

AusNCP complaint procedures – for public consultation

Monday 25 September – Monday 16 October 2023

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Contents

- Preface.....4
- Purpose of the AusNCP procedures.....4
- Context4
- AusNCP complaint procedures5
- Submitting a complaint.....5
- Independent Examiners.....6
- Initial assessment.....6
- Good offices.....9
- Examination10
- Final statement.....11
- Case follow-up12
- Procedural review.....13
- Timing15
- Confidentiality, transparency and conflicts of interest.....15
- Withdrawal of cases16
- Transitional arrangements.....16
- Glossary17
- Appendix A: Complaints process19

Preface

This version of the procedures has been introduced to reflect the updated Guidelines for Multinational Enterprises on Responsible Business Conduct, released in June 2023.

This version replaces version 3.0, originally published in July 2022. Please direct any queries to the AusNCP Secretariat via email at Secretariat@ausncp.gov.au or by phone on +61 2 6263 2224. Additional information is available at www.AusNCP.gov.au.

Purpose of the AusNCP procedures

The Australian Government expects multinational businesses operating in Australia or operating overseas from Australia to act in accordance with the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (OECD Guidelines).

The **Australian National Contact Point for Responsible Business Conduct** (AusNCP) receives complaints against enterprises whose conduct is alleged not to comply with the OECD Guidelines.

These **AusNCP complaint procedures** outline the AusNCP processes for managing those complaints in accordance with the OECD Guidelines.

Context

AusNCP role and responsibilities

The AusNCP helps fulfil the Australian Government's obligations as an adherent to the [OECD Declaration on International Investment and Multinational Enterprises](#). This Declaration, together with a set of other related legal OECD legal instruments, requires adherents to establish a National Contact Point for Responsible Business Conduct (NCP) to further the effectiveness of the OECD Guidelines. NCPs are agencies established by governments to promote the OECD Guidelines and related due diligence guidance, and to handle complaints (also referred to as specific instances) as a non-judicial grievance mechanism.

The AusNCP is responsible for: (a) promoting awareness and uptake of the OECD Guidelines, (b) contributing to the resolution of issues that arise in relation to the implementation of the OECD Guidelines in specific instances, and (c) where appropriate and in coordination with relevant government agencies, supporting efforts by the Australian Government to develop, implement, and foster coherence of policies to promote responsible business conduct.

The AusNCP is delivered by the Australian Treasury. The AusNCP consists of three parts – a secretariat in Treasury that manages the AusNCP, Independent Examiners (Examiners) contracted to Treasury to manage complaints against multinationals brought the AusNCP, and a multistakeholder Governance and Advisory Board (AusNCP Board) that promotes the OECD Guidelines and provides expert advice to help manage complaints.

The AusNCP is a non-judicial grievance mechanism delivered in accordance with the OECD Guidelines and the core effectiveness criteria:

- visible

- accessible
- transparent
- accountable
- impartial and equitable
- predictable, and
- compatible with the OECD Guidelines.

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

The OECD Guidelines are internationally agreed responsible business conduct standards that governments expect multinational enterprises to observe. The standards cover all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, consumer interests, corruption, science and technology, competition and taxation.

A copy of the OECD Guidelines, including implementation procedures and associated commentary is available in a range of languages at <https://mneguidelines.oecd.org/mneguidelines/>.

The OECD Guidelines recommend enterprises undertake **risk-based due diligence** to identify, prevent, mitigate and account for how they address actual and potential adverse impacts on people, the environment and society. [OECD Due Diligence Guidance documents](#) provide practical support to assist enterprises to avoid and address adverse impacts related to matters covered by the Guidelines, including workers, human rights, the environment, corruption, consumers, science and technology, and corporate governance. These documents include sector-specific advice, additional explanations, tips and illustrative examples of due diligence.

AusNCP complaint procedures

Concepts and Principles

1. The AusNCP helps resolve complaints to effectively implement the OECD Guidelines and address adverse impacts from multinational business activities in a way that is consistent with the OECD Guidelines.
2. The AusNCP supports the participation in AusNCP processes of culturally and linguistically diverse individuals or groups including First Nations peoples, individuals with disabilities, and people who are disadvantaged or vulnerable.
 - 2.1. The AusNCP secretariat and the Independent Examiners will strive to sensitively facilitate equitable access and participation including those related to language and literacy, cultural constraints, logistical or practical limitations.
3. The AusNCP will make best endeavours to respond to potential safety risks for notifiers and related parties across the AusNCP process, for example as outlined in paragraph 9 and 27.
4. A simplified diagram of the process is provided at the 'Complaints process' section.

