

Final Statement

Complaint submitted by Ms D Stevens regarding
Dow Inc. and Bayer AG

22 May 2026

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Manager
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The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

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Executive summary

1. In May 2025, Ms D Stevens (**the notifier**) submitted a complaint to the Australian National Contact Point for Responsible Business Conduct (**AusNCP**) about Dow Inc. (**Dow**) and Bayer AG (**Bayer**) (**the enterprises**). The complaint alleged that Dow, and Bayer via its 2018 acquisition of the Monsanto Company (**Monsanto**), breached the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (**OECD Guidelines**)¹ in their historical production of the defoliant Agent Orange, their supply of it for military use in Vietnam in the late 1960s, and their conduct since that supply. Ms Stevens told the AusNCP that she is the daughter of a military veteran who was exposed to Agent Orange in Vietnam and that she suffered impacts due to this.
2. Inquiries with Ms Stevens and the enterprises (**the parties**), as well as other National Contact Points (**NCPs**), indicated that, although the enterprises had Australian subsidiaries, issues in the complaint relevant to the OECD Guidelines concerned actions and decisions taken in the United States (**US**). As a result, the AusNCP Independent Examiner proposed transferring the complaint to the US NCP, in accordance with the OECD Guidelines' expectation that the NCP of the country in which the issues have arisen will generally be the lead NCP.²
3. In July 2025, Ms Stevens indicated that she no longer wanted the AusNCP to continue dealing with the complaint. Under the AusNCP complaint procedures, this meant the complaint was being withdrawn and that the AusNCP must publish a Final Statement acknowledging this withdrawal.³
4. During the Independent Examiner's contact with Ms Stevens, she made allegations about various governments, the AusNCP, and other NCPs. This included allegations of conflict of interest and improper conduct, among others.
5. Given these allegations, it is relevant to state that:
 - 5.1. In July 2025, the Independent Examiner consulted the parties about the potential transfer of the complaint, consistent with the OECD Guidelines, and expressly asked Ms Stevens whether there were exceptional reasons for the AusNCP to handle the complaint instead of another NCP, as provided for under the AusNCP complaint procedures.⁴
 - 5.2. Ms Stevens alleged that the US and German NCPs were conflicted and requested the AusNCP transfer her complaint to the Netherlands NCP. The Independent Examiner notes there is no identified connection between the complaint and the Netherlands.

¹ Organisation for Economic Co-operation and Development (**OECD**), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, 8 June 2023, doi:[10.1787/81f92357-en](https://doi.org/10.1787/81f92357-en) (**OECD Guidelines**).

² OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 69, para [30].

³ Australian National Contact Point for Responsible Business Conduct (**AusNCP**), [AusNCP complaint procedures](#), April 2024, para [100] (**AusNCP complaint procedures**).

⁴ AusNCP complaint procedures, para [25].

- 5.3. The Independent Examiner explained to Ms Stevens that NCPs are independent and any complaint transfer must accord with the OECD Guidelines. Hence, her request might result in:
 - 5.3.1. the AusNCP treating her complaint as withdrawn
 - 5.3.2. her complaint not being transferred to the US NCP
 - 5.3.3. potential prejudice to any future requests for this matter to be considered by another NCP.
- 5.4. Ms Stevens stated that the AusNCP should not contact her again, unless it was to confirm transfer of the complaint to the Netherlands NCP or provide redress.
- 5.5. As Ms Stevens did not change her position, the AusNCP considered this complaint withdrawn.
- 5.6. The AusNCP is not aware of any evidence to suggest that any NCP or NCP official has acted improperly in dealing with this complaint. The German and US NCPs engaged diligently with the AusNCP about which NCP would have lead responsibility for this complaint, in the event the Independent Examiner recommended it be transferred. The Independent Examiner notes the AusNCP had proposed a path to progress the complaint in a manner consistent with the OECD Guidelines, namely transfer to the US NCP.
6. As the complaint did not continue, the AusNCP makes no determination on the merits of Ms Stevens' claims against the enterprises, nor does it assess whether the enterprises' actions were consistent with the OECD Guidelines.
7. A draft of this Final Statement was provided to Ms Stevens, the enterprises, and the other NCPs involved, giving each the opportunity to suggest corrections. Dow, Bayer and Ms Stevens provided comments. On receipt of this draft, Ms Stevens indicated her desire to 're-engage' and that, if appropriate, the complaint be transferred to the US NCP. Dow and Bayer identified various changes it desired to the Final Statement's wording. The Independent Examiner considered all suggestions received in finalising this statement.
8. This statement is available on the AusNCP website at www.ausncp.gov.au.

John Southalan

Independent Examiner

Australian National Contact Point for Responsible Business Conduct

Email: secretariat@ausncp.gov.au

Background

Parties

9. Ms Stevens informed the AusNCP that her father was a veteran who served with the Australian Army in Vietnam in the late 1960s. She alleged that her father was exposed to and harmed by Agent Orange, and that she (born after 1970) has serious *'congenital and developmental disorders'* because of her father's Agent Orange exposure. Ms Stevens asserted to the AusNCP, and wanted recorded in this statement, that she raised her *'status under the Geneva Conventions Additional Protocol I, including Article 77'*. Ms Stevens' father died in the last decade and she provided the AusNCP with a copy of his death certificate. Ms Stevens claimed that the identified causes of death *'align directly with known TCDD-linked conditions already recognised'*. TCDD is a chemical which arose in the production of Agent Orange, explained further below.
10. The complaint was made against four entities:
 - 10.1. The Dow Chemical Company (referred to in the original complaint as Dow Chemical), and by extension, its parent Dow (an American multinational company)
 - 10.2. Dow Chemical (Australia) Pty Ltd, which is an Australian subsidiary of Dow
 - 10.3. Bayer (a German multinational pharmaceutical and biotechnology company), due to its 2018 acquisition of Monsanto (which was an American agrochemical company)
 - 10.4. Bayer Australia Ltd, which is an Australian subsidiary of Bayer.

Complaint and outcomes sought by the notifier

11. Ms Stevens alleged that the enterprises had acted inconsistently with the General Policies (ch II), Disclosure (ch III), Human Rights (ch IV), Environment (ch VI), and Consumer Interests (ch VIII) chapters of the OECD Guidelines, identifying several aspects said to be deficient, including risk-based due diligence, remediating harms, disclosure of information about product risks, and promotion and export of products. Ms Stevens requested that the AusNCP *'facilitate a process to address and remedy the harm suffered'*, including mediation with the enterprises. She wanted the enterprises to *'support research, remediation, and reparative measures for second-generation survivors'*, among other outcomes.
12. Ms Stevens acknowledged that the production of Agent Orange occurred before 1976, which was when the OECD Guidelines were established and, therefore, when its expectations of multinational enterprises first began. The OECD Guidelines are not retrospective,⁵ but may be relevant where

⁵ For example, in 2017, the US NCP addressed a specific instance related to alleged actions prior to the 1976 adoption of the OECD Guidelines. The US NCP noted *'[a]ctions taken prior to 1976 do not fall under the purview of the [OECD] Guidelines[,] which cannot be implemented retroactively'*. US NCP, *Specific Instance Between an Individual Acting for Descendants of Oswald Weiss (submitters) and a U.S. Company for Conduct Linked to Former Czechoslovakia*, Final Statement, 20 September 2017, p 3.

current and/or ongoing impacts are related to past events.⁶ The complaint alleged various actions of Dow and Monsanto in the 1980s and 1990s constituted ongoing impacts contrary to the then OECD Guidelines, and that the enterprises *'ignored new responsibilities under the 2011 [version of the OECD] Guidelines, especially regarding due diligence, human rights, and remediation of harm'*.

