



**Australian Government**  
**The Treasury**



**AusNCP**

Australian National Contact Point  
for Responsible Business Conduct

# AusNCP complaint procedures

Version: 9 April 2024

[ausncp.gov.au](https://ausncp.gov.au)

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## **About this document**

The Australian National Contact Point for Responsible Business Conduct (AusNCP) created this version (version 4.0) of the complaint procedures in April 2024.

Version 4.0 reflects changes to the Guidelines for Multinational Enterprises on Responsible Business Conduct, which were introduced by the Organisation for Economic Co-operation and Development (OECD) in June 2023.

This version replaces version 3.0, which AusNCP originally published in July 2022.

Please direct queries to the AusNCP secretariat via email at [secretariat@ausncp.gov.au](mailto:secretariat@ausncp.gov.au) or by phone on +61 2 6263 2224. Additional information is available at [www.ausncp.gov.au](http://www.ausncp.gov.au).

## **Transitional arrangements**

These AusNCP complaint procedures come into effect for all complaints submitted to AusNCP from 9 April 2024.

Complaints submitted before 9 April 2024 will be transitioned to these procedures at an appropriate point determined by an independent examiner in consultation with the parties.

# Contents

- About this document ..... ii
- Transitional arrangements..... ii
- Purpose of AusNCP complaint procedures..... 4
- Context..... 4
- AusNCP complaint procedures ..... 5
- Submitting a complaint ..... 6
- Independent examiners ..... 6
- Initial assessment..... 6
- Dispute resolution (good offices) ..... 9
- Examination ..... 10
- Final statement..... 11
- Complaint follow-up..... 13
- Timeframes for AusNCP complaint procedures..... 13
- Procedural review ..... 14
- Confidentiality, transparency and conflicts of interest..... 15
- Withdrawal of complaints ..... 16
- Glossary ..... 17
- Appendix A: Complaint process diagram..... 21
- Endnotes ..... 22

## Purpose of AusNCP complaint 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).<sup>1</sup>

An individual or entity (known as a [notifier](#)) can complain to the Australian National Contact Point for Responsible Business Conduct (AusNCP) about [enterprises](#) whose conduct is alleged to be inconsistent with the [OECD Guidelines](#).

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

## Context

### AusNCP role and responsibilities

AusNCP helps fulfil the Australian Government's obligations as an adherent to the OECD Declaration on International Investment and Multinational Enterprises.<sup>2</sup> This declaration, together with a set of other related OECD legal instruments, requires adherents to establish a [National Contact Point for Responsible Business Conduct](#) (NCP) to further the effectiveness of the OECD Guidelines. An NCP is an agency established by an adhering government to promote the OECD Guidelines and related due diligence guidance, and to handle [complaints](#) (also referred to as specific instances or cases) as a non-judicial grievance mechanism.

AusNCP is responsible for:

- promoting awareness and uptake of the OECD Guidelines
- contributing to the resolution of complaints about multinational enterprises not implementing the OECD Guidelines in specific instances, and
- 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 in line with the OECD Guidelines.

AusNCP is delivered by the Australian Treasury. AusNCP consists of three parts – a [secretariat](#) in Treasury that manages AusNCP and promotes the OECD Guidelines, [independent examiners](#) (examiners) contracted to Treasury to manage complaints against multinationals brought to AusNCP, and a multi-stakeholder [Governance and Advisory Board](#) (Board) that promotes the OECD Guidelines and provides expert advice to help manage complaints.

AusNCP is a non-judicial grievance mechanism delivered in accordance with [core effectiveness criteria](#) for National Contact Points set out in the OECD Guidelines, to be:

- 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.

Obeying domestic law is the first obligation of enterprises. The OECD Guidelines outline recommendations on responsible business conduct that may go beyond what enterprises are legally required to comply with. The recommendation from governments that enterprises observe the OECD Guidelines is distinct from matters of legal liability and enforcement. AusNCP focuses on enterprises' implementation of the OECD Guidelines.