Submitting a complaint

5. Notifiers can submit their complaint using the form on the AusNCP website: <https://ausncp.gov.au/complaints/submit-complaint>. If a notifier is unable to use the form, the

AusNCP will seek to provide reasonable alternate arrangements to ensure the process is accessible such as email, translation services, or connecting the notifier to a relevant third party for assistance in forming their case, consistent with paragraph 3. The AusNCP will make reasonable arrangements to ensure accessibility for the duration of the case.

6. Complaints can be made to the AusNCP about alleged non-compliance with the OECD Guidelines by:
 - 6.1. a multinational enterprise operating in Australia or
 - 6.2. a multinational enterprise operating from Australia, even in a country that is not an adherent to the OECD Guidelines.
7. Examiners will seek to take a broad view of the definition of 'multinational enterprise' for the purposes of receiving complaints. Factors such as the entity's corporate identity and scope of management or control in Australia will be considered.
8. Complaints should demonstrate a link between the issue raised and the enterprise's presence, conduct or impact in Australia. Conduct may include acts, omissions, responsibilities or decisions.
9. In certain circumstances, such as where there are risks to the personal safety of the notifier and/or the threat or risk of reprisals, the AusNCP will enable anonymous filing of complaints via a third party. Notifiers acting on behalf of others should be able to demonstrate their authority to do so and to show evidence of the need for anonymity of the affected party.
10. The AusNCP expects the notifier and enterprise to act in good faith throughout the complaint process. If the Examiner is satisfied that a party is not acting in good faith, the Examiner may:
 - 10.1. where that party is the notifier, move to the final statement stage and not make any further assessment of the issues raised regarding the enterprise
 - 10.2. where that party is the enterprise, move to the 'Examination' stage.

Independent Examiners

11. Independent Examiners (Examiners) are appointed by the Secretariat to assess the substance and validity of complaints, offer and provide good offices in appropriate cases, conduct examinations, and write statements about the complaint for the AusNCP in line with these procedures.
12. Examiners have the authority to publicly share their views through AusNCP statements, including as to whether an enterprise's actions were consistent with the OECD Guidelines and, where appropriate, to make recommendations to improve observance of the OECD Guidelines.
13. Examiners may choose to consult one another regarding a complaint, subject to appropriate conflict of interest checks.

Initial assessment

14. The objective of the initial assessment stage is to determine whether a complaint should be accepted, transferred to another NCP, or rejected.
15. The AusNCP secretariat will decide on the allocation of the initial assessment to an Examiner. This decision will be made as soon as practicable after receipt of the complaint. In making this decision, the secretariat will consider each Examiner's availability, expertise, any actual, perceived or

potential conflicts of interest and any other relevant factors. The notifier and the enterprise will be informed of the identity of the allocated Examiner.

16. Receipt of a complaint will be acknowledged to the notifier within five (5) working days.
17. The existence of a complaint will be published on the AusNCP website within 10 working days of receipt. The note will at least identify the country or countries and the sector to which the complaint relates and will be updated consistent with paragraph 27.
18. The secretariat and the Examiner will seek to obtain the information necessary for the Examiner to conduct an initial assessment.
 - 18.1. The secretariat will work with the notifier to explain what additional material would be required for the initial assessment to proceed. Incomplete complaints will be considered invalid if notifiers are unable to provide required information.
 - 18.2. The secretariat will notify the enterprise about the complaint as per paragraph 26.
19. The Examiner may seek additional information from both parties at this stage. The Examiner will facilitate the exchange of this information between the parties.
20. The AusNCP will not determine that issues do not merit further consideration solely because the matter is, has been or could be considered in another forum, whether judicial or non-judicial.¹
21. Complaints that concern a matter that the AusNCP or another NCP is currently handling, or has already handled to completion, will undergo a process of evaluation in the initial assessment stage, including consultation and coordination with other NCPs if appropriate.
 - 21.1. This process will determine whether an offer of good offices by the AusNCP is likely to contribute positively to resolving the issues raised. Such complaints may not be considered valid if the substance of the complaint is not markedly different from complaints that have been or are being handled by the AusNCP or another NCP.
22. In line with the circumstances set out in the OECD Implementation Procedures, if the AusNCP is not the correct NCP to handle the complaint, the Examiner may seek to transfer the case to another NCP during the initial assessment stage.
23. Where the notifier claims exceptional reasons for the AusNCP to handle a case instead of another NCP, the Examiner will consult the notifier in determining whether to transfer a case.
24. The Examiner will not transfer a case before advising the Board, the notifier and the enterprise.
25. In some circumstances, it may be appropriate for the AusNCP to work with another NCP throughout the handling of a case. In such cases, the lead NCP and cooperating NCP status will be agreed between the relevant NCPs and the procedures of the lead NCP would generally apply.²
26. During the initial assessment stage, the enterprise named in the complaint will be notified and provided with a copy of the complaint submission.³ The enterprise will be given an opportunity to

1 OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, (OECD Guidelines), paragraph 35 'Parallel proceedings'. <https://doi.org/10.1787/81f92357-en>

2 Ibid, above n 1, Part II, Coordination between NCPs in Specific Instances, paragraphs 29 – 32 for more information.

3 Consistent with confidentiality requirements in paragraph 84 of these procedures, information provided by any party to a complaint will only be shared with the other party to the complaint with the consent of the party that provided the information.

provide a preliminary response to the complaint prior to the publication of a statement on the outcome of the initial assessment.

