



**Australian National Contact Point**  
for Responsible Business Conduct

# **Business and Human Rights in Practice**

**AusNCP - Australia's unique complaints mechanism**

**Shanta Martin**

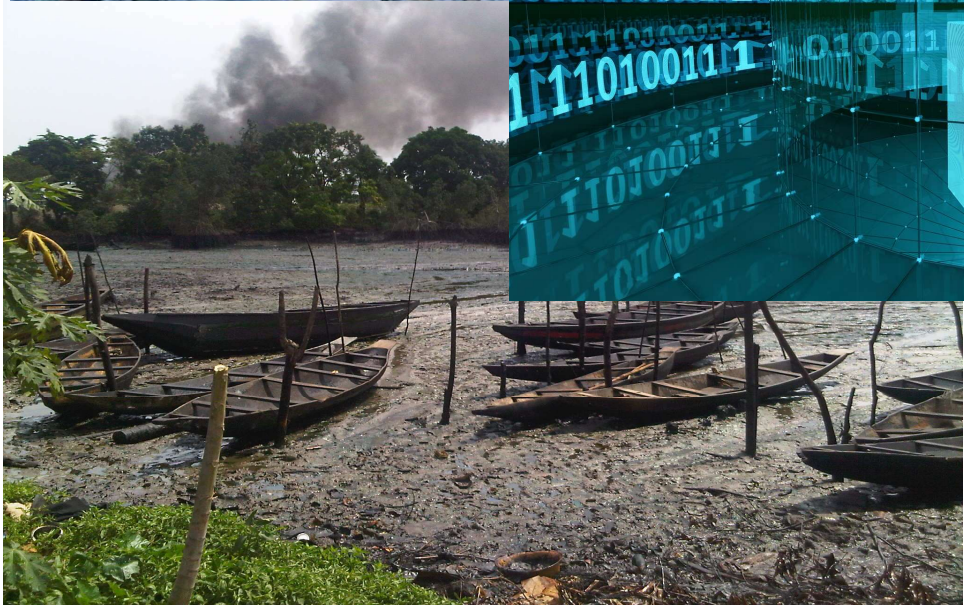
Barrister

AusNCP Independent Examiner

# Session Outline

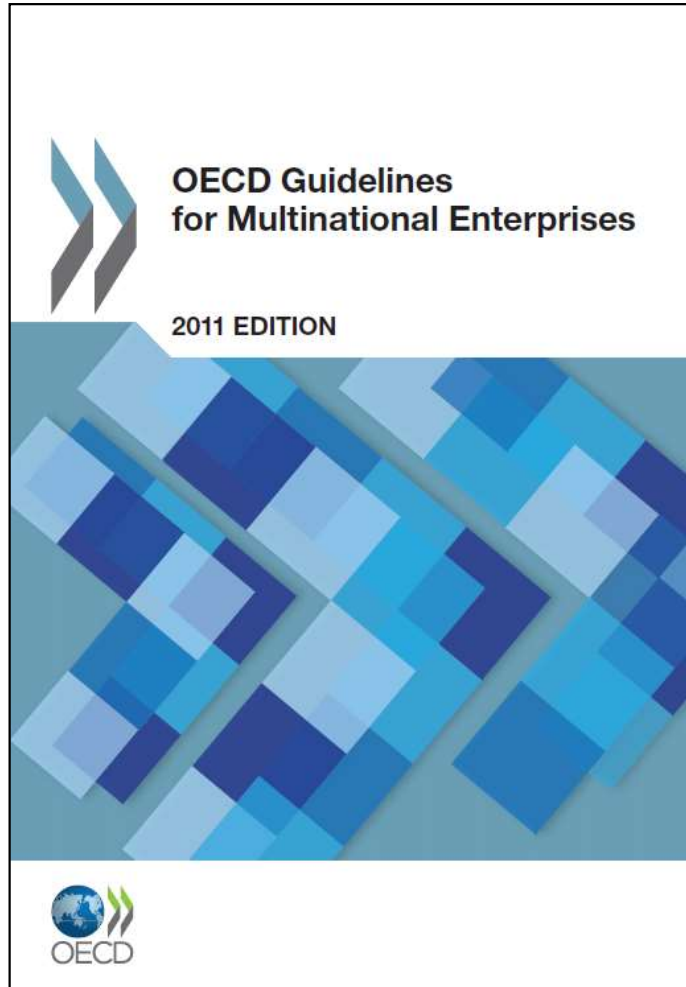
1. OECD Guidelines – what are they?
2. The AusNCP – How is it unique? How does it work?
3. Trends & outcomes
4. Factors for lawyers to consider
5. Questions and Answers