A copy of the OECD Guidelines, including [implementation procedures](#) and associated commentary, is available in a range of languages on the [OECD website](#).<sup>3</sup>

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. There are also a range of [OECD Due Diligence Guidance documents](#)<sup>4</sup> that provide practical support to assist enterprises to avoid and address adverse impacts related to matters covered by the OECD 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. AusNCP helps resolve complaints about conduct by multinational enterprises alleged to be inconsistent with the OECD Guidelines. AusNCP addresses adverse impacts from multinational business activities in a way that is consistent with the OECD Guidelines.
2. AusNCP supports participation in its processes by culturally and linguistically diverse individuals or groups. This includes First Nations people, individuals with disabilities, and other people from groups or populations that may be at a heightened risk of becoming marginalised or vulnerable.
3. The secretariat and examiners will strive to sensitively facilitate equitable access and participation in the AusNCP complaint process. This includes aspects related to access to equal representation, language and literacy, cultural constraints, logistical or practical limitations.
  - 3.1. The examiner and AusNCP will take reasonable steps to ensure the AusNCP complaints process is accessible to all [parties](#), especially overseas notifiers. This may include using technology, translation services and engagement by the Australian Government's overseas missions, consistent with paragraphs 3 and 6. This applies to all phases of the AusNCP complaint process.
4. AusNCP will make best endeavours to respond to potential safety risks for notifiers and related parties across AusNCP's processes, for example as outlined in paragraphs 10 and 29.
5. A simplified diagram of AusNCP's complaint process is provided at Appendix A: Complaint process diagram.

## Submitting a complaint

6. Notifiers can submit their complaint using the form on the [AusNCP website](#).<sup>5</sup> If a notifier is unable to use the form, AusNCP will seek to provide reasonable alternative arrangements to ensure the process is accessible such as email, translation services, or connecting the notifier to a third party with relevant expertise for assistance with forming their complaint, consistent with paragraph 3. AusNCP will make reasonable arrangements to ensure accessibility for the duration of the complaint.
7. Complaints can be made to AusNCP about alleged non-compliance with the OECD Guidelines by:
  - 7.1. a multinational enterprise operating in Australia, or
  - 7.2. a multinational enterprise operating from Australia, even in a country that is not an adherent to the OECD Guidelines.
8. Examiners will seek to take a broad view of the definition of ‘multinational enterprise’ for the purposes of receiving complaints. Examiners may consider factors such as the enterprise’s corporate identity and scope of management or control in Australia.
9. If the complaint does not relate to an Australian multinational enterprise, the complaint should demonstrate a link to Australia.
10. In certain circumstances, such as where there are risks to the personal safety of the notifier and/or the threat or risk of reprisals, AusNCP will enable notifiers to anonymously file 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.
11. 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:
  - 11.1. where that party is the notifier, move to the [‘final statement’](#) stage, or
  - 11.2. where that party is the enterprise, move to the [‘examination’](#) stage.

## Independent examiners

12. Examiners are appointed by the secretariat to assess the substance and validity of complaints, offer and provide [dispute resolution](#) referred to as [good offices](#) in the OECD Guidelines. In appropriate cases, examiners conduct examinations, and write statements about the complaint for AusNCP in line with these procedures.
13. 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.
14. Examiners may choose to consult one another regarding a complaint, subject to appropriate conflict-of-interest checks.

## Initial assessment

15. The objective of the [initial assessment](#) stage is to determine whether a complaint should be accepted for dispute resolution, transferred to another NCP, or rejected.
16. The secretariat will allocate a complaint to an examiner for the initial assessment. 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:

- 16.1. availability
  - 16.2. expertise
  - 16.3. any actual, perceived or potential conflicts of interest, and
  - 16.4. any other relevant factors.
17. The notifier and the enterprise will be informed of the identity of the allocated examiner as soon as practicable.
  18. Receipt of a complaint will be acknowledged to the notifier within 5 working days.
  19. The existence of a complaint will be published on the AusNCP website within 10 working days of receipt. The entry on the AusNCP website will at least identify the country or countries and the sector to which the complaint relates and will be updated consistent with paragraph 29.
    - 19.1. The examiner has discretion to identify the country only, where they consider that disclosure of the sector would have the effect of identifying the enterprise.
  20. The secretariat and examiner will seek to obtain the information necessary for the examiner to conduct an initial assessment.
    - 20.1. Where a complaint does not contain the information necessary to conduct an initial assessment, 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. For more information about the AusNCP's ability to facilitate equitable access and participation in the complaints process, see the concepts and principles section.
    - 20.2. The secretariat will notify the enterprise about the complaint as per paragraph 28.
  21. The examiner may seek additional information from both parties at this stage. The examiner will facilitate the exchange of this information between the parties.
  22. AusNCP can consider complaints even if the same complaint is being considered in other proceedings. This includes judicial or non-judicial proceedings.<sup>6</sup>
  23. Complaints that concern a matter that 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.
    - 23.1. This process will determine whether an offer of dispute resolution by 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 AusNCP or another NCP.
  24. In line with the circumstances set out in the [OECD Implementation Procedures](#) (part of the OECD Guidelines), if AusNCP is not the correct NCP to handle the complaint, the examiner may seek to transfer the complaint to another NCP during the initial assessment stage.
  25. Where the notifier claims exceptional reasons for AusNCP to handle a complaint instead of another NCP, the examiner will consult the notifier and AusNCP Board in determining whether to transfer a complaint.
  26. The examiner will only transfer a complaint after consulting the Board, the notifier and the enterprise.



27. In some circumstances, it may be appropriate for AusNCP to work with another NCP throughout the handling of a complaint. 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.<sup>7</sup>
28. During the initial assessment stage, the enterprise named in the complaint will be notified and provided with a copy of the complaint submission.<sup>8</sup> The enterprise will be given an opportunity to provide a preliminary response to the complaint prior to the publication of a statement on the outcome of the initial assessment.
29. 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.
  - 29.1. 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.
30. Consistent with the OECD Implementation Procedures, in deciding whether to accept a complaint the examiner will determine whether the complaint is made in good faith and is related to the implementation of the OECD Guidelines. 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:
  - 30.1. the identity of the party concerned and its interest in the matter
  - 30.2. whether the issue is material and substantiated
  - 30.3. whether the enterprise is covered by the OECD Guidelines
  - 30.4. whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance
  - 30.5. the extent to which applicable law and/or parallel proceedings limit the ability of AusNCP to contribute to the resolution of the issue and/or the implementation of the OECD Guidelines, and
  - 30.6. whether consideration of the issue would contribute to the purposes and effectiveness of the OECD Guidelines.
31. 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 and the issues raised.
32. The examiner will draft a statement with the proposed outcome of the initial assessment to accept, reject or transfer the complaint. The statement will be an initial assessment statement 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.
  - 32.1. 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.
  - 32.2. 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.
33. If a complaint is accepted:

- 33.1. An initial assessment statement will be published on the AusNCP website.
- 33.2. 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.
- 33.3. The examiner will offer the parties the opportunity to enter into a dispute resolution process.
34. If a complaint is rejected, a final statement will be prepared and published in line with AusNCP complaint procedures. The examiner will consult with the parties and consider their views on whether the identity of the enterprise will be published.
35. 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.
36. Acceptance, rejection or transfer of a complaint is not an assessment of whether the enterprise's actions are consistent with the OECD Guidelines.

## Dispute resolution (good offices)

37. The objective of the dispute resolution stage is for an examiner to help resolve issues by facilitating an exchange of information between the parties. This exchange can include conciliation, formal mediation, or facilitated discussions with the aim of arriving at a mutually agreed resolution. It relies on parties acting in good faith.
38. The secretariat will allocate the complaint to an examiner for dispute resolution. In allocating an examiner, the secretariat will consider relevant factors such as:
  - 38.1. availability
  - 38.2. expertise, and
  - 38.3. any actual, perceived or potential conflicts of interest.
39. The notifier and the enterprise will be informed of the identity of the allocated examiner.
40. The examiner may facilitate dispute resolution directly, or delegate certain steps to a suitably qualified dispute resolution professional. In this instance, the dispute resolution professional will be engaged after the secretariat's consideration of the allocated examiner's availability and expertise and following an assessment of the dispute resolution professional's interests.
41. The dispute resolution process has two stages: preparation and proceedings. In the preparation stage the examiner engages each party separately or jointly to explain the process and options for discussion of the issues, and prepares a framework for handling any conciliation, mediation or facilitated discussions. The proceedings stage then seeks to resolve the issues through the agreed framework.
  - 41.1. In practice, it is expected that the dispute resolution process will differ from complaint to complaint, and the examiner will retain a flexible approach when distinguishing between the preparation and proceedings stages.
42. In consultation with the parties, the examiner will prepare a [discussion plan](#) to clarify the process and manage timeframes and expectations.