27. After the enterprise has been notified and provided a copy of the complaint submission, information regarding the complaint on the AusNCP website will be updated to include the name of the notifier and the allocated Examiner. In exceptional circumstances, such as where non-disclosure of the notifier is important for protecting the safety of an individual, the identity of the notifier may be withheld at the discretion of the Examiner.
 - 27.1. Where the details of the complaint are already in the public domain (that is, are publicly discoverable), the name of the enterprise will also be listed.
28. Consistent with the OECD Implementation Procedures, the Examiner will determine whether the complaint is made in good faith and is related to the implementation of the OECD Guidelines in deciding whether to accept a complaint. In doing so, the Examiner will make an initial assessment of whether the issue raised warrants further examination against the criteria outlined in the OECD Implementation Procedures, namely:
 - 28.1. the identity of the party concerned and its interest in the matter
 - 28.2. whether the issue is material and substantiated
 - 28.3. whether the enterprise is covered by the OECD Guidelines
 - 28.4. whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance
 - 28.5. the extent to which applicable law and/or parallel proceedings limit the ability of the AusNCP to contribute to the resolution of the issue and/or the implementation of the OECD Guidelines
 - 28.6. whether consideration of the issue would contribute to the purposes and effectiveness of the Guidelines.
29. To promote accessibility, the Examiner will interpret 'material and substantiated' to mean that the issues are plausible and related to the application of the OECD Guidelines, and that there is a plausible link between the enterprise's activities and the issues raised.
30. The Examiner will draft a statement with the outcome of the initial assessment to accept, reject or transfer the complaint. The statement will be an initial assessment if the complaint has been accepted, a final statement if the complaint has been rejected, or a transfer statement if the complaint is to be transferred to another NCP.
 - 30.1. The draft statement will be provided to the Board for review and advice. The Examiner is not required to make changes in response to the views of the Board but may do so at their discretion.
 - 30.2. After considering the views of the Board, the Examiner will provide a copy of the draft statement with the outcome of the initial assessment to the notifier and the enterprise for their comment. The Examiner is not required to make changes in response to the comments of the notifier or the enterprise, but may do so at their discretion.
31. If a complaint is accepted:
 - 31.1. An initial assessment statement will be published on the AusNCP website.
 - 31.2. The identity of the enterprise against which the complaint has been made will be published in the initial assessment statement and on the AusNCP website, if not already done so. In exceptional circumstances, such as where non-disclosure of the enterprise is important for

protecting the safety of an individual, the identity of the enterprise may be withheld at the discretion of the Examiner.

- 31.3. Where an Examiner accepts a complaint, the good offices process will formally be offered.
32. If a complaint is rejected, a final statement will be prepared and published in line with the procedures set out in the 'Final statement' section of these procedures. The Examiner will consult with and consider the views of the parties as to whether the identity of the enterprise will be published.
33. If a complaint is transferred to another NCP because of the initial assessment stage, a transfer statement will be published on the AusNCP website stating why and to which NCP the complaint has been transferred. The identity of the enterprise will be published on the AusNCP website if the transferee NCP publishes the identity.
34. Acceptance, rejection or transfer of a complaint is not an assessment of whether the enterprise's actions are consistent with the OECD Guidelines.

Good offices

35. The objective of the good offices stage is for an Examiner to facilitate the exchange of information between the parties to a complaint to help resolve the issues. This exchange can include conciliation, formal mediation or facilitated discussions with the aim of arriving at a mutually agreed resolution. The Examiner will consider the information at hand, seek further information as necessary and draft a final statement where agreement is reached between parties. The good offices stage relies on both parties to a complaint acting in good faith.
 - 35.1. The secretariat will consider availability, expertise, any actual, perceived or potential conflicts of interest and any other relevant factors in allocating an Examiner to the good offices stage. The notifier and the enterprise will be informed of the identity of the allocated Examiner.
 - 35.2. An Examiner may facilitate good offices directly or delegate certain steps to a suitably qualified dispute resolution professional, including conducting formal conciliation or mediation.
36. The good offices process will begin with a preparation stage to enable the Examiner to provide information to the parties on the process and prepare a framework for handling any conciliation, mediation or facilitated discussions. This will be followed by a proceedings stage for discussion of the issues with a view to a resolution.
 - 36.1. In practice, it is expected that the good offices process will differ from case to case, and the Examiner will retain a flexible approach to distinguish between the preparation and proceedings stage.
37. To begin the preparation stage of good offices, the Examiner will seek to engage each party separately or jointly to explain the overall complaint process and options for discussion of the issues.
 - 37.1. The Examiner and the AusNCP will take reasonable steps to ensure the good offices stage is accessible to all parties, especially notifiers from overseas. This may include utilising technology, translation services and engagement by the Australian Government's overseas missions, consistent with paragraphs 3 and 5.