# Business and Human Rights





# OECD Guidelines



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

# What do the OECD Guidelines cover?

*Declaration on International Investment and Multinational Enterprises (1976)*

**Part I = OECD Guidelines**

TABLE OF CONTENTS

*Table of Contents*

Declaration on International Investment and Multinational Enterprises .....7

*Part I*  
**OECD Guidelines for Multinational Enterprises**  
**Recommendations for responsible business conduct in a global context**

Preface .....13

I. Concepts and Principles .....17

II. General Policies .....19

III. Disclosure .....27

IV. Human Rights .....31

V. Employment and Industrial Relations .....35

VI. Environment .....42

VII. Combating Bribery, Bribe Solicitation and Extortion .....47

VIII. Consumer Interests .....51

IX. Science and Technology .....55

X. Competition .....57

XI. Taxation .....60

*Part II*  
**Implementation Procedures of the OECD Guidelines for Multinational Enterprises**

**Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises** .....67

I. National Contact Points .....68

II. The Investment Committee .....68

III. Review of the Decision .....69

**Procedural Guidance** .....71

I. National Contact Points .....71

II. Investment Committee .....74

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

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

II. Commentary on the Procedural Guidance for the Investment Committee .....88

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5

I. Concepts and Principles .....17

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IV. Human Rights .....31

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IX. Science and Technology .....55

X. Competition .....57

XI. Taxation .....60

# Human rights chapter

## 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,

*(Added in 2011)*

**Expectations** of enterprises:

1. Respect HRs & address HR impacts in which **involved**
2. Avoid **causing or contributing** to (and address) adverse impacts
3. Prevent/mitigate adverse HRs impacts to which directly **linked**
4. **HRs Policy**
5. **HRs due diligence**
6. Provide/cooperate in **remedy**