- 42.1. Plans may include each party's initial objectives, anticipated communication methods and confidentiality arrangements, including whether a formal confidentiality agreement is required.
- 42.2. Plans may vary in formality, such as an email or a structured document, and will be complaint-specific to account for each party's preferences and practical constraints.
- 42.3. In cases where a notifier's security would be compromised by direct participation in discussions, the examiner will seek to agree alternative arrangements that would allow the notifier to participate indirectly, consistent with paragraphs 4 and 10.
43. The examiner will seek each party's agreement to proceed with discussions and, if both parties agree, the discussions will commence.
44. At any stage of dispute resolution either party may decide not to continue, in which case the AusNCP website will state that dispute resolution has been declined and a final statement will be produced by an examiner.
45. If at any stage of dispute resolution:
  - 45.1. The notifier does not agree to continue, the examiner will prepare a final statement summarising the process followed to-date. The examiner 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. The final statement may include information on why the notifier has chosen not to continue.
  - 45.2. 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.
46. The examiner will review the progress of proceedings at regular intervals. If the examiner considers dispute resolution is no longer productive after consultation with the parties, the complaint will proceed to final statement which will include an examination of the issues raised.
47. The examiner may offer the parties the option of putting the complaint on hold if:
  - 47.1. the examiner considers the complaint cannot be progressed under the NCP process at the current time, or
  - 47.2. the parties jointly inform the examiner that they wish to pursue alternative dispute resolution processes outside the NCP process. This will be documented in the final statement.
48. Where a complaint is put on hold, the examiner will request regular updates to determine whether the complaint needs to be reopened. The AusNCP website will be updated as appropriate.
49. If the notifier informs AusNCP in writing that further engagement from AusNCP will not be required, the examiner will treat the complaint as having been withdrawn (see Withdrawal of complaints). This will be documented in the final statement.

## Examination

50. The objective of the examination stage is for an examiner to:
  - 50.1. consider whether the enterprise's actions raised in a complaint were consistent with the OECD Guidelines, and

- 50.2. identify means by which to improve observance of the OECD Guidelines, where appropriate.
51. An examination will occur if:
- 51.1. the enterprise has refused AusNCP's offer of dispute resolution
  - 51.2. the dispute resolution stage has concluded without reaching a mutually agreed resolution, unless the examiner determines there was a lack of good faith engagement in dispute resolution by the notifier, or
  - 51.3. The enterprise has not acted in good faith in the complaint process in the circumstances described in paragraph 11.
52. 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.
53. The examiner will review the initial assessment statement and any further information received from the parties or other relevant sources.
54. The examiner may seek out additional information and advice to inform the examination, including from other stakeholders such as relevant government agencies, non-government organisations, diplomatic missions, other examiners, other NCPs, business associations and independent experts.
55. In a final statement, the examiner will incorporate:
- 55.1. the examination's results
  - 55.2. make recommendations where appropriate, and
  - 55.3. if necessary, provide an appropriate timeframe for follow-up.

## Final statement

56. At the conclusion of the complaint process AusNCP will always publish a final statement.
57. At a minimum, the final statement will account for:
- 57.1. the need to protect sensitive business and other stakeholder information
  - 57.2. the parties' respective positions as appropriate
  - 57.3. the steps taken by AusNCP
  - 57.4. the parties' engagement in the process, and will include the issues raised.
58. If AusNCP does not accept a complaint at initial assessment, the final statement will include the initial assessment statement and the reasons why the complaint was not accepted.
59. If agreement is reached by parties during an AusNCP dispute resolution, the final statement:
- 59.1. will state when agreement was reached and, if the parties consent, the results of the agreement, and
  - 59.2. may include recommendations on the implementation of the OECD Guidelines as appropriate (and if appropriate, a reasonable timeframe for follow-up).
60. Where an examination has been conducted, the final statement:

