

# *OECD Guidelines – a presentation for ACFID members*

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# Session outline

1. The basics – what are the OECD Guidelines and why should you care?
2. Some further detail
3. AusNCP – what is it and how does it work?
4. Questions and Answers

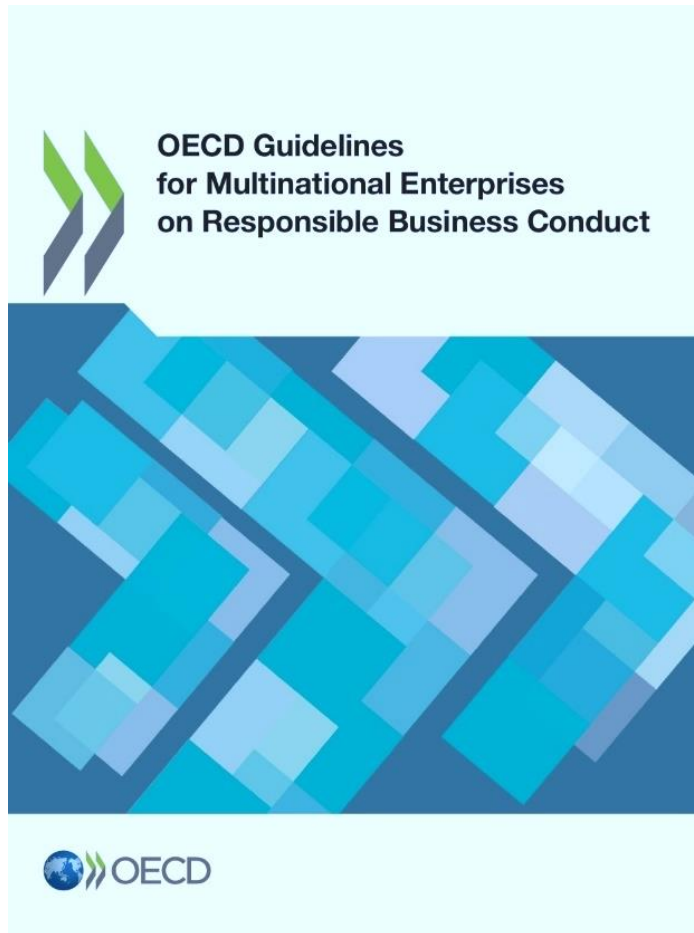
# 1. The basics



# OECD Guidelines – What are they?

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

**Part I = OECD Guidelines**



- Internationally agreed standards on responsible business conduct...
- ...for ‘multinational enterprises’ operating in or from adhering countries
- Adhering countries (incl Australia) have binding obligation to have a **complaints process** (the AusNCP)