# What is a National Contact Point (NCP)?

*Declaration on International Investment and Multinational Enterprises (1976)*

**Part II = Implementation Procedures**

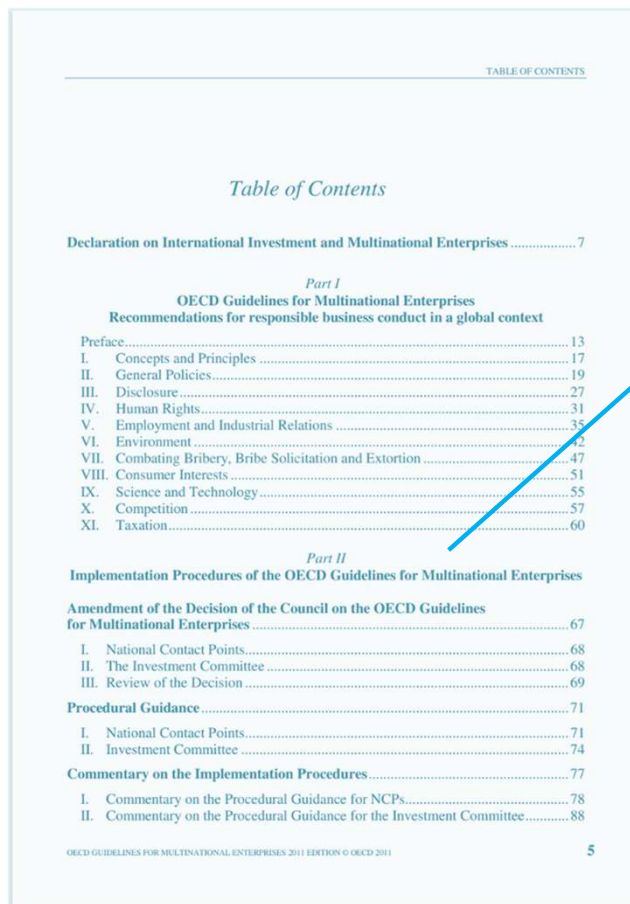


TABLE OF CONTENTS

*Table of Contents*

Declaration on International Investment and Multinational Enterprises ..... 7

*Part I*  
OECD Guidelines for Multinational Enterprises  
Recommendations for responsible business conduct in a global context

Preface.....13  
I. Concepts and Principles .....17  
II. General Policies.....19  
III. Disclosure.....27  
IV. Human Rights.....31  
V. Employment and Industrial Relations .....35  
VI. Environment .....42  
VII. Combating Bribery, Bribe Solicitation and Extortion .....47  
VIII. Consumer Interests .....51  
IX. Science and Technology .....55  
X. Competition .....57  
XI. Taxation.....60

*Part II*  
Implementation Procedures of the OECD Guidelines for Multinational Enterprises

Amendment of the Decision of the Council on the OECD Guidelines  
for Multinational Enterprises ..... 67

I. National Contact Points .....68  
II. The Investment Committee .....68  
III. Review of the Decision .....69

Procedural Guidance .....71

I. National Contact Points .....71  
II. Investment Committee .....74

Commentary on the Implementation Procedures .....77

I. Commentary on the Procedural Guidance for NCPs.....78  
II. Commentary on the Procedural Guidance for the Investment Committee.....88

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- Since 2000, Governments required to have a National Contact Point ('NCP') for implementation
- Two primary roles:
  1. Handling “specific instances” = complaints/cases
  2. Promote the OECD Guidelines

# Principles for NCPs

- NCPs should function in a **visible, accessible, transparent, and accountable** manner
- Must deal with “specific instances” (complaints/cases) in a manner that is:
  - **impartial**
  - **predictable**
  - **equitable**
  - **compatible** with the OECD Guidelines



# Australian NCP - unique structure



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

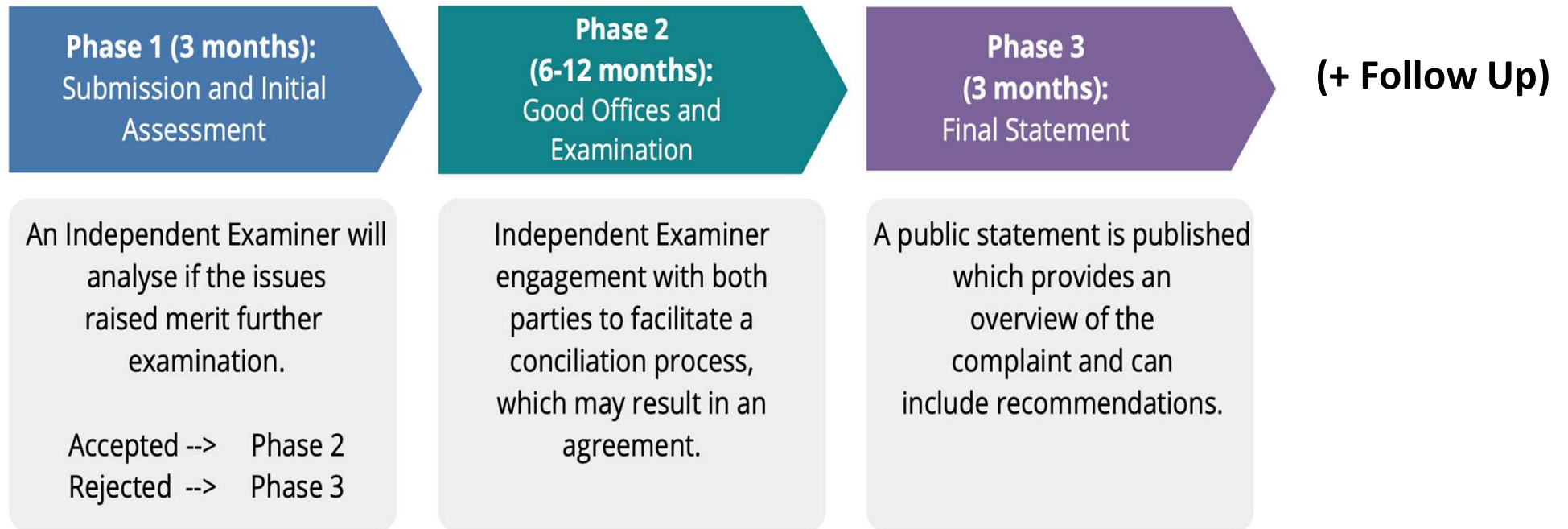
**Secretariat [Gov]** - management (incl case allocation - capacity and conflicts checks); support services; engage internat'ly; promote OECD Guidelines