- 60.1. will include the reasons why the examination was warranted
- 60.2. where relevant, should also include recommendations on the implementation of the OECD Guidelines, and if appropriate, a reasonable timeframe for follow-up
- 60.3. may include the reasons why an agreement could not be reached, and
- 60.4. may include the examiner's views on whether the enterprise observed the OECD Guidelines and whether the parties engaged in good faith throughout the process.
61. Where appropriate, the final statement may inform other government agencies about matters in the final statement relevant to their responsibilities, including instances of inappropriate conduct.
62. To prepare a final statement, in addition to reviewing materials provided by the parties, the examiner may seek out:
  - 62.1. publicly available information
  - 62.2. information gathered through the dispute resolution phase (if the parties consent),
  - 62.3. and information gathered during an examination.
63. To prepare a final statement, 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.
64. 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.
65. The AusNCP may initiate or resume the dispute resolution process at any point during the drafting of a final statement if it is considered useful and is agreed by the parties.
66. Once the examiner has prepared their final statement, the Board will be provided with a draft for review and advice. Where necessary and appropriate, Board members may request additional information over a reasonable time period to inform their review of the final statement. The examiner is not required to make changes in response to the views of the Board but may do so at their discretion.
67. A draft final statement will then be provided to both parties for comment. The examiner may make changes at their discretion.
68. The completed final statement will be:
  - 68.1. provided to parties and the Board
  - 68.2. published on the AusNCP website, and
  - 68.3. reported to the OECD, and provided to relevant Australian government agencies and NCPs.
69. 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.

## Complaint follow-up

70. The examiner preparing a final statement will specify a timeframe for a follow-up on the complaint, 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 AusNCP is warranted, including where appropriate, an offer of dispute resolution.
71. In these cases, the secretariat will decide on the allocation of an examiner for the follow-up process, taking into account the examiner's:
  - 71.1. availability
  - 71.2. expertise
  - 71.3. any actual, perceived or potential conflicts-of-interest and,
  - 71.4. any other relevant factors.
72. 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 if necessary, include consultation with third parties. This consultation may include the examiner responsible for the final statement, if different.
73. 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. This includes 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.
  - 73.1. Consistent with paragraph 61, 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 secretariat.
74. 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.
75. The draft follow-up statement will then be provided to both parties for comment. The examiner may make changes at their discretion.
76. The follow-up statement will be:
  - 76.1. published on the AusNCP website
  - 76.2. shared with the parties and the Board
  - 76.3. reported to the OECD and,
  - 76.4. provided to relevant Australian Government agencies and NCPs.
77. If requested by the parties, the examiner can offer AusNCP dispute resolution to the parties at any time during the follow-up phase.

## Timeframes for AusNCP complaint procedures

78. The following table provides timeframes for each stage of the complaint handling process. Note timeframes are indicative of ideal scenarios and complaints may take longer.

**Table 1: Indicative timeframes for the complaint process**

<b>Stage</b>	<b>Duration</b>
Phase 1: Submission and initial assessment	3 months
Phase 2: Good offices (dispute resolution)	6 months
Phase 3: Final statement	3 months
<b>TOTAL</b>	<b>12 months</b>
Phase 4: Follow up	3 months

79. Where delays are anticipated or ongoing, the independent examiner will discuss the reasons with the parties and consider options to suitably manage the delay. Significant delays will be noted on the AusNCP website.<sup>9</sup>

## Procedural review

80. Where either party considers that the examiner has not acted in line with these procedures, they may request a procedural review within 6 weeks from receipt of the completed version of the final statement.
81. 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.
82. The secretariat will acknowledge receipt of a review request within 5 working days and send a copy of the request to all parties to the complaint.
83. The secretariat will notify the Board of a request for procedural review and call for the formation of a Board Review Committee (the Committee). The Committee will consist of 3 Board members (one government and 2 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 Board 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.
84. 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.
85. The Committee will be provided with relevant information to complete the procedural review.
- 85.1. The secretariat and the examiner will provide written comments on the review request and any background information they consider relevant to the review.