# What do the OECD Guidelines cover?



Disclosure



Environment



Science  
Technology and  
Innovation



Human  
Rights



Combatting Bribery  
and Other Forms of  
Corruption



Competition



Employment  
and Industrial  
Relations



Consumer  
Interests

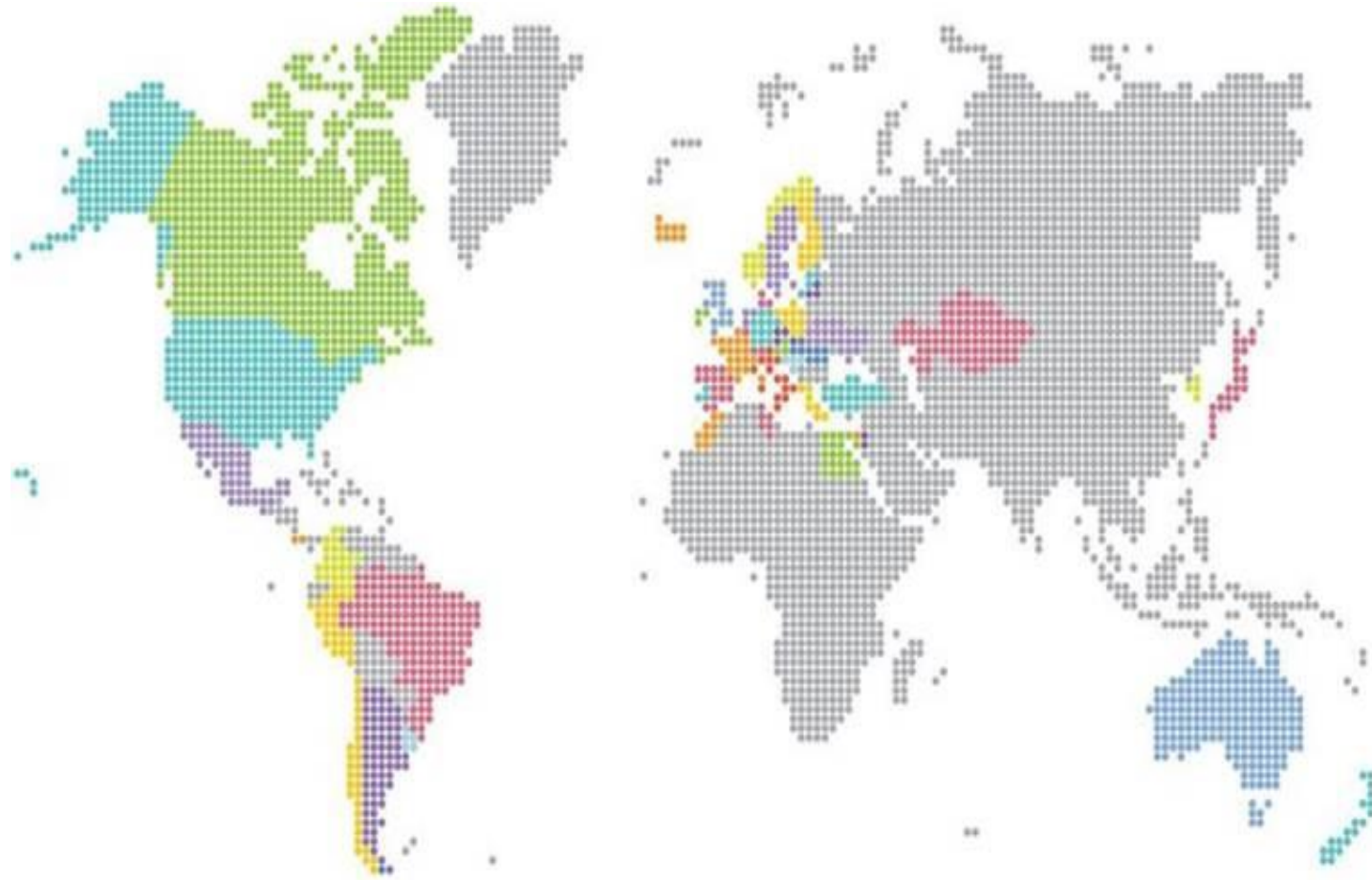


Taxation

# Why?



# To whom do they apply?



*“Multinational enterprises operating from, or in adherent countries”*

# Adherent countries

- All 38 OECD countries

Plus

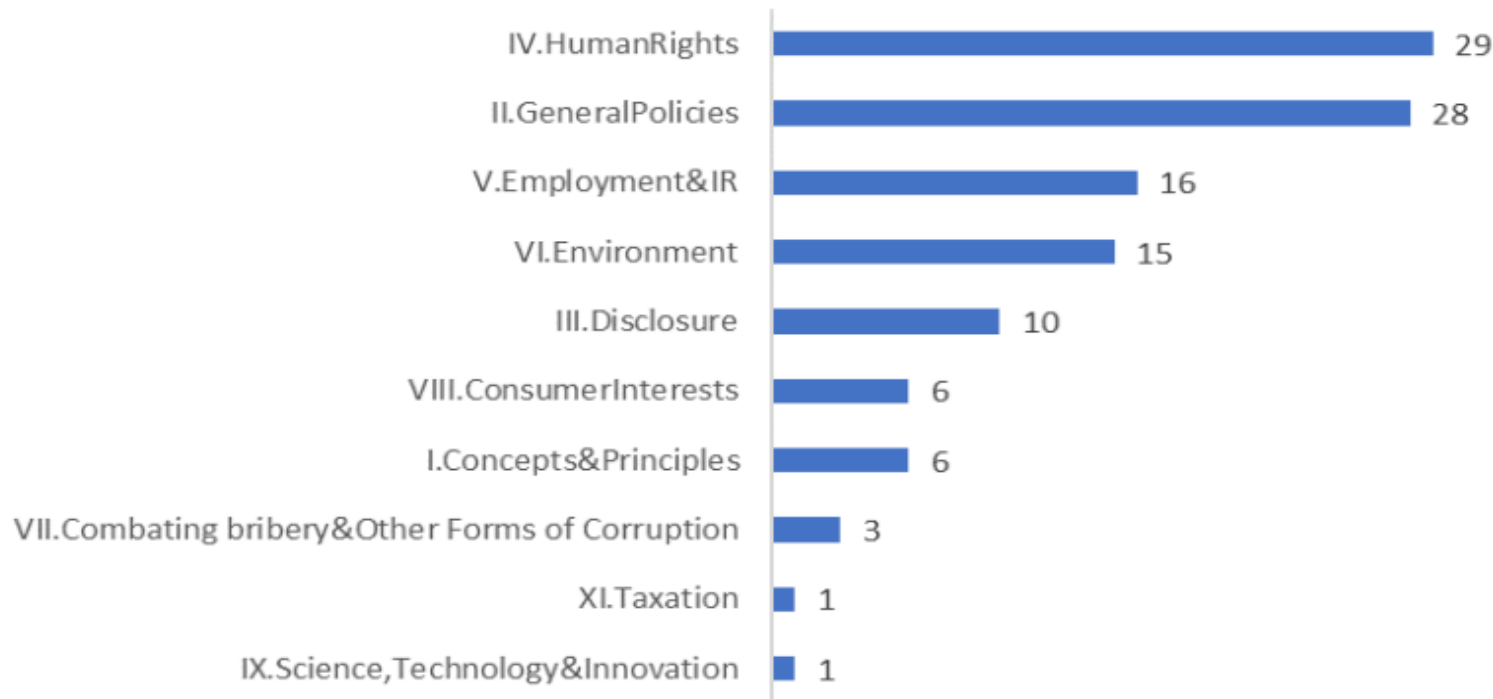
- 13 non-OECD adhering countries
  - Argentina (1997)
  - Brazil (1997)
  - Bulgaria (2022)
  - Croatia (2019)
  - Egypt (2007)
  - Jordan (2013)
  - Kazakhstan (2017)
  - Morocco (2009)
  - Peru (2008)
  - Romania (2005)
  - Tunisia (2012)
  - Ukraine (2017)
  - Uruguay (2021)





# What sorts of matters commonly arise under the OECD Guidelines?

Figure 1.11. Count of specific instances by Guidelines chapter



Note: N=55. Data are not mutually exclusive as one specific instance can reference multiple chapters.  
Source: Source: NCP Annual Reporting Questionnaire (2023)

# Global complaints by sector 2023

Figure 1.10. Count of specific instances submitted in 2023 by industry sector



Note: N=51

Source: NCP Annual Reporting Questionnaire (2023)

# How is this relevant for you and your partners?

- Refer to the OECD Guidelines in advocating for responsible business conduct



- Bring a complaint against an MNE to the AusNCP



- Could the OECD Guidelines apply to your organisation?!



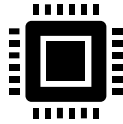
## 2. Some further detail



# 2023 update OECD Guidelines



Recommendations for enterprises to align with internationally agreed goals on **climate change and biodiversity**



Introduction of due diligence expectations on the development, financing, sale, licensing, trade and use of **technology, including gathering and using data**



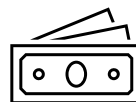
Recommendations on how enterprises are expected to conduct due diligence on impacts and business relationships related to the **use of their products and services**



Better protection for **at-risk persons and groups** including those who raise concerns regarding the conduct of businesses



Updated recommendations on **disclosure of responsible business conduct information**



Expanded due diligence recommendations to **all forms of corruption**



Recommendations for enterprises to ensure **lobbying activities** are consistent with the Guidelines



Strengthened procedures to ensure the visibility, effectiveness, and functional equivalence of **National Contact Points on Responsible Business Conduct**

# Human rights chapter

*(Added in 2011, updated 2023)*

## IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a publicly available policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