38. In consultation with the parties, the Examiner will prepare a plan for discussions to give clarity to the process and manage timeframes and expectations.
 - 38.1. Plans may include each party's initial objectives, anticipated communication methods and confidentiality arrangements, including whether a formal confidentiality agreement is required.
 - 38.2. Plans may vary in formality such as an email or a structured document, and will be case-specific to account for the preferences of each party and any practical constraints.
39. The Examiner will seek each party's agreement to proceed with discussions and if both parties agree, the discussions will commence.
40. If at any stage of good offices:
 - 40.1. The notifier does not agree to continue, the Examiner will prepare a final statement summarising the process followed to date but will not undertake an examination of the issues raised unless an Examiner determines the notifier discontinued due to a lack of good faith engagement by the enterprise.
 - 40.2. The enterprise does not agree to continue, the Examiner will prepare a final statement which will include an examination of the issues raised, unless an Examiner determines the enterprise discontinued due to a lack of good faith engagement by the notifier.
41. In cases where a notifier is unable to participate in discussions such as instances where personal security would be compromised, the Examiner will seek to agree alternative arrangements that would allow for the notifier to participate indirectly, consistent with paragraphs 3 and 9.
42. The Examiner will review the progress of proceedings at regular intervals.
43. If the Examiner considers that the complaint cannot be progressed under the NCP process, or if the parties jointly inform the Examiner that they wish to pursue alternative dispute resolution processes outside the NCP process, the Examiner may offer the parties the option of suspending or putting the case on hold.
 - 43.1. Where a case is suspended, the Examiner will request regular updates to determine whether the complaint needs to be reopened.
 - 43.2. If the notifier informs the AusNCP in writing that further engagement from the AusNCP will not be required, the Examiner will treat the case as having been withdrawn.

Examination

44. An examination of a complaint will take place in the circumstances where:
 - 44.1. the enterprise has refused the AusNCP offer of good offices
 - 44.2. the good offices stage has concluded without reaching resolution, unless the Examiner determines there was a lack of good faith engagement in good offices by the notifier
 - 44.3. the enterprise has not acted in good faith in the complaint process in the circumstances described in paragraph 10.
45. The objective of the examination stage is for an Examiner to consider whether the actions of the enterprise raised in a complaint were consistent with the OECD Guidelines, and to identify means by which to improve observance of the OECD Guidelines, where appropriate.

46. The Examiner will invite the parties to provide submissions and relevant supporting material to inform the examination. The Examiner may also request additional information from the parties or seek meetings with the parties.
47. The Examiner will review the initial assessment and any further information received and gathered from the parties to the complaint. The Examiner will also determine whether information from other sources and consultation with other persons or entities is required to complete the examination.
48. The Examiner may seek advice from other stakeholders, including relevant government agencies, non-government organisations, diplomatic missions, other Examiners, other NCPs, business associations and independent experts to inform the examination.
49. The Examiner will incorporate the results of the examination into a final statement.

Final statement

50. At the conclusion of the complaint process, the AusNCP will publish a final statement, taking into account the need to protect sensitive business and other stakeholder information.
51. The Examiner will draft a final statement in the following circumstances:
 - 51.1. the AusNCP does not accept a complaint at initial assessment (the final statement replaces an initial assessment statement)
 - 51.2. a notifier withdraws a complaint
 - 51.3. an agreement is reached by parties to a complaint in good offices
 - 51.4. the Examiner conducts an examination.
52. At a minimum, the final statement will include the issues raised, the parties' respective positions as appropriate, the steps taken by the AusNCP, and the parties' engagement in the process. In addition:
 - 52.1. If the AusNCP does not accept a complaint at initial assessment, the final statement will contain the reasons why the complaint was not accepted.
 - 52.2. If agreement is reached by parties to a complaint in good offices, the final statement will state when agreement was reached.
 - 52.3. If the Examiner conducts an examination, the final statement will include the reasons why the Examiner decided that the issues raised warranted examination.
53. To prepare a final statement, the Examiner will review the materials provided by the parties and may also review publicly available information, and other information gathered through the good offices phase if the parties consent, or information gathered during an examination. Information and advice may also be sought as needed from other stakeholders and sources including the Board, other NCPs, the OECD Responsible Business Conduct Centre or other subject matter experts.
 - 53.1. Each party will be given an opportunity to respond to any information that may be taken into account by the Examiner in the formulation of views or recommendations for the final statement.