- 85.2. Subject to any confidentiality considerations, the information provided will be made available to the parties.
- 85.3. The Committee will investigate the review request to determine whether there are grounds for concern about the procedural matters raised. The Committee may make inquiries 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.
86. If the Committee determines that material procedural irregularities occurred, they will:
- 86.1. Acknowledge that there were procedural irregularities in the examiner's handling of the complaint.
- 86.2. Return the decision to the examiner or refer the decision to a different examiner with instructions on how to rectify the procedural irregularity.
- 86.3. Make recommendations to the secretariat and/or the examiners to prevent the recurrence of such irregularities in the future.
87. 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.
88. If the decision is sent to an examiner for reconsideration, the examiner will:
- 88.1. re-open the complaint in accordance with the instructions of the Committee
- 88.2. correct the procedural irregularities and,
- 88.3. if necessary, reconsider the final statement (where the procedural irregularities would have influenced the final statement)
- 88.4. no further request for review of that action may be made.
89. The Committee will provide its draft public statement on the procedural review to the examiner and both parties for comment prior to finalising.
90. The 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.

## Confidentiality, transparency and conflicts of interest

91. Transparency is one of the core criteria by which AusNCP operates. At the same time, it is important for the parties to have confidence that information provided to AusNCP will be treated sensitively. This information will not be released publicly by representatives of AusNCP without consultation and consent. It 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.
92. 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.



93. 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 complaint.
94. Information shared between the parties or by AusNCP should be kept confidential, including following the conclusion of the complaint, unless:
  - 94.1. the providing party agrees to its disclosure
  - 94.2. it is in the public domain, or
  - 94.3. this would be contrary to the provisions of a national law.
95. Parties should be aware that information and documents provided to 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 outlines a number of [exemptions](#)<sup>10</sup> to ensure sensitive information is properly protected. Please note that these exemptions are determined on a case-by-case basis, depending on the type of information sought. 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.
96. Parties should also be aware that the Australian Parliament can seek the production of information and documents supplied to or created by the Treasury.
97. 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. These guidelines outline when and how AusNCP Board members' conflicts should be identified, assessed and managed. The guidelines help ensure that Board activities, including advice to help manage AusNCP complaints, can:
  - 97.1. withstand scrutiny, and
  - 97.2. are undertaken in a fair, and
  - 97.3. unbiased way consistent with the OECD's 2003 advice on *Managing conflict of interest in the Public Service*.
98. Examiners must disclose conflicts of interest in accordance with the *Independent Examiner Conflicts of Interest Framework*. This framework outlines when and how examiners' conflicts should be identified, assessed and managed. The framework helps ensure 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 2003 advice in *Managing conflict of interest in the Public Service*.

## Withdrawal of complaints

99. Notifiers may request to withdraw their case in writing to AusNCP. If this occurs, the examiner will:
  - 99.1. consider whether there have been any concerns about reprisals or safety consistent with paragraph 10, including where appropriate by contacting the notifier or other relevant parties
  - 99.2. consult the enterprise, and
  - 99.3. where appropriate, close the complaint.
100. Withdrawn complaints will be publicly acknowledged on the AusNCP website through the publication of a final statement consistent with the 'Final statement' section.

## Glossary

<p><b>AusNCP Governance and Advisory Board (the Board)</b></p>	<p>A multi-stakeholder body that supports AusNCP and independent examiners.</p> <p>The Board has representatives from the Australian Government, civil society, business and unions.</p> <p>The Board and its members are available to the independent examiners to provide advice throughout the handling of complaints.</p> <p>Members of the Board may also conduct procedural reviews in accordance with this document.</p> <p>The Board terms of reference and membership are available on the <a href="#">AusNCP website</a>.<sup>11</sup></p>
<p><b>AusNCP secretariat (the secretariat)</b></p>	<p>The secretariat is staffed by the Australian Treasury and provides coordination and support services to the independent examiners and the Board.</p> <p>The secretariat procures professional services as required, such as formal mediation, conciliation, translation services and legal advice.</p>
<p><b>complaint/case/specific instance</b></p>	<p>A complaint about an enterprise’s conduct relating to the OECD Guidelines.</p> <p>AusNCP uses the terms ‘specific instance’, ‘complaint’ and ‘case’ interchangeably.</p>
<p><b>conduct</b></p>	<p>May include acts, omissions, responsibilities or decisions.</p>
<p><b>core effectiveness criteria</b></p>	<p>A set of criteria outlined in the OECD Guidelines<sup>12</sup> that all NCPs seek to meet to function with an equivalent degree of effectiveness.</p> <p>The core effectiveness criteria are:</p> <ul style="list-style-type: none"> <li>• visible</li> <li>• accessible</li> <li>• transparent</li> <li>• accountable</li> <li>• impartial and equitable</li> <li>• predictable</li> <li>• compatible with the OECD Guidelines.</li> </ul>
<p><b>due diligence</b></p>	<p>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, instead of risk to the enterprise.</p> <p>Due diligence is how companies can identify, prevent, mitigate and account for how they address their actual and potential adverse</p>