**Expectations** by Govts that enterprises will:

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

# Environment chapter

## Chapter VI. Environment

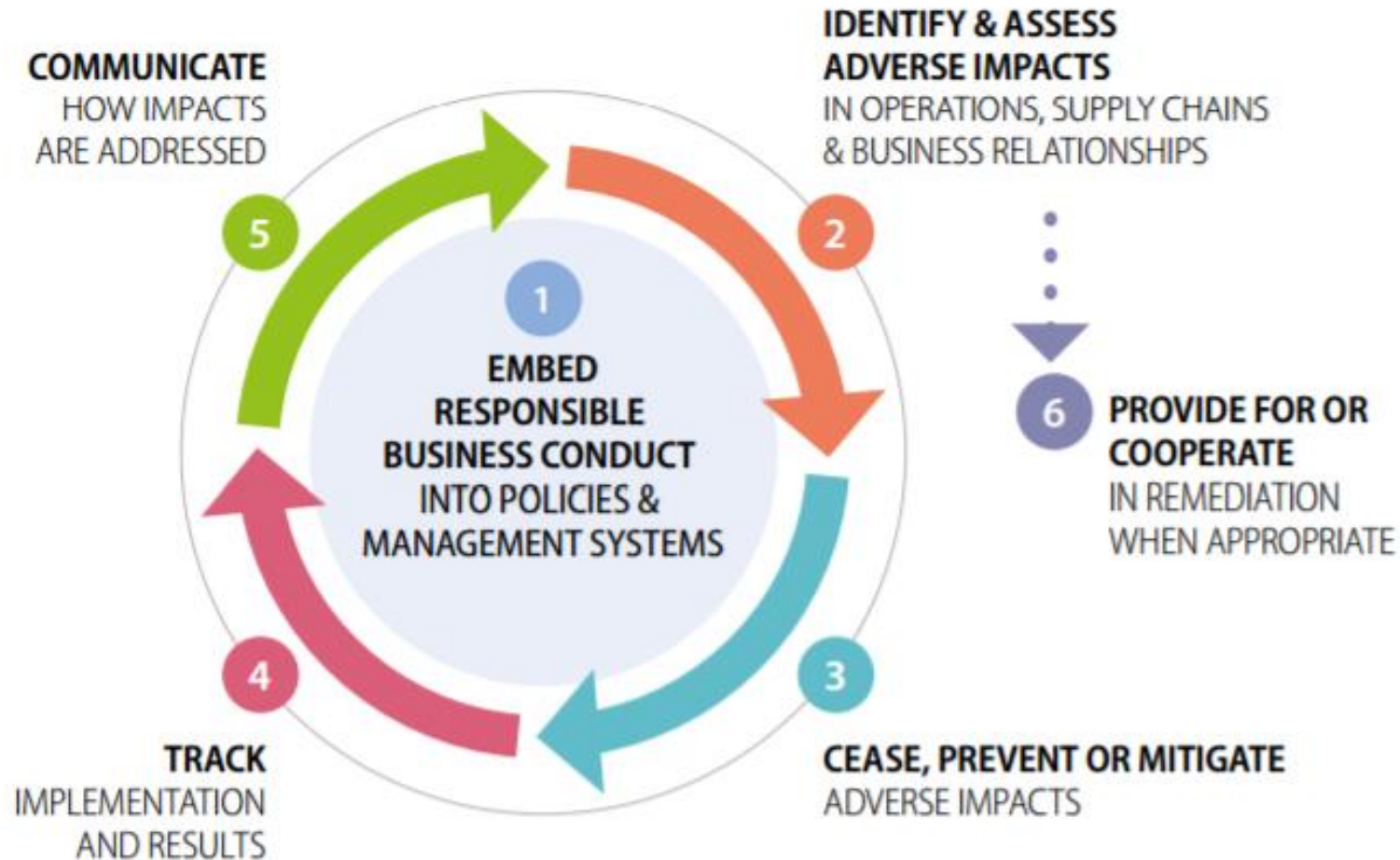
Enterprises play a key role in advancing sustainable economies and can contribute to delivering an effective and progressive response to global, regional and local environmental challenges, including the urgent threat of climate change. Within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, enterprises should conduct their activities in a manner that takes due account of the need to protect the environment, and in turn workers, communities and society more broadly, avoids and addresses adverse environmental impacts and contributes to the wider goal of sustainable development. Enterprises can be involved in a range of adverse environmental impacts. These include, among others:

- a) climate change;
- b) biodiversity loss;
- c) degradation of land, marine and freshwater ecosystems;
- d) deforestation;
- e) air, water and soil pollution;
- f) mismanagement of waste, including hazardous substances

Enterprises should:

1. Have a system of appropriate **environmental management** over their full life cycle, including by carrying out **risk-based due diligence for adverse environmental impacts**
2. Conduct meaningful **engagement with relevant stakeholders**
3. **Precautionary approach to prevent/minimise** threats of serious or irreversible damage to the environment
4. Maintain **contingency plans** for preventing, mitigating, and controlling serious environmental and health damage
5. **Continuously improve** environmental performance
6. **Train workers** in environmental, health and safety matters
7. Contribute to the development of **environmentally responsible** and economically efficient **public policy**

# OECD Due Diligence wheel





# OECD sectoral guidance on due diligence

 <p>OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT</p> <p>OECD</p>	 <p>RESPONSIBLE BUSINESS CONDUCT</p> <p>Due Diligence for Responsible Corporate Lending and Securities Underwriting</p> <p>Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises</p> <p>OECD</p>	 <p>OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector</p> <p>OECD</p>	 <p>OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector</p> <p>OECD</p>
<p><a href="#">General</a></p>	<p><a href="#">Lenders</a></p>	<p><a href="#">Extractives</a></p>	<p><a href="#">Textiles &amp; Footwear</a></p>
 <p>RESPONSIBLE BUSINESS CONDUCT</p> <p>Responsible business conduct for institutional investors</p> <p>Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises</p> <p>OECD</p>	 <p>OECD-FAO Guidance for Responsible Agricultural Supply Chains</p> <p>OECD</p>	 <p>OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas</p> <p>THIRD EDITION</p> <p>OECD</p>	 <p>G20/OECD Principles of Corporate Governance</p> <p>OECD</p>
<p><a href="#">Investors</a></p>	<p><a href="#">Agriculture</a></p>	<p><a href="#">Mining</a></p>	<p><a href="#">Corp. Governance</a></p>

# 3. The AusNCP



# National Contact Points (NCPs)

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

## ***Part II = Implementation Procedures***

- Since 2000, Governments required to have a National Contact Point ('NCP') for implementation
- Primary roles:
  1. Act as non-judicial grievance mechanism to resolve “specific instances” = **complaints/cases**
  2. **Promote** the OECD Guidelines
  3. Coordinate with other Gov agencies and support efforts by Gov to develop, implement & foster **coherence of policies** to promote RBC.

# Core Criteria for NCPs

- NCPs must operate in a manner that is:
  - Visible
  - Accessible
  - Transparent
  - Accountable
  - Impartial and equitable
  - Predictable
  - Compatible with the OECD Guidelines.