Summary of the enterprises' position

13. The AusNCP did not ask the enterprises to formally respond to the allegations when it notified them of the complaint, because the AusNCP needed to first determine which NCP should conduct the Initial Assessment. Nevertheless, Dow communicated that it disputed Ms Stevens' allegations and contended that the various actions and decisions involved US Government directions to the relevant companies. Dow also emphasised that it is currently a party to Agent Orange-related legal proceedings in other forums, and that it has an *'interest in maintaining a consistent record on Agent Orange matters and, to that end here, directed the Independent Examiner to material from prior Agent Orange court rulings, government reports and other academic literature'*. These matters have been noted, where relevant, in this statement.
14. As the complaint did not continue, the AusNCP makes no determination on the merits of Ms Stevens' claims against the enterprises, nor does it assess whether the enterprises' actions were consistent with the OECD Guidelines.

Notifier's allegations against non-parties

15. Over two and a half months, from Ms Stevens first lodging the complaint (13 May 2025), to just after she indicated she no longer wanted the AusNCP to progress the complaint (29 July 2025), Ms Stevens made numerous allegations against entities other than the enterprises and published many of these on her website, including allegations against:
 - 15.1. several NCPs involved in this complaint, including allegations of obstruction, delay, conflict of interest, and procedural failure
 - 15.2. several governments regarding fraud and misrepresentation, treaty breaches, and complicity in war crimes and other crimes against humanity in relation to the use of Agent Orange and other matters.
16. Given the above, the Independent Examiner has included in this statement some exchanges with the parties. This involved a balance between transparency and recognising the need to avoid sharing sensitive information, and has been done in the following context:
 - 16.1. The OECD Guidelines require that, at the conclusion of the proceedings and after consultation with the parties involved, an NCP must *'make the results of the proceedings publicly available, taking into account the need to protect sensitive business and other*

⁶ See, e.g., OECD, *Guide for National Contact Points on the Initial Assessment of Specific Instances*, OECD Publishing, 31 January 2019, <https://doi.org/10.1787/c8d7f80a-en>, p 12 (OECD Initial Assessment Guide); Netherlands NCP, *Odoh family vs de Shell Petroleum Development Company of Nigeria Limited*, Final Statement, 11 July 2024, p 11; AusNCP, *Complaint submitted by Human Rights Law Centre (on behalf of affected individuals) against Rio Tinto*, Initial Assessment, 15 September 2023, para [13.3].

stakeholder information, by publicly issuing a [F]inal [S]tatement'. The content of such a statement depends on the course of the proceedings, but where there has been no agreement, the OECD Guidelines indicate that it 'should at a minimum describe the issues raised, the parties' respective positions as appropriate, the steps taken by the NCP ..., and the reasons for the NCP's decision'.⁷

- 16.2. According to the OECD Guidelines' Implementation Procedures, NCPs must operate in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the OECD Guidelines.⁸ Particularly relevant here is:

'Transparency is an important criterion ... in gaining the confidence of stakeholders, parties to specific instances and the general public [and so] as a general principle and subject to applicable law, the activities of the NCP will be transparent. ...

Predictable [entails that] NCPs' operations will provide clear and publicly available information on their role and the procedures they follow in fulfilling their responsibilities, particularly in the resolution of specific instances. ...

Compatible with the [OECD] Guidelines ... means working with parties to avoid any situation where agreements are contrary to the [OECD] Guidelines, or where case-handling procedures are inconsistent with the [Implementation] Procedures.'⁹

- 16.3. The OECD Guidelines' commentary expressly acknowledges the relationship between transparency and confidentiality:

'Transparency is ... a general principle for the conduct of NCPs ... However, ... there are specific circumstances where maintaining confidentiality of certain facts and arguments brought forward by the parties is justified. For example ... to protect sensitive business information, such as commercial secrets ... [and] the identity of individuals ... if disclosing it places them or related persons at risk of retaliation. Nonetheless, it remains important to strike a balance between transparency and confidentiality in order to build confidence in the [NCP] process and to promote the [OECD] Guidelines' effective implementation.'¹⁰

- 16.4. The AusNCP complaint procedures align with the OECD Guidelines in emphasising the importance of confidentiality and transparency,¹¹ and requiring the AusNCP's public statement at the conclusion of a complaint to '[a]t a minimum ... account for: the need to protect sensitive business and other stakeholder information; the parties' respective positions as appropriate; the steps taken by [the] AusNCP; [and] the parties' engagement in the process, and will include the issues raised'.¹² The AusNCP complaint procedures state that:

⁷ OECD Guidelines, *I. National Contact Points for Responsible Business Conduct*, p 60 para [C.4.]. Emphasis added.

⁸ OECD Guidelines, *I. Commentary on the Procedures for NCPs*, pp 64-66.

⁹ OECD Guidelines, *I. Commentary on the Procedures for NCPs*, pp 65-66. Emphasis added.

¹⁰ OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 72, para [47]. Emphasis added.

¹¹ AusNCP complaint procedures, paras [91]-[96] and Glossary definition of 'good faith', p 19.

¹² AusNCP complaint procedures, para [57].

*'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'.*¹³

- 16.5. The main focus of protections for parties' confidentiality and interests is about exchanges during any 'good offices' process (or 'dispute resolution', as it is termed in the AusNCP complaint procedures).¹⁴ Strict confidentiality for that phase is essential to providing a forum for the parties' engagement. That confidentiality regime should not, however, govern all information an NCP receives from parties. To do so would impede an NCP from performing its fundamental role of furthering the effectiveness of the OECD Guidelines.
 - 16.6. In this case, considerable time and resources have been devoted by many parties in seeking to progress the notifier's complaint according to the OECD Guidelines. This includes the time and resources of Ms Stevens, the enterprises, and the various NCPs.
 - 16.7. There is a balance as to what information should be included in this Final Statement, in endeavouring to appropriately protect the interests of all parties while also providing transparency. This is in the context of communications in which Ms Stevens has indicated that the Netherlands NCP should consider her concerns regarding the enterprises, and where Dow has addressed the relevance of the OECD Guidelines to these issues, as explained later in this statement.
17. The Independent Examiner considers the extracts included in this Final Statement are appropriate to further the effectiveness of the OECD Guidelines, noting that:
 - 17.1. many of the allegations and assertions made by Ms Stevens have been publicly disclosed on her website
 - 17.2. generalising the allegations made around NCP irregularities, without providing more detail or context, could harm confidence in the OECD Guidelines and NCPs
 - 17.3. Ms Stevens indicated that she wanted the Netherlands NCP to deal with her allegations concerning the enterprises and their consistency with the OECD Guidelines
 - 17.4. some of this information may assist if there are future and/or other allegations about the relevance of the OECD Guidelines to the use of and responses to Agent Orange
 - 17.5. based on all information known to the Independent Examiner, the inclusion of the extracts in this statement would not disclose the identity of individuals in a manner that increases the risk of retaliation, nor reveal sensitive business information or commercial secrets.
 18. For the above reasons, the Independent Examiner has determined that it is appropriate to provide some detail of the parties' respective positions in this statement, consistent with the OECD Guidelines and the AusNCP complaint procedures. However, the Independent Examiner also

¹³ AusNCP complaint procedures, para [91]. Emphasis added.

¹⁴ See, e.g., OECD Guidelines, *Procedures*, p 60 para [C.6.] and p 72 paras [48-49]; AusNCP complaint procedures, paras [42] and [92]-[94].

emphasises this extent of inclusion of AusNCP communications in this statement is not normally necessary and that AusNCP statements do not routinely include parties' exact submissions and exchanges with the AusNCP. This will only occur in exceptional circumstances, such as those outlined above.