54. Where good offices resulted in an agreement, the Examiner will prepare a final statement that details the results of the agreement with the parties' consent. In this scenario, the Examiner's statement may also include recommendations on the implementation of the OECD Guidelines, as appropriate.
55. The Independent Examiner may draw instances of inappropriate conduct to the attention of other government agencies or inform them about matters in the final statement that are relevant to the responsibilities of those agencies.
56. If a complaint is withdrawn by the notifier, a final statement will be prepared by the Examiner that will include the minimum matters referred to in paragraph 52.
57. If the Examiner determines that the complaint is not accepted in the initial assessment phase, the Examiner will prepare a final statement that will include the minimum matters referred to in paragraph 52 and the reasons for the Examiner not accepting the complaint.
58. When no agreement is reached or when a party is unwilling to participate in the process, the final statement will include the minimum matters referred to in paragraph 52 and the reasons why the Examiner decided that the issues raised warranted examination. The final statement may set out the Examiner's views on whether the enterprise observed the OECD Guidelines and will include recommendations on the implementation of the Guidelines where relevant. Where appropriate, the final statement may include the reasons why an agreement could not be reached.
59. The Examiner may initiate or resume the good offices process at any point during the drafting of a final statement, if it is considered useful and is agreed by the parties.
60. Once the Examiner has prepared their final statement, the Board will be provided with a draft for review and advice. The Examiner is not required to make changes in response to the views of the Board but may do so at their discretion.
61. A draft final statement will then be provided to both parties for comment. The Examiner may make changes at their discretion.
62. The completed final statement will be provided to parties and the Board, published on the AusNCP website, reported to the OECD, and provided to relevant Australian government agencies and NCPs. Where recommendations affect bodies other than the parties, the statement will be provided to these bodies. The Examiner has discretion to accommodate any reasonable requests, including from the Board, in relation to sensitivities around publication content or timing.

Case follow-up

63. The Examiner preparing a final statement will specify a timeframe for a follow-up on the case, provided this is appropriate in the context of the issues involved. The objective of any follow-up process will be to examine the extent to which the recommendations in the final statement have been implemented and whether any further engagement from the AusNCP is warranted, including where appropriate an offer of good offices.
64. In these cases, the AusNCP secretariat will decide on the allocation of an Examiner for the follow-up process, taking into account the Examiner's availability, expertise, any actual, perceived or potential conflicts of interest and any other relevant factors. The Examiner will then request an update from both parties on developments since the completion of the final statement. The Examiner may also conduct independent inquiries and include consultation with third parties if necessary. This consultation may include the Examiner responsible for the final statement.

65. The Examiner will draft a follow-up statement with a summary of the updates received and any commentary on the matter that they consider relevant, including on the extent to which recommendations made in the final statement or any mediated outcome have been implemented. They may also recommend an additional follow-up period, where they consider this useful.
 - 65.1. Consistent with paragraph 55, at the conclusion of each follow-up process, the Examiner may draw instances of inappropriate conduct to the attention of other government agencies through the AusNCP secretariat.
66. Once the Examiner has drafted their follow-up statement, the Board will be provided with a copy for review and advice. The Examiner is not required to make changes in response to the views of the Board, but may do so at their discretion.
67. The draft follow-up statement will then be provided to both parties for comment. The Examiner may make changes at their discretion.
68. Each follow-up statement will be published on the AusNCP website, shared with the parties and the Board, reported to the OECD, and provided to relevant Australian government agencies and NCPs.
69. If requested by the parties, the Examiner can offer AusNCP good offices to the parties at any time during the follow-up phase.

Procedural review

70. Where either party considers that the Examiner has not acted in line with these procedures, they may request a procedural review within six weeks from receipt of the completed version of the final statement.
71. Requests can be made to the secretariat according to the contact information listed on the AusNCP website. The request must identify the final statement to be reviewed and what procedural irregularity occurred.
72. The secretariat will acknowledge receipt of a review request within five (5) working days and send a copy of the request to all parties to the case.
73. The AusNCP secretariat will notify the Board of a request for procedural review and call for the formation of a Review Committee (the Committee). The Committee will consist of three Board members (one government and two non-government, with the latter members to include a balance of business and civil society/union backgrounds to reflect the multi-stakeholder composition of the Board). Board members may volunteer themselves or their proxies to participate in the Committee. Where there is a surplus of volunteers, the Chair has the discretion to select from the volunteers retaining the composition of: one government, one non-government and one additional member with either a civil society or union background.
74. Appointments to the Committee are to be consistent with the Board's published conflicts of interest framework. If suitable representation cannot be drawn from the Board or proxies, then Board members may nominate one or more external candidates for the Committee. The external candidate/s must be agreed by majority of the Board. The name of any candidate/s agreed by majority of the Board will be provided to the parties for comment, and the Board may make changes at their discretion.
75. The Committee will be provided with relevant information to complete the procedural review.

