**

# Databases of NCP cases

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.

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

**MOST RECENTLY NOTIFIED**

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

**BY THEME**

- Combating bribery, bribe solicitation and extortion: 0%
- Competition: 3%
- Concepts and principles: 11%
- Consumer interests: 7%
- Disclosure: 21%
- Employment and industrial relations: 5%
- Environment: 23%
- General policies: 53%
- 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: 6%
- 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: 0%
- Manufacturing: 28%
- Mining and quarrying: 18%
- 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%

<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/>

# Australian NCP



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

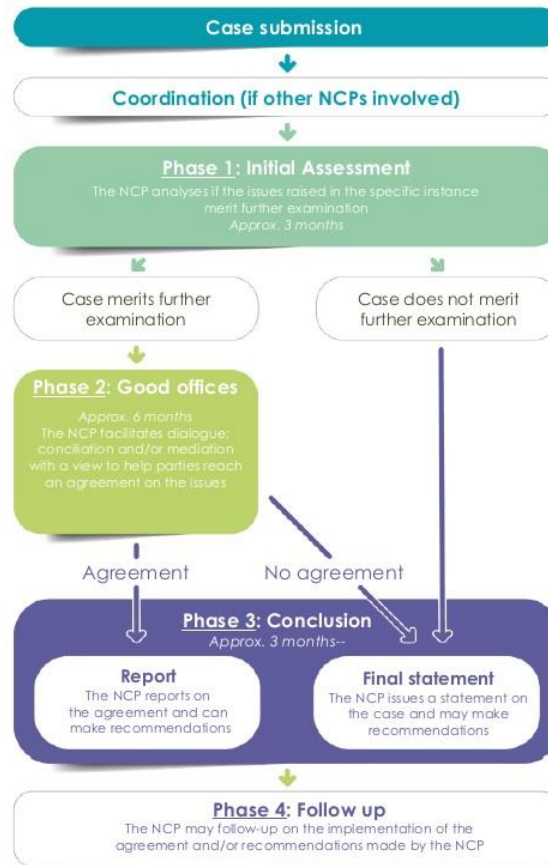
**Secretariat** - management, support services, promote Guidelines, international representation

**Independent Examiners** – manage complaints against multinational enterprises, promote Guidelines


**Governance and Advisory Board** – (business, society & and gov't members), advise on management of complaints, promote Guidelines