# Australian NCP - unique structure



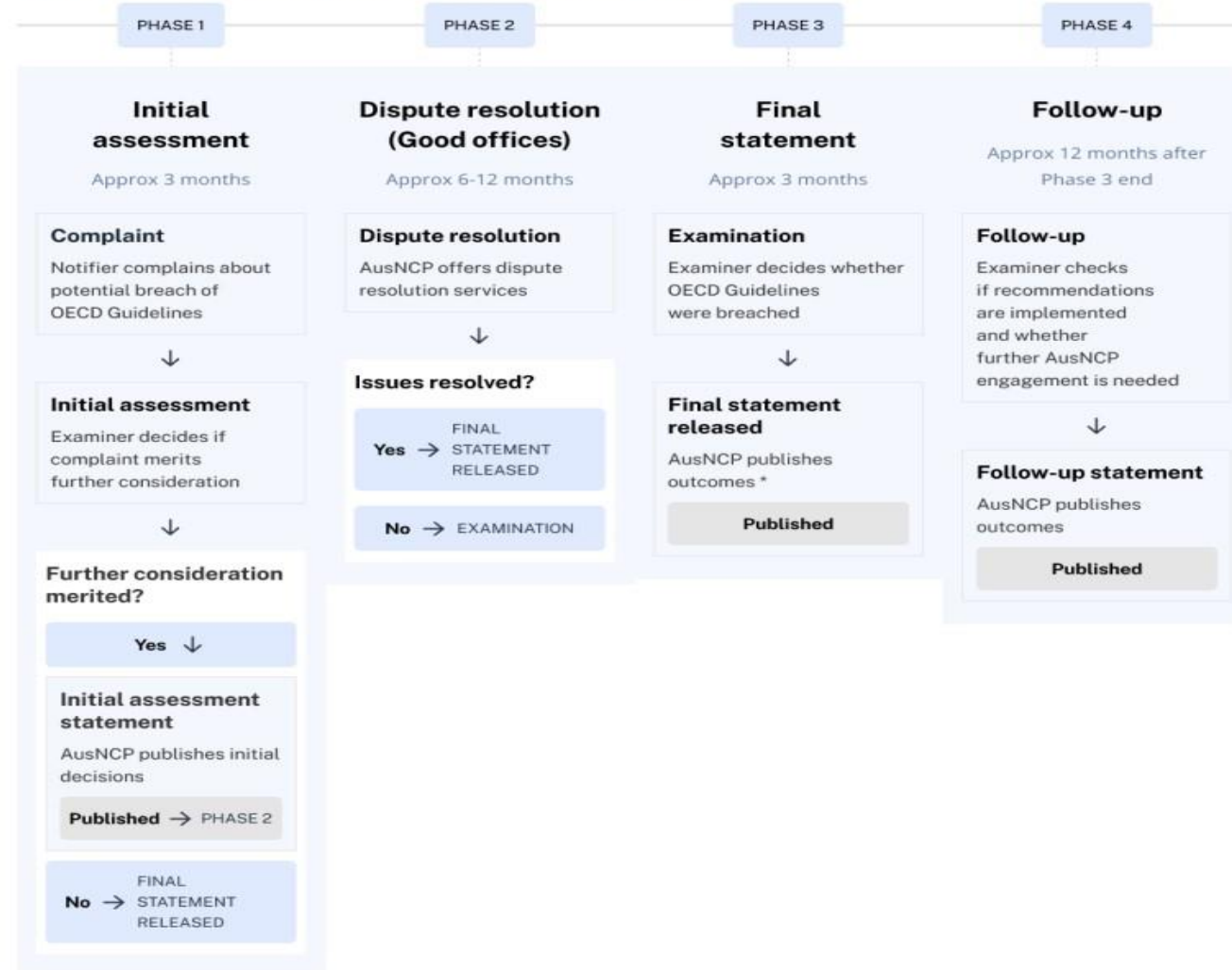
**Secretariat** [Treasury] - management (incl case allocation - capacity and conflicts checks); support services; engage internationally; promote OECD Guidelines

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

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

# Complaints process

Appendix A: Complaint process diagram



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

# Phase 1 – Initial Assessment

**Purpose:** determine whether the complaint is made in good faith and is related to implementation of OECD Guidelines

Take into account:

1. **Party** - Identity & interest in the matter
2. **Issue** - material and substantiated
3. **Enterprise** – is it covered by the Guidelines?
4. **Link** - between enterprise's activities and issue raised
5. **Applicable law** and **parallel proceedings** – whether any limit on ability of AusNCP to contribute to resolving the issue or implementing the Guidelines.
6. Would consideration **contribute** to the **purposes** and **effectiveness** of the Guidelines.

# Phase 2 – Good Offices

If examiner offers and both parties agree → alternative dispute resolution





# Examination

Where no agreement, or enterprise does not engage → examination



# Phase 3 - Final Statement

- Must be published
- Where **complaint rejected** - explain
- Where **complaint accepted** and **good offices agreement** - informed by parties' agreement
- Where complaint accepted and **examination**:
  - *"views on whether an enterprise has breached the OECD Guidelines"*
  - *"recommendations to improve observance of the Guidelines"*
- Independent Examiner may draw instances of **inappropriate conduct to the attention of other government agencies** through the AusNCP Secretariat.