**Independent Examiners [Indep x 3]** – assess and manage complaints; liaise with parties; provide good offices; write reports; promote OECD Guidelines

**Governance and Advisory Board [Gov, Biz, Civil, Union]** – advice & view points on management of complaints; promote OECD Guidelines.

# Clear Complaints process

## Complaints Process



# Phase 1 – Initial Assessment

**Purpose:** determine whether the issue is *bona fide* and *relevant* to implementation of Guidelines

Take into account 6 core criteria:

1. **Party** - Identity & interest in the matter
2. **Issue** - material and substantiated
3. **Link** - between enterprise's activities and issue raised
4. **Applicable law and procedures** - Relevance, including court rulings
5. **Other domestic or international proceedings** – dealing with similar or same issues (incl parallel proceedings)
6. Would further consideration **contribute** to the **purposes** and **effectiveness** of the *Guidelines*.

# Phase 2 – Good Offices





# Phase 3 - Final Statement

- Must be published
- Can include:
  - “**determinations** on whether an enterprise’s actions were consistent with the Guidelines” and
  - “**recommendations** to improve observance of the Guidelines”: AusNCP Procedures, 6.1 & 6.3
- Where complaint rejected - explain initial assessment
- Where good offices agreement – informed by parties’ agreement
- Where no agreement, or enterprise didn’t engage:
  - Examiner will include their analysis of the issue
  - Statement on ‘*whether the enterprise’s actions were consistent with the OECD Guidelines*’.
- Independent Examiner may draw instances of inappropriate conduct to the attention of other government agencies through the AusNCP Secretariat.