19. A draft of this statement was provided to Ms Stevens and the enterprises, prior to it being finalised by the Independent Examiner. This included this section about including some exchanges from the parties in this statement.
 - 19.1. Given the limited engagement the parties had with each other, the extracts included in the draft accorded with the OECD Guidelines' approach that '*[a]s much as possible, NCPs should avoid basing fundamental aspects of their decisions on information that is not available to both parties*'.¹⁵
 - 19.2. Each party was able to indicate if there were any extracts they considered should not be included in the published Final Statement, for example, because of risk of retaliation against any individual or the disclosure of sensitive business information or commercial secrets, and to explain those relevant circumstances.
 - 19.3. Ms Stevens did not indicate any concerns about extracts from her communication being included in the published Final Statement. Dow requested that the information it provided to the AusNCP be included in full in this statement, which is included in **Annex A**.
 - 19.4. The Independent Examiner considered the parties' positions carefully in finalising the content of the published Final Statement.

AusNCP proceedings

20. During the proceedings, the Independent Examiner had considerable contact with Ms Stevens to understand her concerns and explain relevant processes.
21. Between May and July 2025, Ms Stevens and the Independent Examiner communicated via email regarding the complaint. These communications explained the AusNCP process, sought clarification of her complaint, and covered topics such as her preferred communication method, the enterprises to which her complaint related, and the potential involvement of other countries' NCPs. After Ms Stevens confirmed the enterprises as Dow and Bayer, the AusNCP commenced contact and coordination with the US and German NCPs, because the enterprises were headquartered in those countries.
22. Throughout this period, Ms Stevens raised concerns about delays, which the Independent Examiner addressed in several emails that explained the coordination process between NCPs.
23. Ms Stevens first indicated that her 'preferred lead NCP' was Germany and later requested that the complaint be transferred to the Netherlands NCP, which she considered to be the only neutral NCP on the basis that other governments had some past connection with the use of Agent Orange.

¹⁵ OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 72 para [48].

However, no further detail was provided to substantiate this claim. The Independent Examiner emphasised NCP independence to Ms Stevens, including that: (a) NCPs are required to focus on the relevant company and its consistency with the OECD Guidelines, and not determine matters by reference to government interests;¹⁶ (b) this is further reinforced by the Independent Examiner structure in the AusNCP;¹⁷ and (c) he disagreed that the various NCPs she identified, including the AusNCP, were ‘conflicted’ because of actions she attributed to their governments.

24. On 11 July 2025, the Independent Examiner wrote to Ms Stevens and the enterprises, outlining his preliminary view that the AusNCP was not the correct NCP to handle the complaint, and that it should be transferred to the US NCP. Consistent with the AusNCP complaint procedures,¹⁸ the Independent Examiner explained that no transfer decision would be made until the parties had been consulted, and he specifically highlighted to Ms Stevens that if she identified exceptional reasons for the AusNCP to handle the complaint, they would be considered.
25. Less than an hour later, Ms Stevens responded that she disagreed with the transfer of the complaint to the US NCP. In a separate email dated 14 July 2025, Ms Stevens indicated that she no longer considered the AusNCP as having authority to handle and make decisions on her complaint. Ms Stevens then emailed the Netherlands NCP, copying in the AusNCP, and asserted that she had formally removed the AusNCP from the handling of her complaint.
26. On 15 July 2025, the Independent Examiner acknowledged receipt of Ms Stevens’ 14 July 2025 email. The Independent Examiner also explained that, pursuant to the AusNCP complaint procedures, the complaint still remained with the AusNCP and that he was required to continue with the process previously explained unless the complaint was withdrawn, noting that withdrawal could include circumstances in which a notifier indicates that further engagement from the AusNCP will not be required.¹⁹ The Independent Examiner alerted Ms Stevens to possible implications of withdrawing the complaint at this stage, noting that if the matter were then submitted to another NCP, that NCP may consider that it would not contribute to the purposes and effectiveness of the OECD Guidelines.
27. On 25 July 2025, Dow requested an extension until 4 August 2025 to reply to the Independent Examiner’s 11 July 2025 email about the potential transfer of the complaint to the US NCP. The Independent Examiner agreed to this extension and provided it to all parties.
28. On 28 July 2025, the Independent Examiner wrote to Ms Stevens outlining the three options available to her: transfer of the complaint to the US NCP; withdrawal of the complaint; or an Initial Assessment by the AusNCP, if there were exceptional reasons for the AusNCP to handle the complaint and new information demonstrating that the alleged issues under the OECD Guidelines had arisen and occurred in Australia. He emphasised to Ms Stevens that her current position might

¹⁶ ‘NCPs will ensure impartiality in the resolution of specific instances, including by actively seeking to prevent and address potential or perceived conflicts of interests of any person playing a role on behalf of the NCP’: OECD Guidelines, I. Commentary on the Procedures for NCPs, p 65 [10(e)].

¹⁷ AusNCP Independent Examiners ‘manage complaints brought to [the] AusNCP ...[and] exercise their judgement impartially and without bias; independent of the interests of others’: AusNCP complaint procedures, *Glossary*, p 19.

¹⁸ AusNCP complaint procedures, paras [24]-[26].

¹⁹ The Independent Examiner explained the relevant AusNCP complaint procedures (paras [49], [99] and [100]).

result in: (a) the AusNCP treating her complaint as withdrawn; and (b) her complaint not being transferred to the US NCP.

29. Ms Stevens' reply to the Independent Examiner on 29 July 2025 stated the following:

'Do not contact me again unless:

1. You confirm immediate transfer of this case to a neutral NCP Netherlands

2. Or you provide formal written redress.'

30. Ms Stevens' response did not indicate acceptance of any of the three paths outlined in the Independent Examiner's email of 28 July 2025. She had previously stated that she had *'explicitly removed the AusNCP from handling this complaint'*, which she repeated to the Netherlands NCP. The Independent Examiner therefore considered the complaint to have been withdrawn, in line with paragraph 49 of the AusNCP complaint procedures and commenced drafting this Final Statement.

31. In light of Ms Stevens' request not to be contacted again, the Independent Examiner made no further contact with Ms Stevens until providing her with a draft copy of this statement for review.

32. The Independent Examiner's draft of this statement was first provided to the AusNCP Governance and Advisory Board (**AusNCP Board**) and the other NCPs involved (Germany, the Netherlands and the US) for review and comment. Review by the AusNCP Board is required under the AusNCP complaint procedures,²⁰ and consultation with other NCPs is encouraged by the OECD Guidelines.²¹ The German and Dutch NCPs provided comments, but as the US Government was in shutdown at the time of the AusNCP's consultation on this Final Statement, the US NCP was unable to comment on the draft until after a version had been sent to the parties for review. The Independent Examiner considered all feedback received and revised some wording before subsequently providing a draft statement to the parties,²² as required by the AusNCP complaint procedures.²³

33. Ms Stevens and Dow responded to the draft statement with comments for the Independent Examiner's consideration:

33.1. Ms Stevens responded that she wished to *'re-engage in good faith'*, and that the AusNCP should continue with the complaint or transfer it to the US NCP. The Independent Examiner considers that this would be inappropriate because of the time and resources already taken by all parties and NCPs in response to Ms Stevens' previous requests and communications. To re-engage would require undertaking a fresh process of coordination, and eventually, an Initial Assessment. If Ms Stevens considers an Initial Assessment remains appropriate, that could occur through a new complaint to the appropriate NCP. Ms Stevens stated that her earlier response was a *'jurisdictional position [which] was taken*

²⁰ AusNCP complaint procedures, para [66].