# AusNCP 'complaint' process



AusNCP Complaint Procedures



## Australian National Contact Point Complaint Procedures

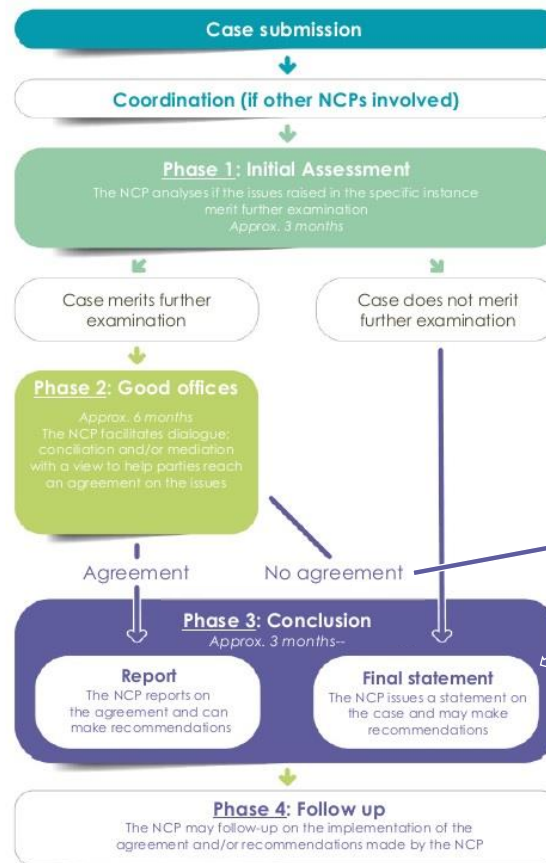
July 2022

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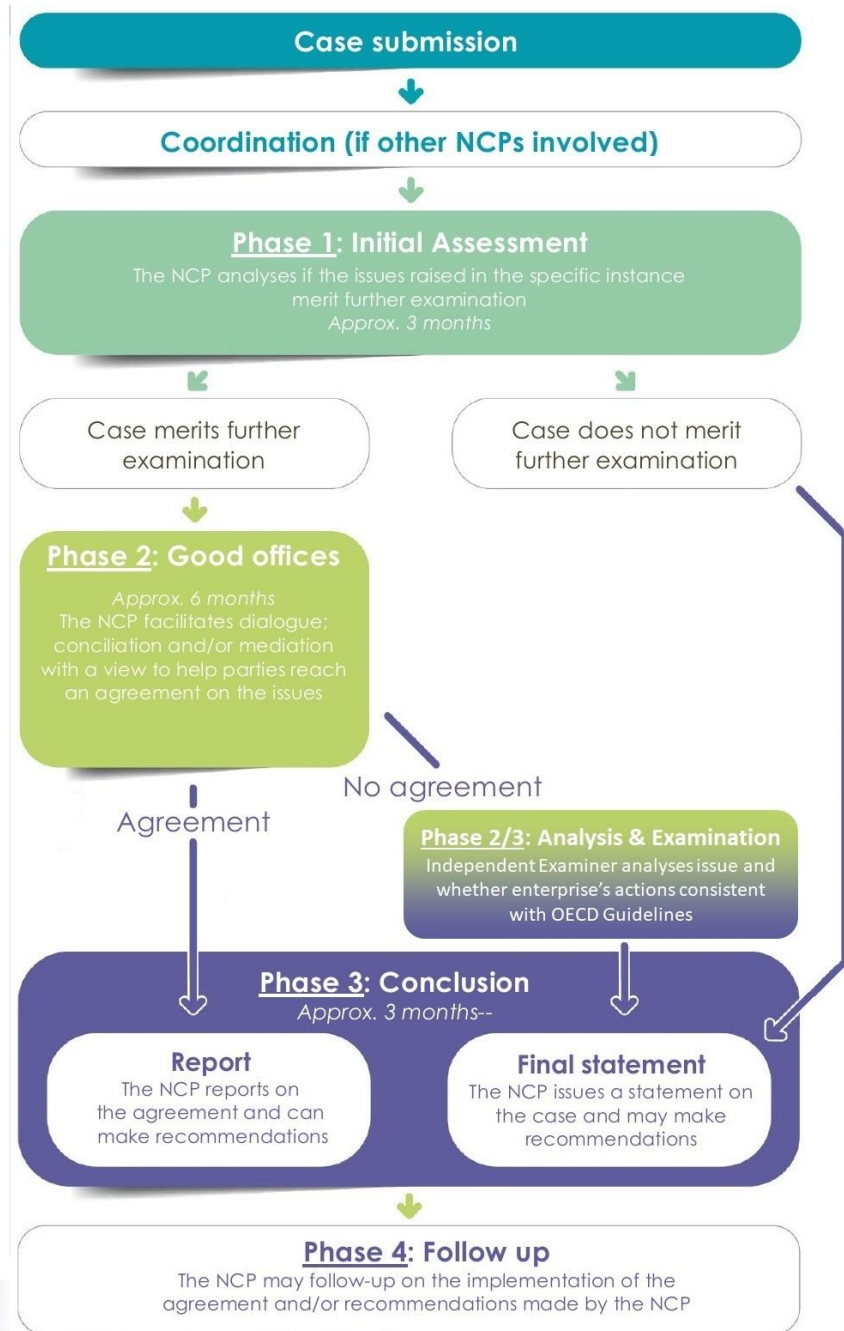
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AusNCP [Complaint Procedures](#) (2022)

# AusNCP 'complaint' process



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



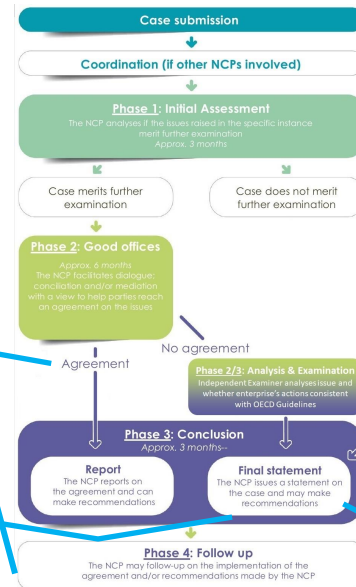


# AusNCP cases

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]