- 75.1. The secretariat and the Examiner will provide written comments on the review request and any background information they consider relevant to the review.
- 75.2. Subject to any confidentiality considerations, all the above information will also be made available to the parties.
76. The Committee will investigate the review request to determine whether there are grounds for concern about the procedural matters raised. The Committee may make enquiries to inform their decision. To facilitate these inquiries, the Committee may share the request for review or seek submissions from any person involved in the original matter (including the parties). The Committee may also consult with other NCPs or the OECD Responsible Business Conduct Centre.
77. If the Committee determines that material procedural irregularities occurred, they will:
- 77.1. Acknowledge that there were procedural irregularities in the Examiner's handling of the complaint.
- 77.2. Return the decision to the Examiner or refer the decision to a different Examiner with instructions on how to rectify the procedural irregularity.
- 77.3. Make recommendations to the AusNCP secretariat and/or the Examiners to prevent the recurrence of such irregularities in the future.
- As the review is strictly procedural, the Committee will not examine the substance of any Examiner's decision and will not replace the Examiner's decision with their own decision.
78. If the decision is sent to an Examiner for reconsideration, the Examiner will re-open the complaint in accordance with the instructions of the Committee, correct the procedural irregularities and, if necessary, reconsider the final statement (where the procedural irregularities would have influenced the final statement). No further request for review of that action may be made.
79. The Committee will provide its draft public statement on the procedural review to the Examiner and both parties for comment prior to finalising.
80. The AusNCP secretariat will support the Committee in the conduct of its review and provide the Board with an embargoed copy of the finalised public statement prior to publication on the AusNCP website.

Timing

81. The following table provides timeframes for each stage of the case handling process. Timeframes are indicative of ideal scenarios and cases may take longer.

| Stage | Duration |
|---|------------------|
| Phase 1: Submission and Initial Assessment | 3 months |
| Phase 2: Good Offices | 6 months |
| Phase 3: Final statement | 3 months |
| TOTAL | 12 months |
| Phase 4: Follow up | 3 months |

82. Where delays are anticipated or ongoing, the Examiner will discuss the reason/s with the parties and consider options to suitably manage the delay. Where delays are significant, this will be noted on the AusNCP website.

Confidentiality, transparency and conflicts of interest

83. Transparency is one of the core criteria by which the AusNCP operates. At the same time, it is important for the parties to have confidence that information provided to the AusNCP will be treated sensitively. This information will not be released publicly by representatives of the AusNCP without consultation and consent, and will only be shared on a confidential basis with those who have a direct role in assisting the Examiner in considering the complaint such as members of the Board, service providers such as translators and mediators, other government officials and other NCPs.
84. Information provided by any party to a complaint will only be shared with the other party to the complaint with the consent of the party that provided the information. If a party does not agree to share information, the Examiner will assess whether this is reasonable in the circumstances and where possible, work with the relevant party to excise any sensitive information that may otherwise limit the sharing of the information.
85. Information that cannot be shared between the parties in some form will not be able to form part of the Examiner's consideration of the case.
86. Information shared between the parties or by the AusNCP should be kept confidential, including following the conclusion of the complaint, unless the providing party agrees to its disclosure, it is in the public domain, or this would be contrary to the provisions of a national law.
87. Parties should be aware that information and documents provided to the AusNCP will be subject to the operation of the *Freedom of Information Act 1982* (FOI Act) and could be released under

the provisions of that Act. The FOI Act sets out a process for ensuring the public's right to access documents held by government, but it does not prevent agencies from disclosing information outside that process.

88. Parties should also be aware that the Australian Parliament can seek the production of information and documents supplied to or created by the Treasury.
89. AusNCP Board members must disclose conflicts of interest relating to AusNCP complaints in accordance with the *Guidelines for disclosing interests and managing conflicts* annexed to the AusNCP Board terms of reference. The guidelines outline when and how AusNCP Board members' conflicts should be identified, assessed and managed, and helps ensure that Board activities, including advice to help manage AusNCP complaints, can withstand scrutiny, and are undertaken in a fair and unbiased way consistent with the OECD's 2003 advice on *Managing conflict of interest in the Public Service*.
90. Examiners must disclose conflicts of interest in accordance with the *Independent Examiner Conflicts of Interest Framework*. The framework outlines when and how Examiners' conflicts should be identified, assessed and managed. The framework helps ensure the Examiners' management of AusNCP complaints and other activities can withstand scrutiny, and are undertaken in a fair and unbiased way consistent with the OECD's advice on *Managing conflict of interest in the Public Service* (2003).