²¹ OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 69, paras [29]-[31].

²² Except in the case of the US NCP, where changes to the draft Statement were made at the Independent Examiner's discretion after this time (following receipt of the US NCP's comments).

²³ AusNCP complaint procedures, para [67]: *'A draft [F]inal [S]tatement will ... be provided to both parties for comment. The [Independent] [E]xaminer may make changes at their discretion'*.

while [she] was engaging multiple international mechanisms simultaneously, including UN bodies and other OECD National Contact Points, for the purpose of preserving the international record of treaty non-implementation and long-standing UN findings’. Ms Stevens also indicated that she considered relevant a recent report ‘*Military activities and toxics*’ publicised by the UN’s Special Rapporteur on management and disposal of hazardous substances and wastes.²⁴ None of these points raised by Ms Stevens change the outcome of this complaint, as explained in this statement.

- 33.2. Dow identified various parts of the draft Final Statement that it considered to be inaccurate or incomplete and requested that the full detail of its responses be included in an annex to the statement (see **Annex A**).
34. The Independent Examiner finalised this statement after considering all comments from the parties, the AusNCP Board, and the other NCPs involved. Any changes proposed were made at the Independent Examiner’s discretion, and the decision and statement remain the Independent Examiner’s responsibility.

Conclusion

35. For the reasons outlined above, this Final Statement primarily documents that the AusNCP considers this complaint to have been withdrawn. As the complaint has been withdrawn, this Final Statement does not assess:
 - 35.1. whether the complaint merits further consideration, including any offer of AusNCP-facilitated dispute resolution (or ‘good offices’)
 - 35.2. the merits of the claims presented, including whether the enterprises’ actions (as identified in the complaint) were consistent with the OECD Guidelines.
36. However, given both parties had views on which NCP should consider this complaint, and because other NCPs or institutions may need to understand the AusNCP’s management of this complaint, it is desirable to explain some of the issues the AusNCP considered.

Observations regarding the complaint

37. In addition to reviewing material provided by the parties, the Independent Examiner reviewed public sources regarding Agent Orange. The information drawn from these public sources is summarised below and may not be complete or accurate.

²⁴ Orellana M, Special Rapporteur, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, UN Doc A/80/174, United Nations, 16 July 2025.

38. Agent Orange was one of several herbicides the US military used in the Vietnam War to remove covering vegetation and crops available to Viet Cong and North Vietnamese soldiers.²⁵
39. Agent Orange was produced to specifications from the US Government, which included two herbicides, one of which was 2,4,5-T, in a much higher concentration in Agent Orange than was commercially available.²⁶
40. The US military procured Agent Orange from seven to nine chemical companies in the US who were contracted to manufacture the product, with the largest supply from Dow and Monsanto.²⁷ The US military specified, and contractually required, the ingredients the companies used to produce Agent Orange, and in 1966, US authorities compelled production of Agent Orange from the manufacturers under US law.²⁸
41. The Independent Examiner did not find any information indicating the Agent Orange used in Vietnam was sourced from companies other than those noted above, or from countries other than the US.
42. Many people claim to have been exposed to Agent Orange in Vietnam during this time, including military personnel from Australia and New Zealand.²⁹ Dow contends that this remains a disputed matter, along with whether any exposures to Agent Orange were at a harmful level.
43. It was discovered that the manufacturing process for Agent Orange introduced a contaminant known as TCDD, which is toxic. The timing of what was known by who is contested. Some commentary says the presence of TCDD as a contaminant in 2,4,5-T was first documented in 1957, and concerns about TCDD levels in 2,4,5-T were reported in 1964.³⁰ A 1985 Australian Royal Commission report states that in 1952, Monsanto had warned some US military personnel of the TCDD 'by-product', but that its toxicity was uncertain.³¹ It is, however, broadly documented that:
 - 43.1. Dow temporarily ceased production in 1964 because of TCDD concerns related to workplace exposure³²

²⁵ Department of Veterans' Affairs, *Agent Orange and other chemicals in the Vietnam War*, Australian Government, 6 August 2025, accessed 2 April 2026; Evatt P 1985, *Royal Commission on the use and effects of chemical agents on Australian personnel in Vietnam*, Final Report, Australian Government, July 1985, accessed 27 May 2025, pp I-24 and I-28.

²⁶ In re "Agent Orange" Prod. Liability Litigation, 517 F.3d 76, (2nd Cir. 2008), pp 23-28; Young AL, *The History, Use, Disposition and Environmental Fate of Agent Orange*, Springer Link Publishing, 2009, pp 1-2 & 23-45.

²⁷ Young 2009, p 173; Young AL, *Agent Orange: The Failure of Science, Policy and Common Sense*, Springer Link Publishing, p 196.

²⁸ Vietnam Association for Victims of Agent Orange/Dioxin v. Dow Chemical Co., (2nd Cir, 05-1953-cv, February 22 2008) p 13 (*Vietnam Association v. Dow Chemical Co.*); In Re "agent Orange" Product Liability Litigation, 818 F.2d 145 (2nd Cir. 1987); Eccles M, *Paris court rejects appeal against chemicals giant over Vietnam War use of Agent Orange*, POLITICO, 22 August 2024, accessed 27 May 2025.

²⁹ See, e.g., Yule P, *The Long Shadow: Australia's Vietnam Veterans since the War*, NewSouth Publishing, November 2020; Evatt 1985, pp IV-233 to IV-327.

³⁰ Young 2022, p 196.

³¹ Evatt 1985, p I-38.

³² Evatt 1985, p I-30; Young 2022, p 196.

- 43.2. studies in the late 1960s suggested TCDD caused birth defects in mice³³
 - 43.3. concerns grew about effects of Agent Orange on humans (including allegations about birth defects in areas sprayed in Vietnam)³⁴
 - 43.4. in April 1970, US authorities suspended the use of the herbicide 2,4,5-T around homes, recreation areas and on crops intended for human consumption³⁵
 - 43.5. the US suspended the military use of Agent Orange in 1970, and its use by the US military in Vietnam ended in 1971.³⁶
44. Bayer acquired Monsanto in 2018.³⁷ This is relevant to Ms Stevens' allegations regarding Bayer.
45. The OECD Guidelines' Implementation Procedures provide that, where the issues raised in a complaint (referred to by the OECD Guidelines as a 'specific instance') take place in several countries that adhere to the OECD Guidelines (**Adherents**),³⁸ or concern multiple enterprises established in several Adherents:
- 45.1. the NCP that received the specific instance will inform and coordinate with all other concerned NCPs at the outset, with the goal of designating the 'lead NCP'
 - 45.2. generally, the NCP of the country in which the issues have arisen would be the 'lead NCP', who is responsible for all aspects of the 'specific instance' process and its case-handling procedures would be applicable to the process
 - 45.3. the parties to a complaint should be kept informed with regard to coordination arrangements and consulted on decisions to transfer a 'specific instance'.³⁹
46. The AusNCP's own procedures require the AusNCP to assess new complaints in line with the OECD Guidelines' Implementation Procedures, and that '*if [the] AusNCP is not the correct NCP to handle [a] complaint, [an Independent] [E]xaminer may seek to transfer the complaint to another NCP during the [I]nitial [A]ssessment stage*'.⁴⁰ The AusNCP complaint procedures also specify that '*[i]f the complaint does not relate to an Australian multinational enterprise, the complaint should demonstrate a link to Australia*'.⁴¹
47. On the information available, the Independent Examiner understands that the main allegations in the complaint about consistency with the OECD Guidelines arose in the US, meaning it would have been appropriate to seek to transfer the complaint to the US NCP.