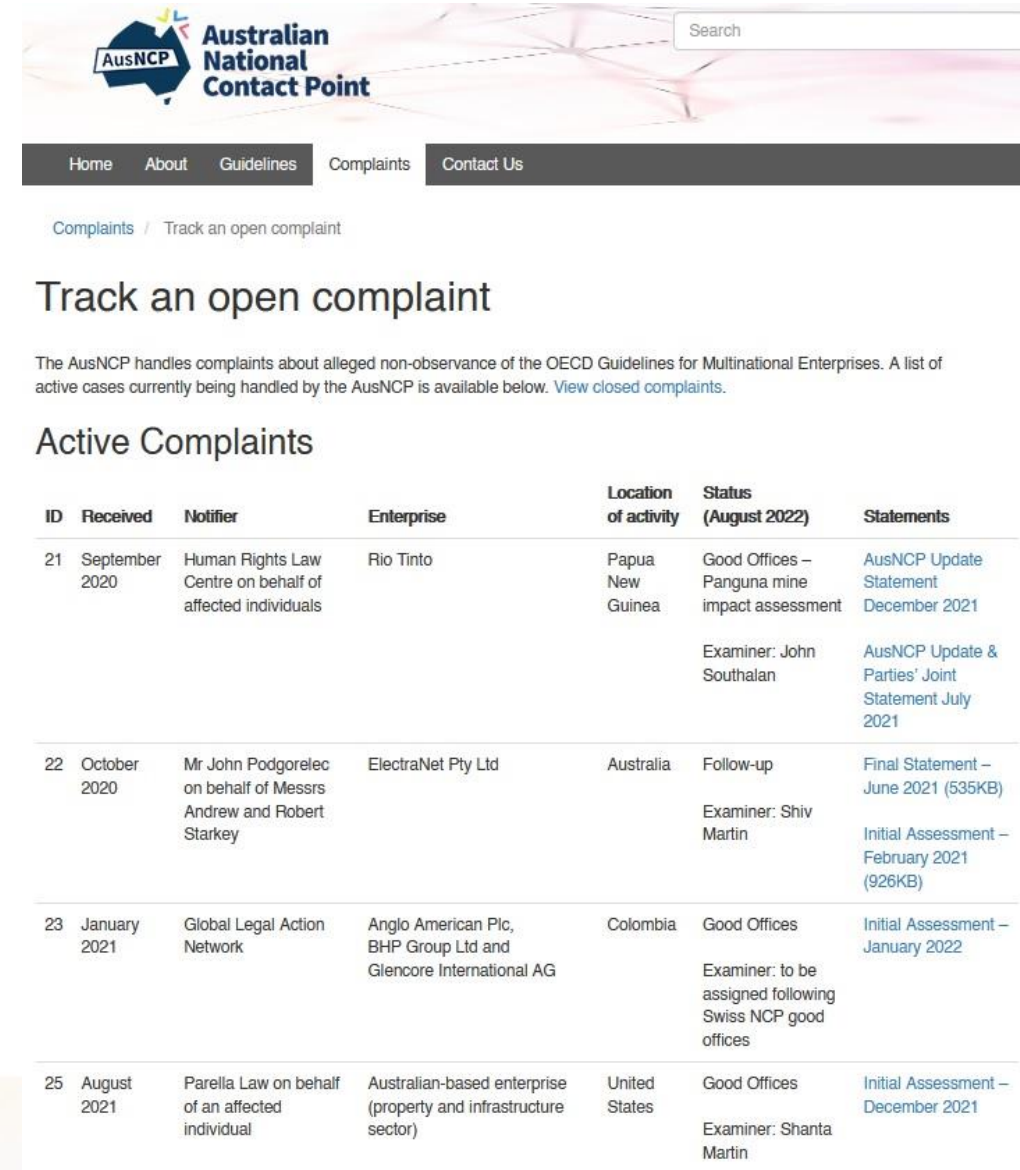
Reasons against further examination can include:

- 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



**Australian National Contact Point**

Search

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	<a href="#">AusNCP Update Statement December 2021</a>  <a href="#">AusNCP Update &amp; Parties' Joint Statement July 2021</a>
22	October 2020	Mr John Podgorelec on behalf of Messrs Andrew and Robert Starkey	ElectraNet Pty Ltd	Australia	Follow-up  Examiner: Shiv Martin	<a href="#">Final Statement – June 2021 (535KB)</a>  <a href="#">Initial Assessment – February 2021 (926KB)</a>
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	<a href="#">Initial Assessment – January 2022</a>
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	<a href="#">Initial Assessment – December 2021</a>