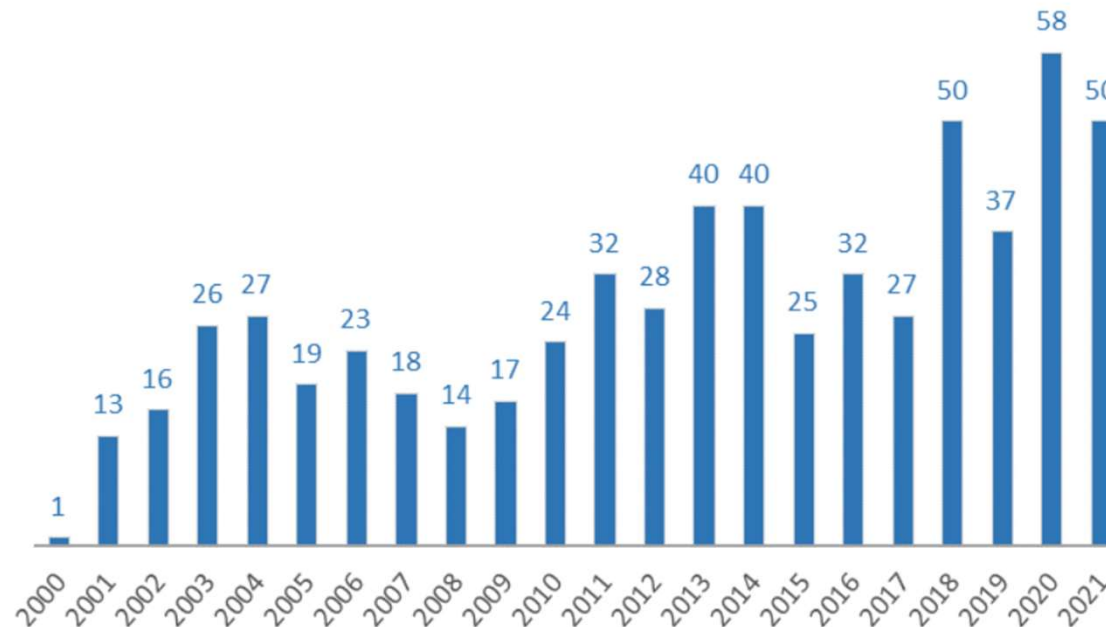


# Trends



# OECD complaints globally

Figure 2.6. Number of specific instances submitted annually 2000-2021<sup>23</sup>



Note: Data do not include Egypt and Jordan  
Source: NCP Annual Reporting Questionnaire 2021

Ref: OECD (2022) 2021 Draft Annual Report on the Activity of National Contact Points, final forthcoming

# Global complaints by sector 2021

Figure 2.8. Count of specific instances submitted in 2021 by industry sector



Note: Data do not include Egypt and Jordan  
Source: NCP Annual Reporting Questionnaire 2021





# Global complaints by theme 2021

Figure 2.9. Specific instances by Guidelines chapter in 2021



Note: Data do not include Egypt and Jordan

Source: NCP Annual Reporting Questionnaire 2021

# Australia – trends

- Trends similar to global:
  - Increasing # of complaints (31 since 2006, c. 40% in last 3 years)
  - Sectors:
    - Extractive industries (45%),
    - financial services and manufacturing sectors (13% each)
  - Themes: General Policies and Human Rights chapters cited more frequently
  - Location of activities: Aus Co's operating overseas (Latin America, South Asia, Southeast Asia, Pacific).
    - BUT recent trend – more focus on operations in Australia



# Outcomes - Australia

- 31 complaints since 2006
- Only 1 complaint rejected since 2020 (out of 12)
- 9 currently open (new one today - not yet on website)
- Approximately half of all complaints accepted by the AusNCP have resulted in agreements being reached.
- Agreements have included financial remedies, changes to policies, procedures & practices, commitments to improved due diligence



# Factors for lawyers to consider





# Confidentiality

- *“Information shared between the parties should be kept confidential, including following the conclusion of the complaint, unless the providing party agrees to its disclosure or this would be contrary to the provisions of a national law”*: AusNCP Procedures 10.3
- Information shared with other party by consent
- Only information shared with the other party can be taken into account by the Indep Examiner
- Good Offices – all parties agree to confidentiality = confidence, build trust, encourage frankness -> assists resolution
- Transparency: Initial and Final Statements are published