³³ Normile D, *The fog of war*, Science, vol 388, no 6745, 25 April 2025, p 351; Young 2022, p 196.

³⁴ Evatt 1985, p I-30; Normile 2025, p 351; Young 2009, pp 165-166.

³⁵ Young 2022, p 196; AUS Gov 1985, pp I-30 & I-39.

³⁶ *Vietnam Association v. Dow Chemical Co.*, p 14; Evatt 1985, pp I-30 to I-31.

³⁷ Bayer, *Bayer closes Monsanto acquisition*, Bayer, 7 June 2018, accessed 5 November 2025.

³⁸ Australia, Germany, the Netherlands, and the US are all 'Adherents' to the OECD Guidelines.

³⁹ OECD Guidelines, *I. Commentary on the Procedures for NCPs*, pp 67, 69 paras [20], [29]-[31].

⁴⁰ AusNCP complaint procedures, para [24].

⁴¹ AusNCP complaint procedures, para [9].

- 47.1. The issues raised in the complaint focused on Dow and Monsanto's actions and decisions in the production and supply of Agent Orange (and more recent conduct regarding that), and the effects of these in Vietnam and Australia.
 - 47.2. The complaint also raised concerns about Bayer's conduct, arising from Bayer's acquisition of Monsanto.
 - 47.3. There was nothing indicating the relevant alleged decisions and actions of Dow, Monsanto, and Bayer were specific or particular to Australia. That is, the alleged 'failures' and 'misinformation' referenced in the complaint were allegations regarding Dow and Monsanto's actions in or from the US. Those actions, regardless of how they are characterised or their consistency with the OECD Guidelines, reportedly affected people in many countries, including the US and Vietnam, and also the countries with personnel who were allegedly exposed to Agent Orange at that time.
 - 47.4. The two Australian entities identified in the complaint were subsidiaries of Dow and Bayer, and may have produced the herbicide 2,4,5-T at some stage. However, there was nothing indicating that the two Australian entities identified by the notifier had any involvement in Dow and Monsanto's actions and decisions about the production and supply of Agent Orange, or more recent conduct regarding that, which was the focus of the complaint.
48. If the complaint was transferred to the US NCP, then the US NCP would have conducted an Initial Assessment in accordance with its procedures. The AusNCP could have continued to support or assist the US NCP in its management of the complaint, particularly regarding matters in Australia.
 49. The information in paragraphs [38]-[48] above was explained to the enterprises and Ms Stevens in the Independent Examiner's letter of 11 July 2025 about the potential transfer of this complaint. No party then indicated there were inaccuracies in the above assessment. Dow subsequently provided further information, which has been considered. Ms Stevens alleged conflicts of interest and other issues, which was summarised earlier.
 50. Dow's full statements to the AusNCP are reproduced at **Annex A** for transparency. Dow expressly requested this information be included in this published statement. The Independent Examiner does not guarantee the accuracy or completeness of the supplied information.
 51. The Independent Examiner acknowledges the considered response the enterprises gave to this complaint, and the additional information they provided. The enterprises did not oppose the transfer of the complaint to the US NCP, which would have enabled it to have been considered in accordance with the OECD Guidelines, including an Initial Assessment of the issues raised.
 52. The Independent Examiner also wishes to acknowledge the work of the US and German NCPs in their coordination with AusNCP staff.
 53. The AusNCP notes that this matter concluded when Ms Stevens requested the AusNCP not continue processing the complaint, which meant the complaint was effectively withdrawn, as explained above. This prevented the matter being transferred to the relevant NCP to conduct an Initial Assessment of the issues raised which, under the OECD Guidelines, would then have had the potential for that NCP to:

- 53.1. decide if the issues warranted further examination
- 53.2. offer 'good offices' to help the parties resolve the issues
- 53.3. issue a Final Statement, which could have included recommendations on the implementation of the OECD Guidelines and/or the NCP's views on whether the enterprises acted consistently with the OECD Guidelines.

John Southalan

Independent Examiner

Australian National Contact Point for Responsible Business Conduct

Email: secretariat@ausncp.gov.au

Annexes

Annex A: Extracts from Dow’s communications to the AusNCP

During the management of this complaint, Dow had various communications with the AusNCP. Annex A reproduces, for transparency, extracts from Dow’s communications to the AusNCP,⁴² which Dow requested be included in an annex to this statement. **All footnotes and references in this annex are those provided by Dow. The Independent Examiner does not guarantee the accuracy or completeness of the supplied information.**

January 2026

The Dow Chemical Company (“TDCC”) provides its comments to AusNCP’s (Australian National Contact Point) draft Final Statement concerning Complaint 36. We first address the Final Statement’s mischaracterization of TDCC not having contested the accuracy of background information regarding Agent Orange contained in AusNCP’s letter of 11 July 2025, which is repeated in paragraphs 50-60 of the draft Final Statement, and second, reiterate and address the substantive issues with those statements.

TDCC’s Prior Response

The draft Final Statement mischaracterizes TDCC’s prior response dated 1 August 2025, to the letter dated 11 July 2025. The draft Final Statement sets forth in paragraph 61:

No party indicated there were inaccuracies in the above assessment. Dow provided further information which was consistent with the above.

Ostensibly for the sake of transparency, the draft Final Statement provides extracts of TDCC’s prior response, however, pertinent portions of TDCC’s prior response are omitted and the draft Final Statement disclaims “guarantee[ing] the accuracy or completeness of the supplied information,” despite the information provided by TDCC being amply supported by citations to court rulings, government studies and references that are cited/relied upon by the draft Final Statement itself.

To assert that TDCC essentially agreed with the background information is incorrect and misleading. The 11 July 2025 letter requested TDCC’s response to the preliminary assessment that AusNCP was not the correct body to handle the complaint in deference to a transfer to the US NCP (United States National Contact Point); TDCC responded that it had no objection to the proposed transfer. The 11 July 2025 letter should not now be construed as akin to a pleading whereby TDCC not having formally denominated “denials” or “objections” to the background information as stated should be construed as some purported agreement or acquiescence with them. This unfairly miscasts the prior process and TDCC’s cooperation therewith.

Nevertheless, as reiterated below, TDCC substantively corrected or clarified several statements, including those relating to (i) the composition of Agent Orange from commercial products, (ii) the extent of exposure to Agent Orange, and (iii) TDCC’s workplace experience with TCDD, as well as providing information regarding the science concerning an alleged link between Agent Orange and birth defects. As noted, notwithstanding the Final

⁴² The paragraph numbers in these communications relate to an earlier draft version of the statement provided to the parties for comment. Those paragraph numbers may not correspond to the main body of the Final Statement.

Disclaimer's intended disclaimer about the accuracy of the information provided, these corrections/clarifications were amply annotated with objective sources, and moreover, as discussed below, we are now constrained to identify additional flaws in the Final Statement's recitation of Agent Orange background.

Accordingly, TDCC would urge that the Final Statement be revised.

Revisions to Inaccurate Statements

- 1) Paragraph 51 provides, without a supporting citation: "Agent Orange was produced by combining two commercially available herbicides, one of which was 2,4,5-T."

This statement is incorrect. As noted in TDCC's prior response, this proposition was specifically raised by the plaintiffs in the US Agent Orange litigation, and the court rejected it. Dr. Young's volume on the history of Agent Orange (cited as a reference to the Final Statement) likewise explains that the military did not simply purchase commercially available herbicides and includes a full chapter detailing the research and development of Agent Orange and the other tactical herbicides.