Withdrawal of cases

91. Notifiers may request to withdraw their case in writing to the AusNCP. If this occurs the Examiner will:
 - 91.1. consider whether there have been any concerns about reprisals or safety consistent with paragraph 9 including where appropriate by contacting the notifier or other relevant parties
 - 91.2. consult the enterprise
 - 91.3. where appropriate, close the case.
92. Withdrawn complaints will be publicly acknowledged through the publication of a final statement consistent with 'Final statement' section.

Transitional arrangements

93. These AusNCP complaint procedures come into effect for all complaints submitted to the AusNCP from the date of publication on this document.
94. Complaints submitted prior to the publication date of this document will be transitioned to these procedures at an appropriate point determined by the Examiner in consultation with the parties.

Glossary

AusNCP: The Australian National Contact Point for Responsible Business Conduct (AusNCP) has been established by the Australian Government as part of its legal obligations as an adherent to the [OECD Declaration on International Investment and Multinational Enterprises](#). The AusNCP is responsible for promoting awareness and uptake of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines). It also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines by serving as a non-judicial grievance mechanism.

The AusNCP consists of a secretariat, Independent Examiners, and a Governance and Advisory Board.

AusNCP secretariat: The secretariat is staffed by the Australian Government Treasury and provides coordination and support services to the Independent Examiners and the Board, including enabling procurement of professional services as required (such as formal mediation, conciliation and/or translation services and legal advice).

Complaint/ Case/ Specific Instance: A complaint concerning an enterprise's conduct in relation to the OECD Guidelines. The terms 'specific instance', 'complaint' and 'case' are used synonymously.

Core effectiveness criteria: A set of criteria that all NCPs seek to meet in order to function with an equivalent degree of effectiveness. The core effectiveness criteria are: visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the OECD Guidelines.

Due diligence: In a responsible business conduct context, this is the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. The OECD Guidelines recommend enterprises undertake risk-based due diligence and the OECD has developed a range of tools (Due Diligence Guidance documents) to provide practical guidance on how companies can undertake due diligence. Due diligence in the context of the OECD Guidelines is an outward-facing approach to risk – it assesses risk to people, the environment and society, rather than risk to the enterprise.

Enterprise: The multinational company or business entity against which the complaint is made.

Examination: The stage of a complaint that may occur if an AusNCP good offices offer is refused by the enterprise, the enterprise has not acted in good faith or the good offices phase has concluded without agreement. In this process, an Examiner considers whether the actions of an enterprise that are the subject of complaint were consistent with the OECD Guidelines and considers means to improve observance.

Final statement: A statement published on the AusNCP website which signals the end of a complaint. It can include information about the issues raised, the complaint process, the parties engagement in the process and their respective positions. Final statements can also contain the Examiner's views on whether an enterprise has breached the OECD Guidelines and may include recommendations to improve observance of the OECD Guidelines.

Good offices: Facilitated discussion services offered by the Independent Examiners and supported by the AusNCP, intended to assist the parties to resolve a complaint once it has been accepted by an Independent Examiner. Mediation or conciliation, whether formal or informal, may form part of the good offices stage.

Governance and Advisory Board (Board): The multi-stakeholder body supporting the AusNCP and Independent Examiners. The Board has representatives from the Australian Government, civil society, business and unions. The Board and its members are available to the Independent Examiners to

provide advice throughout the handling of complaints.⁴ Members of the Board may also conduct procedural reviews in accordance with these procedures.

Independent Examiner (Examiner): A person, independent of the Australian Government, the parties, the AusNCP Secretariat, the Board and other Examiners, who is contracted by the Commonwealth of Australia to manage complaints brought to the AusNCP about alleged non-observance of the OECD Guidelines.

Initial Assessment: A statement drafted by an Examiner that is published on the AusNCP website. It contains the examiner's decisions about whether the complaint should be accepted or rejected and progress to the next stage of the AusNCP process or be transferred to another NCP. This statement will also contain the Examiner's assessment of the issues raised in the complaint and whether they warrant further examination.

Good faith: In the context of engagement in the AusNCP process, good faith includes responding to the AusNCP in a timely fashion, acting consistent with the AusNCP complaint procedures including by maintaining confidentiality where appropriate, refraining from misrepresenting the issues and the process particularly in public communications, not threatening or taking reprisals against other parties or against the AusNCP itself, and genuinely engaging in the proceedings with a view to finding a Guidelines-compatible solution to the issues raised, including giving serious consideration to any offer of good offices made by or on behalf of the AusNCP.