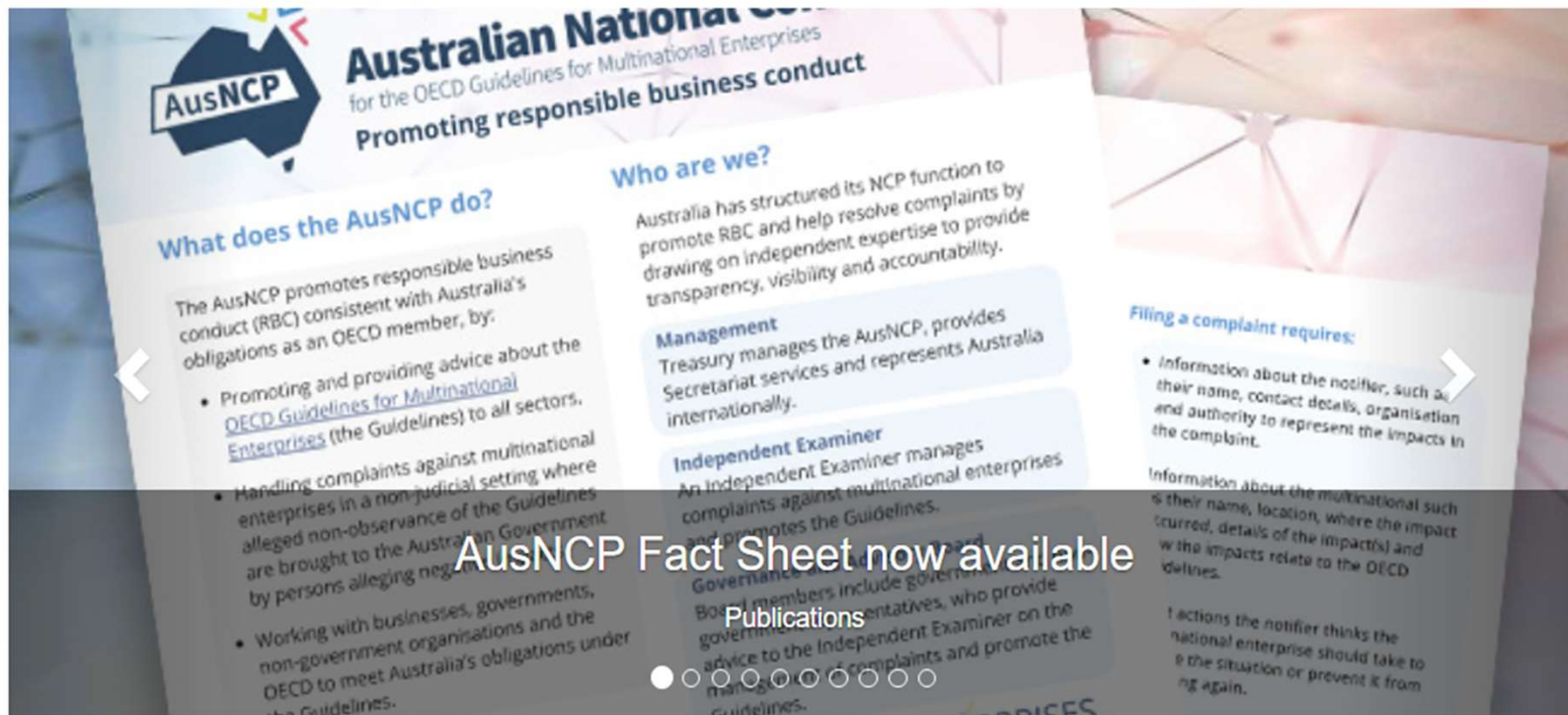
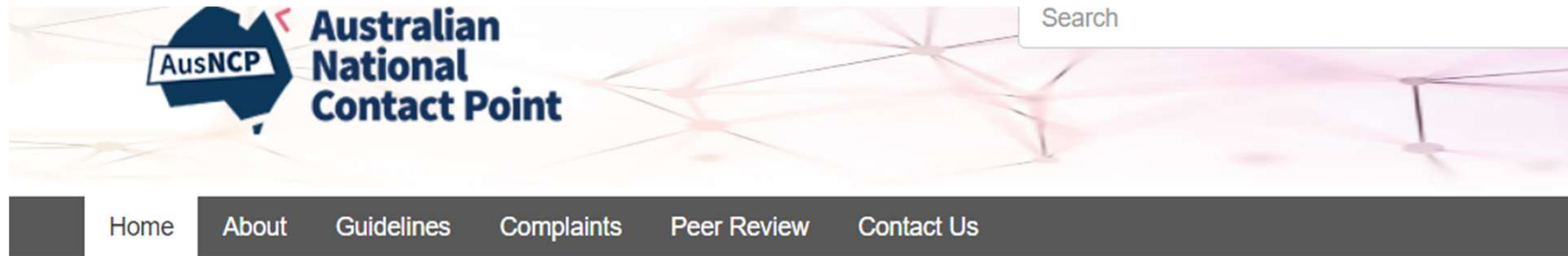
# Questions

Raise virtual hand

Use the chat function



# Find out more



<https://ausncp.gov.au/>