A more complete and accurate statement of the development and composition of Agent Orange, including footnotes, would be as follows:

The US military specified the formulation of Agent Orange based on an extensive program of research, development and testing led by the US Army Chemical Corps Research Laboratories at Fort Detrick, Maryland.⁴³ While Agent Orange utilized the herbicide components 2,4,5-T and 2,4-D, variants of which were used in products used for domestic agricultural purposes, Agent Orange was not a commercially available product and was not merely a combination of commercially available herbicides.⁴⁴

- 2) Paragraph 54 provides, "Many people were exposed to Agent Orange in Vietnam during this time, including military personnel from Australia and New Zealand," citing to Yule 2020, ch 11 and AUS Gov 1985, pp IV-233 to IV-327.

This paragraph omits important context from these references and creates a misleading impression of widespread exposure to harmful levels of Agent Orange.

First, the Royal Commission report sets forth "the likelihood of exposures of Australian personnel to" 2,4,5-T, 2,4-D and TCDD as "low" (Table 28, at pages IV-234 – IV-235); and endorses a prior Senate Committee conclusion "that it is unlikely that the majority of Australian troops were directly or indirectly exposed to the herbicides used by U.S. forces, namely Agent Orange and other compounds containing the phenoxy herbicides 2,4-D and 2,4,5-T (pages IV-235 – IV-236). Indeed, the Royal Commission report endorses the conclusion that perceptions of exposure to Agent Orange were attributable to exposure to insecticides, which were sprayed on populated areas in an effort to control malaria, i.e., "The Committee

⁴³ See Young, A., 2009. *The History, Use, Disposition and Environmental Fate of Agent Orange*. New York (USA): Springer New York, ch. 2 ("A History of the Development and Procurement of Tactical Herbicides").

⁴⁴ See *In re "Agent Orange" Product Liability Litigation*, 517 F.3d 76, 90-91 (2d Cir. 2008) (rejecting contention that Agent Orange was simply a combination of "off-the-shelf, commercially available herbicides," as, among other things, Agent Orange required 2,4,5-T at purity levels greater than 90%, far exceeding that of commercial products); Young 2009, p. 1 ("The belief that commercially available herbicides were simply purchased from US chemical companies and deployed directly to Vietnam was incorrect and contrary to historical records. 'Tactical herbicides' were herbicides and formulations developed specifically by the United States Department of Defense (DOD) to be used in combat operations").

believes, however, that direct exposure to insecticides (such as malathion) which were used to control malaria, was probable in the majority of cases. (Id.)

In a similar vein, Professor Yule remarks in chapter 11 of his volume, “Although Australian discussions of chemical exposure in Vietnam have always focused on American Ranch Hand operations, most Australians were far more exposed to chemicals used for perimeter clearing, crop destruction and insect control than to American-sprayed Agent Orange.” (Pages 221-22)

In addition to the context provided in the Royal Commission report and Yule volume that has been overlooked, other authoritative references such as the US National Academy of Science, Veterans and Agent Orange Update 11 (2018) and the Young 2009 volume (which is listed among the Final Statement’s references) also controvert the premise of widespread exposure; yet, this portion of TDCC’s prior response is omitted from the annex to the draft Final Statement.

TDCC urges that paragraph 54 regarding exposure be revised as follows to ensure accuracy and avoid a misleading conclusion regarding the Agent Orange exposure facts:

Many people claim to have been exposed to Agent Orange in Vietnam during this time, including military personnel from Australia and New Zealand, however, this remains a disputed matter, along with whether any exposures to Agent Orange were at a harmful level.⁴⁵

3) Other statements appear to be overbroad and/or ignore additional facts and context provided in the sources cited as references.

a) Paragraph 55 sets forth that the manufacturing process for Agent Orange introduced TCDD as a toxic contaminant, however, “[t]he timing of what was known by who is contested.” To reflect this purportedly contested state of knowledge, the Final Statement includes the point, “A 1985 Australian Royal Commission report says that in 1952, Monsanto had warned some U.S. military personnel of the TCDD ‘by-product’ but that its toxicity was not then well known.”

First, in connection with Monsanto’s 1952 “warning,” the Royal Commission report notes that research at that time regarding Monsanto’s TCDD incidence concluded that “there were no long-term signs or symptoms other than persistent chloracne,” a skin condition; however, paragraph 55 does not incorporate this detail as to what was known about any toxicity of TCDD.

Second, paragraph 55 ignores the pertinent context provided in TDCC’s prior response regarding the U.S. government’s consideration of the toxic risk of exposure to TDCC from Agent Orange as used in Vietnam, which is based on U.S. court rulings. Those rulings recognized that the U.S. government determined that “Agent Orange as then being manufactured posed no unacceptable hazard for the wartime uses for which it was intended.” To the extent paragraph 55 speaks to what was known as being contested, the knowledge of the U.S. government should be included for appropriate balance.

Paragraph 55 should be revised to provide a more balanced discussion as follows:

⁴⁵ Yule 2020, ch 11; AUS Gov 1985, pp IV-233 to IV-327; and National Academy of Science, Veterans and Agent Orange Update 11 (2018), pp. 30-44. As the NAS committee notes in its discussion of exposure, “After decades of research, the challenge of estimating the magnitude of potential risk posed by exposure to the COIs remains intractable” (p. 44).

It was discovered that the manufacturing process for Agent Orange introduced a contaminant known as TCDD, which is toxic. The timing of what was known by who is contested. Some commentary says the presence of TCDD as a contaminant in 2,4,5-T was first documented in 1957 and concerns about TCDD levels in 2,4,5-T were reported in 1964.⁴⁶ A 1985 Australian Royal Commission report says that in 1952, Monsanto had warned some US military personnel of the TCDD 'by-product', though research at the time indicated "there were no long-term signs or symptoms other than persistent chloracne," a skin condition.⁴⁷ U.S. courts examining the U.S. government's consideration of toxic risks in the use of Agent Orange concluded that the government determined, "Agent Orange as then being manufactured posed no unacceptable hazard for the wartime uses for which it was intended."⁴⁸

- b) Paragraph 55.1 refers to Dow's suspension of production in 1964 "because of TCDD contamination problems." In TDCC's prior response, we already elaborated the facts of this incidence of workplace exposure to TCDD in waste oil associated with the manufacturing of 2,4,5-T. In addition, note the Statement's supporting reference for this paragraph, Young 2022, section 11.2.1 describes the circumstances:

The Company [TDCC] closed their production facilities and made extensive modification in the reaction conditions for the synthesis of trichlorophenol. By late 1965, the modified technology developed by Dow Chemical Company, permitted production of 2,4,5-T containing no more than 1 parts-per-million (ppm) TCDD.

Inasmuch as the Final Statement cites to Young 2022, this additional excerpt should be included. Paragraph 55.1 should be revised as follows, including amplification of the footnote:

Dow temporarily ceased production in 1964 because of TCDD contamination problems related to workplace exposure.⁴⁹

- c) Paragraph 55.2 states, "studies in the late 1960s identified TCDD caused birth defects in mice." Again, as stated, this contention is overbroad and mischaracterizes the science. Indeed, the Royal Commission report (which the Final Statement ignores as a source on this particular topic) describes the subject study as "a study funded by the National Cancer Institute which suggested that 2,4,5-T was teratogenic in rats and mice." (Royal Commission Report, page I-39) Notably, "teratogenicity" refers specifically to birth defect resulting from maternal exposure during pregnancy, so, this suggested finding did not equate to a broad causal finding of birth defects as paragraph 55.2 would now purport.