National Contact Points for Responsible Business Conduct (NCP): NCPs are agencies established by governments to promote the OECD Guidelines and related due diligence guidance, and to handle complaints as a non-judicial grievance mechanism.

Notifier: The individual or entity who submits a complaint to the AusNCP. The notifier is usually directly or indirectly affected by the conduct that is the subject of the complaint, but may be any interested party able to supply the AusNCP with timely, accurate and adequate information to be able to progress the complaint.

OECD: Organisation for Economic Cooperation and Development

OECD Implementation Procedures: Procedural guidance and commentary regarding the 2023 OECD Guidelines.

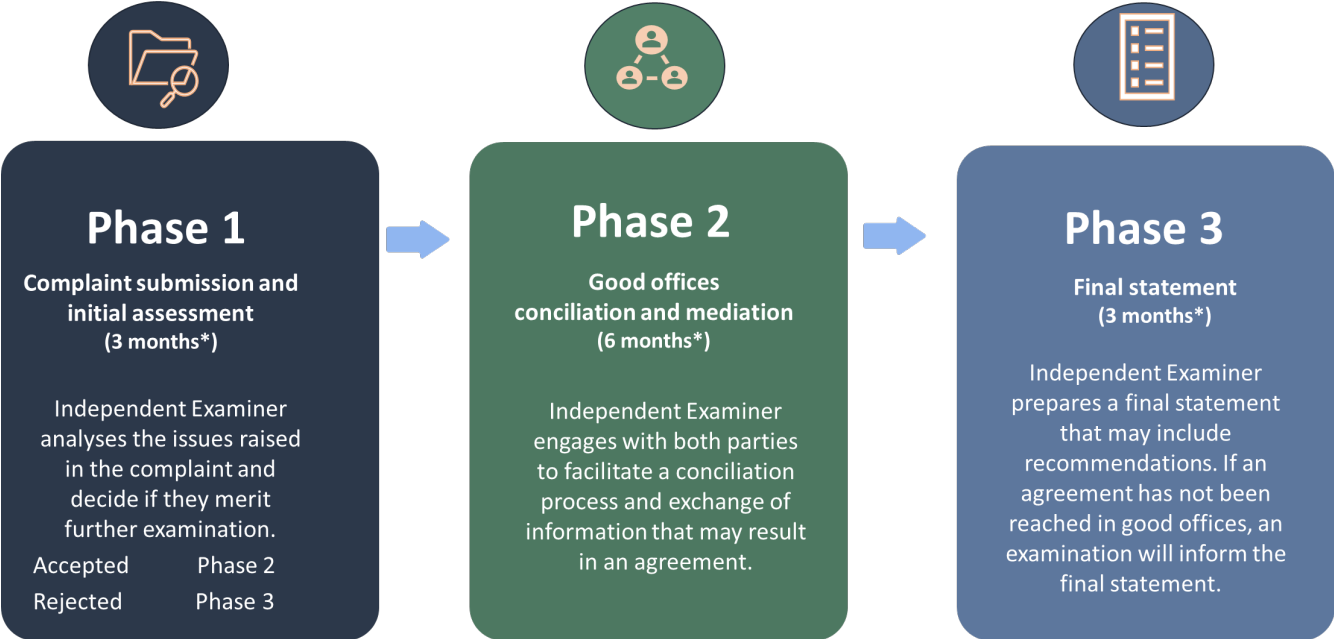
OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines): The OECD Guidelines are recommendations jointly addressed by governments (including the Australian Government, all OECD members and other adhering governments) to multinational enterprises. The recommendations articulate the actions these enterprises should take to enhance their contribution to sustainable development and address any adverse impacts on people, planet, and society that are associated with their business activities.

OECD Responsible Business Conduct Centre: Delivers the OECD's work on responsible business conduct and provides the secretariat to the Working Party on Responsible Business Conduct that includes representatives of all governments adhering to the OECD Guidelines.

Parties: The notifier/s and the enterprise/s. **Transfer statement:** A statement published on the AusNCP website which sets out an Examiner's decision to transfer the complaint to another NCP.

⁴ The Board Terms of Reference and membership is available at: Australian National Contact Point for Responsible Business Conduct, *AusNCP website*, (2023), <https://ausncp.gov.au/>.

Appendix A: Complaints process



Case follow up (3 months*)
Independent Examiner will follow up on cases to assess whether recommendations have been implemented.
Final statement species a timeframe for follow up of cases usually after 12 months

*All timeframes are indicative. Actual timing will depend on unique circumstances of each case.
❖ A procedural review is available on request.