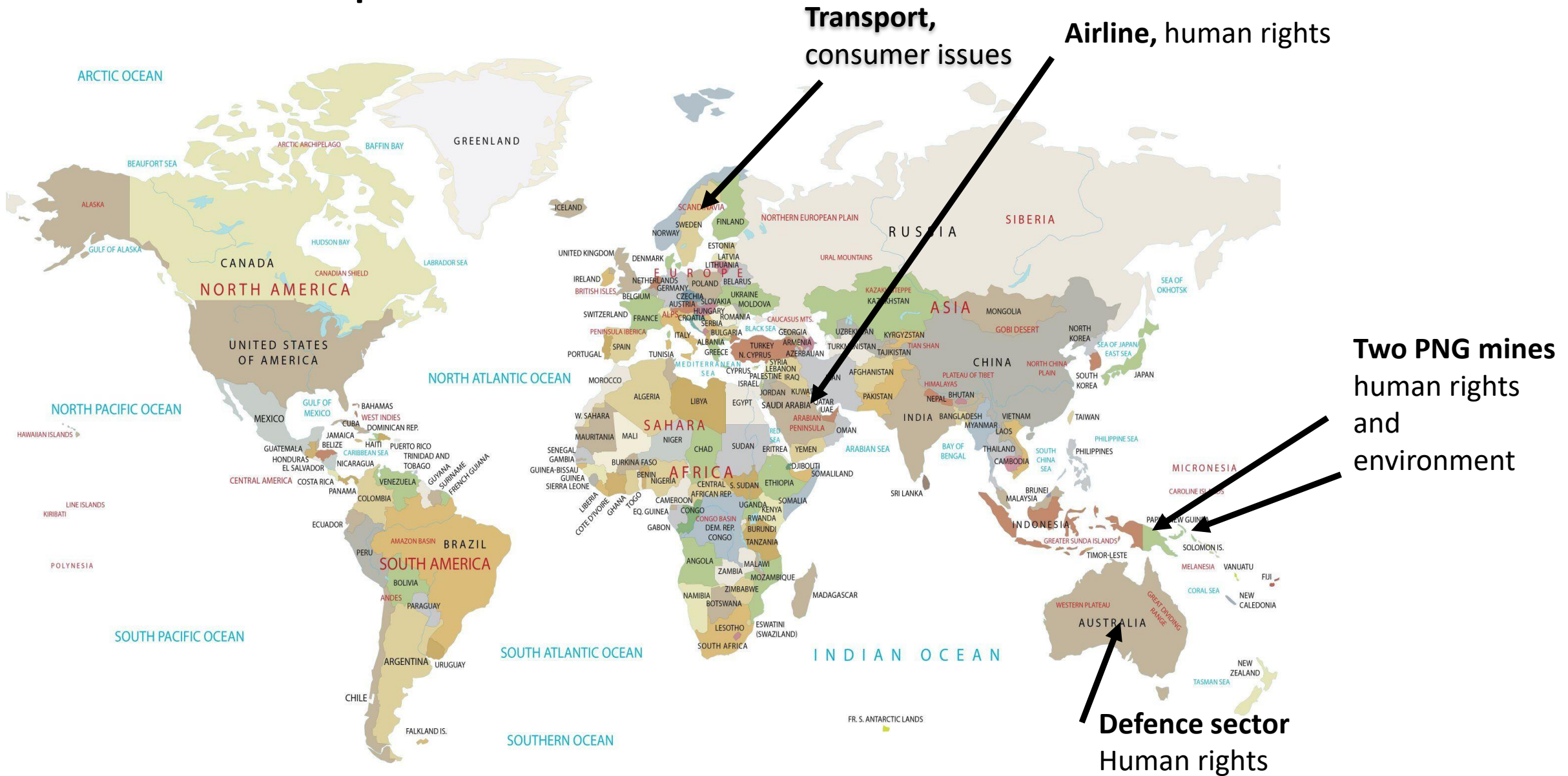
# AusNCP – trends

- Trends similar to global:
  - Increasing # of complaints (33 since 2006, around 45% in last 4 years)
  - Sectors:
    - Extractive industries (40%),
    - financial services and manufacturing sectors (around 10% each)
  - Themes: General Policies and Human Rights chapters cited more frequently
  - Location of activities: Aus Co's operating overseas (Latin America, South Asia, Southeast Asia, Pacific).
    - BUT recent trend – more focus on operations in Australia, including virtual services