Furthermore, from the sources on which the Final Statement does rely for this topic, the Final Statement omits clarifying detail on the study from Young 2022, section 11.2.2, which remarks on the elevated concentration of TCDD in the samples used in the study, "When the article was published, it contained a footnote indicting that the original sample of 2,4,5-T used in the screening tests contained

⁴⁶ Young 2022, section 11.2.1.

⁴⁷ AUS Gov 1985, pp I-38.

⁴⁸ See *In re "Agent Orange" Product Liability Litigation*, 517 F.3d 76, 95-97 & 100 (2d Cir. 2008).

⁴⁹ AUS Gov 1985, pp I-30; Young 2022, section 11.2.1 ("The Company [TDCC] closed their production facilities and made extensive modification in the reaction conditions for the synthesis of trichlorophenol. By late 1965, the modified technology developed by Dow Chemical Company, permitted production of 2,4,5-T containing no more than 1 parts-per-million (ppm) TCDD").

approximately 30 ppm TCDD.” The Royal Commission report also references that female rodents were given significant doses early in their pregnancies. (Page I-39)

Thus, paragraph 55.2 should be revised as follows, relying on the Royal Commission’s description of this event and elaborating the facts from the Young volume:

studies in the late 1960s suggested that 2,4,5-T was teratogenic in rats and mice⁵⁰

- d) Per the discussion in item 2 above regarding paragraph 54 and the dispute over exposure, it would be appropriate in paragraph 59.2 to refer to “personnel who were [allegedly] exposed to Agent Orange at that time such as Australia and New Zealand.” Again, as reflected in TDCC’s prior response to AusNCP letter of 11 July 2025 and the foregoing, TDCC did not and does not concur with the observations regarding the complaint as contained in paragraphs 50-60 of the draft Final Statement.

Accordingly, TDCC would respectfully urge that: (i) those paragraphs should be modified as suggested above, (ii) the annex to the Final Statement should be amended to include the entirety of TDCC’s prior response and this communication, and (iii) paragraphs 61 and 62 amended to accurately describe the process and exchange with TDCC.

August 2025

The Dow Chemical Company (“TDCC”) hereby responds to the Australian National Contact Point for Responsible Business Conduct’s (“AusNCP”) letter dated 11 July 2025 in connection with AusNCP Complaint 36 / OECD Guidelines complaint regarding Agent Orange. Please note that while the letter is addressed to Dow Inc., based on the complaint’s designation of “Dow Chemical Company (now Dow Inc.)” as an involved company, TDCC was the entity involved with the production of Agent Orange for the US government and continues to exist as a separate legal entity. Accordingly, TDCC is the proper party to this matter.

TDCC concurs with AusNCP’s preliminary assessment that “the AusNCP is not the correct body to handle this complaint and it should be transferred to the US National Contact Point” and has no objection to such proposed transfer.

As correctly observed as a basis for transfer, “There is nothing indicating the relevant decisions and actions of Dow and Monsanto were specific or particular to Australia” (3(b)); rather, as described below, all pertinent aspects of the US military’s defoliation program and TDCC’s involvement in it as a manufacturer of Agent Orange relate to the United States. The matter of Agent Orange claims by veterans and their progeny has been extensively litigated in the US courts, whose findings reflect that the decision-making, development and use of Agent Orange was the province of the US government. That decision-making included consideration of potential human health risks arising out of exposure to Agent Orange and its trace dioxin contaminant in Vietnam. Agent Orange was manufactured according to the military’s specification and only during the Vietnam War; it was distinct and separate from commercially available herbicides utilizing 2,4,5-T and 2,4-D components.

Allegations concerning TDCC’s awareness of risks associated with exposure to Agent Orange or dioxin likewise relate to conduct in the United States. As noted above, consideration of human health risks arising out of exposure to Agent Orange took place in the United States as the government decided on its herbicide formulations. The courts have determined that TDCC did not fail to advise the government of risks of which it

⁵⁰ AUS Gov 1985, p. I-39; Normile 2025, 351; Young 2022, section 11.2.2 (noting that “the original sample of 2,4,5-T used in the screening tests contained approximately 30 ppm TCDD.”).

was aware but the government was not. In addition, after the War and in conjunction with the US government's Agent Orange veterans' benefit scheme, the US government has undertaken the preeminent review of the science relating to Agent Orange-related health effects, as between 1994 and 2018, its Institute of Medicine (National Academy of Science) issued a series of 12 extensive literature reviews assessing "associations" between Agent Orange and health outcomes, encompassing thousands of papers and studies.⁵¹ Note that even under the association standard, which is a lesser standard than causation, these reviews have found insufficient evidence to link Agent Orange with birth defects.⁵²

To elaborate pertinent background, Agent Orange was a combination of herbicide components 2,4,5-T and 2,4-D; however, the formulation was distinct from commercially available 2,4,5-T and 2,4-D products and was supplied only to the US military during the Vietnam War.⁵³ A concern over health risks from exposure to Agent Orange arises from the presence of the dioxin congener, 2,3,7,8-TCDD, as a contaminant in 2,4,5-T in trace amounts, i.e., concentrations of parts per million. While spray mission protocols would prevent troops from being in the area being sprayed, any actual exposure and intake of TCDD would have been even less than the initial concentration due to factors such as interception of the substance by the forest canopy and photodegradation of TCDD captured on the leaves⁵⁴; so, widespread exposure to a harmful dose of TCDD was highly unlikely.

Allegations that the Agent Orange manufacturers were aware that 2,4,5-T presented a toxic risk have been based on incidents of chloracne, a skin disorder, in their workplaces. As alluded in the 11 July 2025 letter, TDCC experienced such a workplace incidence of chloracne in 1964. First, it has been recognized that this chloracne incidence was an issue of workplace exposure, specifically, TCDD was detected in waste oil at the manufacturing plant, as opposed to a risk of TCDD exposure from the finished product.⁵⁵ Second, as the courts acknowledged, TDCC modified its production process whereby the 2,4,5-T in its Agent Orange would contain a TCDD concentration of no more than 1 part per million, employing what was the state of the art technology at the time to eliminate any chloracne hazard to workers or consumers.⁵⁶

⁵¹ e.g. National Academy of Science, Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides, *Veterans and Agent Orange Update 11* (2018).

⁵² National Academy of Science, *Veterans and Agent Orange Update 11* (2018), at 8, 397-406.

⁵³ *In re "Agent Orange" Product Liability Litigation*, 517 F.3d 76, 90-91 (2d Cir. 2008) (rejecting contention that Agent Orange was simply a combination of "off-the-shelf, commercially available herbicides," as, among other things, Agent Orange required 2,4,5-T at purity levels greater than 90%, far exceeding that of commercial products). At the suspension of the spray program, the existing stocks were destroyed. Young, A. 2009, *The History, Use, Disposition and Environmental Fate of Agent Orange*, ch. 4.

⁵⁴ See Young, A. 2009, *The History, Use, Disposition and Environmental Fate of Agent Orange*, at 82-91 (discussing spray mission protocols, such as use of forward air controller "to insure that the mission was still clear of friendly troops"); National Academy of Science, *Veterans and Agent Orange Update 11* (2018), at 43 (noting dermal exposure affected by canopy density).

⁵⁵ *In re "Agent Orange" Product Liability Litigation*, 517 F.3d 76, 99 n.20 (2d Cir. 2008) (observing "it was not clear that dioxin was in the final products emanating from the contaminated plant. See V.K. Rowe, Test. for the 2,4,5-T Hr'g (undated), at 28-29 (indicating testing of Dow trichlorophenol and 2,4,5-T following 1964 chloracne outbreak in manufacturing plant revealed no "chloracnegens," and that source of outbreak was contaminated waste oil, "not exposure to trichlorophenol").