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

# Takeaways: AusNCP & environment

- 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



# References: 1

- AUS NCP 2022 PanAust. Independent Examiner, *Complaint submitted by Project Sepik and Jubilee Australia Research Centre on behalf of affected Sepik River communities, against PanAust Limited*, Initial Assessment, AusNCP case #23, 25 July 2022. Canberra: Australian National Contact Point, Department of Treasury. Available <[https://ausncp.gov.au/sites/default/files/2022-07/29\\_AusNCP\\_Initial\\_Assessment.pdf](https://ausncp.gov.au/sites/default/files/2022-07/29_AusNCP_Initial_Assessment.pdf)> 13 Nov 2022.
- AUS NCP 2021 ANZ. Independent Examiner, *Complaint by Friends of the Earth, Egan, Dodds and Simons regarding ANZ Group*, Final Statement, AusNCP case #20, 15 December 2021. Canberra: Australian National Contact Point, Department of Treasury. Available <[https://ausncp.gov.au/sites/default/files/2021-12/AusNCP\\_Final\\_Statement\\_Friends\\_of\\_Earth\\_0.pdf](https://ausncp.gov.au/sites/default/files/2021-12/AusNCP_Final_Statement_Friends_of_Earth_0.pdf)> 15 Dec 2021.
- AUS NCP 2021 BHP. Independent Examiner, *Complaint by Port Hedland Community Progress Association regarding BHP*, Final Statement, AusNCP case #24, 1 September 2021. Canberra: Australian National Contact Point, Department of Treasury. Available <[https://ausncp.gov.au/sites/default/files/2021-09/AusNCP\\_Final\\_Statement\\_Port\\_Heland.pdf](https://ausncp.gov.au/sites/default/files/2021-09/AusNCP_Final_Statement_Port_Heland.pdf)> 2 Sep 2021.
- AUS NCP 2021 Rio Tinto. Independent Examiner, *Complaint by Human Rights Law Centre (on behalf of affected individuals) regarding Rio Tinto*, Update December 2021, AusNCP case #21, 22 December 2021. Canberra: Australian National Contact Point, Department of Treasury. Available <[https://ausncp.gov.au/sites/default/files/2021-12/21\\_AusNCP\\_Update\\_Statement.pdf](https://ausncp.gov.au/sites/default/files/2021-12/21_AusNCP_Update_Statement.pdf)> 5 Mar 2022.
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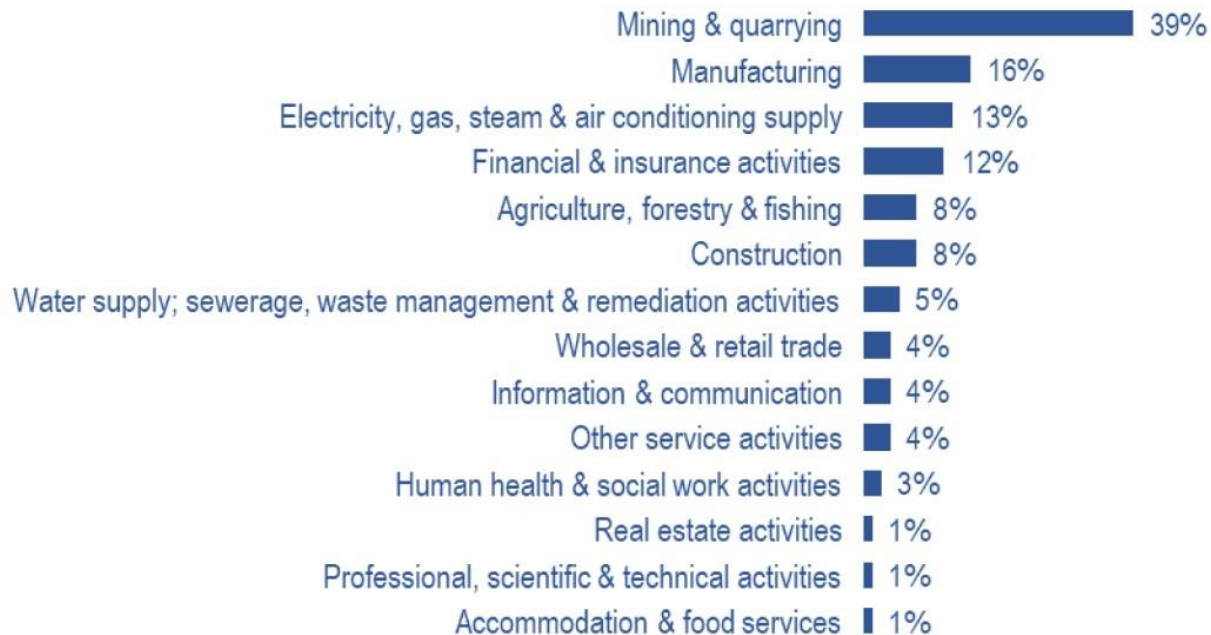
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# NCP 'environment' cases

From OECD [RBC and environmental issues](#) p15 & 45

## Specific instances referencing the Environment Chapter across industry sectors



## Chapters of the OECD Guidelines for Multinational Enterprises cited in Environmental Case Submissions

Chapter of the OECD Guidelines	Number of environmental case submissions referencing key chapters of the Guidelines	Percentage of environmental case submissions referencing key chapter of the Guidelines
General policies	51	66%
Human rights	48	62%
Disclosure	36	47%
Employment and industrial relations	19	25%
Concepts and principles	12	16%
Consumer interests	9	12%
Combating bribery, bribe solicitation and extortion	5	6%
Science and technology	2	3%
Competition	1	1%
Taxation	1	1%



# *Questions*

Workshop  
NELA(WA) / Curtin Law School  
17 November 2022, Perth