	<p>impacts as an integral part of business decision-making and risk-management systems.</p> <p>The OECD Guidelines recommend enterprises undertake risk-based due diligence.</p> <p>The OECD Due Diligence Guidance for Responsible Business Conduct explains how companies can undertake due diligence.</p> <p>The OECD has developed a <a href="#">range of sector-specific due diligence guidance</a><sup>13</sup></p>
<b>discussion plan</b>	Discussion plans are flexible and tailored for a specific complaint.
<b>dispute resolution</b>	<p>Facilitated discussion services offered by the independent examiners and supported by AusNCP, intended to assist the parties to resolve a complaint once it has been accepted by an independent examiner.</p> <p>Mediation or conciliation, whether formal or informal, may form part of the dispute resolution stage.</p> <p>See ‘good offices’ definition for more information. This dispute resolution process is described as ‘good offices’ in the OECD Guidelines.</p>
<b>enterprise</b>	The multinational company or business entity against which the complaint is made.
<b>examination</b>	<p>The stage of a complaint that may occur if an AusNCP dispute resolution offer is refused by the enterprise, the enterprise has not acted in good faith or the dispute resolution phase has concluded without agreement.</p> <p>In this process, an independent examiner considers whether the actions of an enterprise that are the subject of the complaint were consistent with the OECD Guidelines. ‘Considers’ means to improve observance.</p>
<b>final statement</b>	<p>A statement published on the AusNCP website that signals the end of a complaint.</p> <p>A final statement can include information about the issues raised, the complaint process, parties’ engagement in the process and their respective positions.</p> <p>Final statements can also contain the independent examiner’s views on whether an enterprise has breached the OECD Guidelines and may include recommendations to improve observance of the OECD Guidelines.</p>
<b>follow-up statement</b>	Statement published on the AusNCP website after the final statement, following up on:

	<ul style="list-style-type: none"> <li>• the progress of the implementation of recommendations and,</li> <li>• the progress of parties and issues arising from the final statement.</li> </ul>
<b>good faith</b>	<p>In the context of engagement in AusNCP process, good faith includes:</p> <ul style="list-style-type: none"> <li>• responding to AusNCP in a timely fashion</li> <li>• acting consistently with AusNCP complaint procedures, including by: <ul style="list-style-type: none"> <li>– maintaining confidentiality where appropriate</li> <li>– refraining from misrepresenting the issues and the process, particularly in public communications</li> <li>– not threatening or taking reprisals against other parties or against AusNCP itself, and</li> <li>– genuinely engaging in the proceedings with a view to finding an OECD Guideline-compatible solution to the issues raised. This includes giving serious consideration to any offer of dispute resolution made by (or on behalf of) AusNCP.</li> </ul> </li> </ul>
<b>good offices</b>	<p>The terminology used in the OECD Guidelines Implementation Procedures to describe the dispute resolution process. This process includes offering a platform for dialogue between the parties to assist with the resolution of the complaint.</p> <p>See ‘dispute resolution’ definition for more information.</p>
<b>independent examiner</b>	<p>An appropriately qualified person who is contracted by the Commonwealth of Australia to manage complaints brought to AusNCP under the OECD Guidelines, help promote the OECD Guidelines and AusNCP, and advise on improving AusNCP.</p> <p>Where the secretariat appoints an independent examiner to manage a complaint about alleged non-observance of the OECD Guidelines, the appointed independent examiner is independent of the parties.</p> <p>In handling complaints, independent examiners exercise their judgement impartially and without bias; independent of the interests of others.</p> <p>These procedures refer to the independent examiner as an ‘examiner.’</p>
<b>initial assessment</b>	<p>A statement drafted by an independent examiner that is published on the AusNCP website.</p> <p>Initial assessments contain the independent examiner’s decisions about whether the complaint should be:</p> <ul style="list-style-type: none"> <li>• accepted, or</li> <li>• rejected and progressed to the next stage of the AusNCP process, or</li> <li>• transferred to another NCP.</li> </ul>