# AusNCP complaints received from 2005 to current



# Current AusNCP Complaints



# AusNCP outcomes [examples]

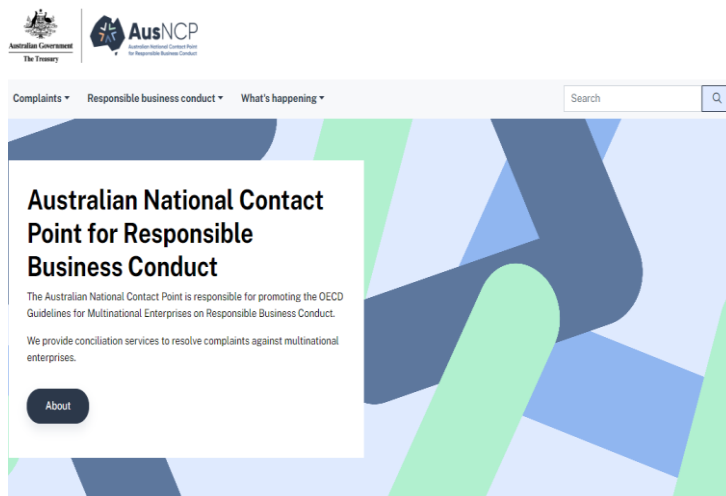
- Parties reach **agreement within AusNCP ‘good offices’**:
  - [Ansell Ltd](#) p9
  - [ANZ \(Cambodia\) FS](#) [17]-[23]
- Parties reach **agreement outside AusNCP ‘good offices’**:
  - [Parella Law](#) [33]-[35]
  - [Justicia y Reparación](#) [17]-[23]
- Final Statement **observations/ recommendations** eg:
  - recommend company improve governance & procedures: [ANZ \(Cambodia\) FS](#) [46]-[48]
  - Company’s actions were consistent with Guidelines: [ANZ \(FoE\) FS](#) [64] & [70]-[72]; [AusLab](#) [54]-[57]
  - company’s actions inconsistent with Guidelines (eg. no HR policy, inadequate DD) & recommend company action: [Mallee Resources](#) [128]; : [PanAust](#) [3] & [94]
  - encourage company apology & compensation: [Mercer PR](#) [49]
  - Recommend Aus Govt improvements: [Mallee Resources](#)

# Questions



# Find out more

- *More about AusNCP:*
- [www.ausncp.gov.au](http://www.ausncp.gov.au)



## Complaints process

We provide a mechanism to help parties resolve conflicts of alleged non-observance of the OECD Guidelines



## OECD Guidelines

The Australian Government expects multinational enterprises to observe the OECD Guidelines (internationally agreed responsible business conduct standards)



## Events and workshops

We work with businesses, academia, non-government organisations and the OECD to raise awareness of the OECD Guidelines and the value of responsible business conduct

- *Track AusNCP complaints:*
- <https://ausncp.gov.au/complaints/track-complaints>

## Track complaints

The AusNCP handles complaints about alleged non-observance of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. A list of active and closed complaints is available below.

Active complaints

Closed complaints

### Active complaints

ID	Notifier	Enterprise	Activity location	Status	Statements
<a href="#">Complaint 33</a> Received: October 2023	Individual	Canada-based enterprise (transportation and storage sector)	Australia	Initial Assessment	
<a href="#">Complaint 31</a> Received: November 2022	Evangelical Lutheran Church of Papua New Guinea, Centre for Environmental Law and Community Rights Inc and Jubilee Australia Research Centre on behalf of affected Morobe Province communities	Newcrest Mining Ltd and Harmony Gold (Australia) Pty Ltd	Papua New Guinea	Final Statement	<a href="#">Initial Assessment - August 2023</a>
<a href="#">Complaint 30</a> Received: December 2021	Marque Lawyers on behalf of affected individuals	Qatar Airways	Qatar	Final Statement On hold	<a href="#">Initial Assessment - August 2022</a>
<a href="#">Complaint 28</a> Received: September 2021	Andrew and Robert Starkey	Saab Australia and Saab Group Sweden	Australia	Final Statement	<a href="#">Initial Assessment - April 2022</a>
<a href="#">Complaint 21</a> Received: September 2020	Human Rights Law Centre on behalf of affected individuals	Rio Tinto	Papua New Guinea	Good Offices	<a href="#">Initial Assessment - September 2023</a>

Complaints
Complaints process
Submit a complaint
Track complaints
Independent examiners

- *Resources – due diligence and more:*
- <https://mneguidelines.oecd.org/resources/>
- <https://mneguidelines.oecd.org/duediligence/>