	The initial assessment contains the independent examiner’s assessment of the issues raised in the complaint and whether the issues warrant further examination.
<b>material and substantiated</b>	<p>‘Material’ will be interpreted to mean that the issues are plausible and related to the application of the OECD Guidelines.</p> <p>‘Substantiated’ will be interpreted to mean that there is a plausible link between the enterprise and the issues raised.</p>
<b>National Contact Points for Responsible Business Conduct (NCP)</b>	Agencies established by governments to promote the OECD Guidelines and related due diligence guidance, and to handle complaints as a non-judicial grievance mechanism.
<b>notifier</b>	<p>The individual or entity that submits a complaint to AusNCP.</p> <p>The notifier is usually directly or indirectly affected by the conduct that is the subject of the complaint.</p> <p>Alternatively, the notifier may be any interested party able to supply AusNCP with timely, accurate and adequate information to be able to progress the complaint.</p>
<b>OECD</b>	Organisation of Economic Co-operation and Development
<b>OECD implementation procedures</b>	Procedural guidance and commentary regarding the 2023 OECD Guidelines.
<b>OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines)</b>	<p>Recommendations jointly addressed to multinational enterprises from governments – including the Australian Government, all OECD members and other adhering governments.</p> <p>The recommendations explain the actions enterprises should take to:</p> <ul style="list-style-type: none"> <li>• enhance their contribution to sustainable development, and</li> <li>• address any adverse impacts on people, planet and society that are associated with their business activities.</li> </ul> <p>The OECD Guidelines are available on the <a href="#">OECD website</a>.<sup>14</sup></p>
<b>OECD Responsible Business Conduct Centre</b>	The OECD Responsible Business Conduct Centre is the secretariat to the Working Party on Responsible Business Conduct, which includes representatives of all governments adhering to the OECD Guidelines.
<b>parties</b>	The notifier and the enterprise.
<b>transfer statement</b>	A statement published on the AusNCP website that sets out an independent examiner’s decision to transfer the complaint to another NCP.

# Appendix A: Complaint process diagram



\* A procedural review may be requested within six weeks from receipt of completed final statement.

## Endnotes

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- <sup>1</sup> OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, <https://doi.org/10.1787/81f92357-en>, accessed December 2023.
- <sup>2</sup> OECD, OECD Legal Instruments, *Declaration on International Investment and Multinational Enterprises*, [legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0144), accessed December 2023.
- <sup>3</sup> OECD, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, <https://mneguidelines.oecd.org/mneguidelines/>, 2023, accessed December 2023.
- <sup>4</sup> OECD, OECD Due Diligence Guidance for Responsible Business Conduct, <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>, 2023, accessed December 2023.
- <sup>5</sup> AusNCP, Submit a Complaint, <https://ausncp.gov.au/complaints/submit-complaint>, 2023, accessed 2023.
- <sup>6</sup> OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, paragraph 35 ‘Parallel proceedings’, <https://doi.org/10.1787/81f92357-en>, accessed December 2023.
- <sup>7</sup> *Ibid*, above n 1, Part II, Coordination between NCPs in Specific Instances, paragraphs 29 – 32 for more information, <https://doi.org/10.1787/81f92357-en>, accessed December 2023.
- <sup>8</sup> Consistent with confidentiality requirements in paragraph 85.
- <sup>9</sup> AusNCP, AusNCP website, <https://ausncp.gov.au/>, 2023, accessed December 2023.
- <sup>10</sup> Office of the Australian Information Commissioner, Exemptions and conditional exemptions under the Freedom of Information Act 1982, <https://www.oaic.gov.au/freedom-of-information/>, 2023, accessed December 2023.
- <sup>11</sup> AusNCP, Governance and Advisory Board – terms of reference, <https://ausncp.gov.au/responsible-business-conduct/governance-and-advisory-board>, 2023, accessed December 2023.
- <sup>12</sup> OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, above n 1, page 58, paragraph I, accessed December 2023.
- <sup>13</sup> OECD, OECD Due Diligence Guidance for Responsible Business Conduct, above n 4.
- <sup>14</sup> OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, above n 1.