⁵⁶ *In re "Agent Orange" Product Liability Litigation*, 517 F.3d 76, 99 n.20 (2d Cir. 2008) ("[TDCC] changed its production process such that the concentration of dioxin in its Agent Orange would be reduced to the point where, in its view, the hazard would be eliminated."); see also *id.*, 92 n.16 (discussing TDCC's implementation of new production process for Agent Orange as hurdle for plaintiffs' claims as they could not surmount that TDCC used state of the art technology).

In any event, the courts have moreover recognized that in formulating its specification for Agent Orange, the US government made its own assessment of the potential toxicity and concluded it “posed no unacceptable hazard for the wartime uses for which it was intended”:

In other words, the Army examined the toxicology data available to it and concluded that Agent Orange’s components, 2,4,5-T and 2,4-D -- in the formulation that the Government, in its discretion, used when ordering it, and as it was then being manufactured -- posed “no health hazard” and were, at least under the circumstances of international armed conflict, suitable for use in Southeast Asia.

...

The Government made an express determination, based on the knowledge available to it at the time, that Agent Orange as then being manufactured posed no unacceptable hazard for the wartime uses for which it was intended, and that the product should continue to be manufactured and supplied to it.⁵⁷

Likewise, the courts have concluded that apart from the risk of workplace chloracne, the manufacturers knew of no health risks from exposure to Agent Orange as it was to be used in wartime conditions:

There is no evidence to which we have been directed or that we have otherwise found that the defendants' knowledge of 2,4,5-T's risks extended to dioxin as a carcinogen, as a toxin that potentially might cause diseases long after exposure, or as a significant health risk (apart from chloracne) to those exposed to herbicides containing 2,4,5-T being used as such, in wartime conditions or otherwise, except for workers manufacturing them or their component chemicals.⁵⁸

In sum, the matters relating to the development of the herbicide, including the consideration of any toxic risks, by and among the US government, TDCC and other manufacturers, are related to and concern conduct in the United States and transfer of this matter to the US NCP would be appropriate.

Issues of Agent Orange science are also inimitably linked to the United States. The matter of Agent Orange causation has been considered in the course of the US litigation, with the courts finding the lack of a causal link between Agent Orange and diseases other than chloracne.⁵⁹

Rather than recovery from lawsuits against the manufacturers, US veterans (like their Australian counterparts) now receive compensation from the government for a set of diseases presumptively caused by exposure to Agent Orange, although such presumptions are based on “statistical associations,” which “are not equivalent to cause in a legal sense for such purposes as mass tort liabilities” against the manufacturers.⁶⁰

⁵⁷ *In re “Agent Orange” Product Liability Litigation*, 517 F.3d 76, 95-97 (2d Cir. 2008).

⁵⁸ *In re “Agent Orange” Product Liability Litigation*, 517 F.3d 76, 100 (2d Cir. 2008).

⁵⁹ In granting dismissal to the manufacturers on the government contractor defense, Judge Jack Weinstein, who presided over the Agent Orange cases for decades, summarized: “In earlier waves of such suits in the 1970s, 1980s and 1990s, the courts concluded that none of the available evidence would support a finding to a more-probable-than-not standard of causality between exposure to Agent Orange and disease (except for a quickly discoverable and curable form of skin irritation, chloracne). The scientific basis for that conclusion of lack of any substantial proof of causality, either general or specific to individuals, remains much the same. See Institute of Medicine, *Veterans and Agent Orange: Update 2002 (2003)*”. *In re “Agent Orange” Product Liability Litigation*, 304 F. Supp. 2d 404, 407 (E.D.N.Y. 2004).

⁶⁰ *In re “Agent Orange” Product Liability Litigation*, 304 F. Supp. 2d 404, 407-08 (E.D.N.Y. 2004).

Pertinent to the issue of birth defects raised by the underlying complaint, based on the literature reviews made by committees of the US Institute of Medicine (National Academy of Science), the US Veterans Administration does not provide benefits for the progeny of male veterans except for those suffering from one specific condition, spina bifida. With respect to spina bifida, while VA continues to provide such benefits as a policy matter, the current reviews of Agent Orange literature (2014 and 2018) determined there was inadequate or insufficient evidence of an association with spina bifida, along with not identifying any other associations between Agent Orange exposure and adverse outcomes in future generations.⁶¹

Thus, as with matters and issues involving the development and production of Agent Orange, the issues concerning Agent Orange science heavily involve the United States, which further supports the transfer of this matter to the US NCP.

Lastly, as explained in a corresponding response to the 11 July 2025 letter by Dow Chemical (Australia) Pty Ltd, that entity has had no involvement with Agent Orange at any time and is not a proper respondent party to the notifier's complaint. Notifier's allegations concerning Dow Chemical (Australia) and other Australian connections do not provide a basis for the AusNCP to retain this Agent Orange matter and transfer to US NCP should not be withheld.

For the foregoing reasons, TDCC concurs with the AusNCP's assessment to transfer this complaint to US NCP and requests that such transfer be so made.

⁶¹ US VA explains in this regard: "The Health and Medicine Division (formally known as the Institute of Medicine) of the National Academy of Sciences, Engineering, and Medicine (NASEM) concluded in its report, *Veterans and Agent Orange: Update 1996 Summary and Research Highlights*, that there is limited or suggestive evidence of an association between exposure to herbicides used in Vietnam and spina bifida in children of Vietnam Veterans. In *Veterans and Agent Orange Update 2014* and *Veterans and Agent Orange 2018*, NASEM did not find any new significant associations between exposure to herbicides used in Vietnam and adverse outcomes in future generations. Furthermore, the committee has changed the previous categorization of exposure to the chemicals of interest and spina bifida from limited or suggestive evidence to inadequate or insufficient evidence." <https://www.publichealth.va.gov/exposures/agentorange/birth-defects/spina-bifida.asp>

Annex B: Schedule of events

Submission	Date
<ul style="list-style-type: none"> • Notifier submitted complaint to the AusNCP 	13 May 2025
<ul style="list-style-type: none"> • AusNCP acknowledged receipt and sought further information 	19 May 2025
<ul style="list-style-type: none"> • Notifier submitted updated the complaint 	19 May 2025
Initial Assessment	
<ul style="list-style-type: none"> • AusNCP commenced ongoing coordination with the US and German NCPs 	23 May 2025
<ul style="list-style-type: none"> • AusNCP notified the AusNCP Board 	28 May 2025
<ul style="list-style-type: none"> • AusNCP email update sent to the notifier 	3 July 2025
<ul style="list-style-type: none"> • AusNCP received necessary inputs from other NCPs 	11 July 2025
<ul style="list-style-type: none"> • AusNCP contacted all parties, including the enterprises, regarding the potential transfer of the complaint from the AusNCP to the US NCP 	11 July 2025
Final Statement	
<ul style="list-style-type: none"> • Draft Final Statement provided to the AusNCP Board for review and advice 	14 October 2025
<ul style="list-style-type: none"> • Draft Final Statement provided to other NCPs for comment 	14 October 2025
<ul style="list-style-type: none"> • Revised draft Final Statement provided to the AusNCP Board for review and advice 	7 November 2025
<ul style="list-style-type: none"> • Draft Final Statement provided to the parties for comment 	19 January 2026
<ul style="list-style-type: none"> • Correspondence from the notifier in response to the draft Final Statement received by the AusNCP 	23 January 2026
<ul style="list-style-type: none"> • Additional correspondence from notifier in response to the draft Final Statement received by the AusNCP 	17 February 2026
<ul style="list-style-type: none"> • Comments received from the US NCP 	18 February 2026
<ul style="list-style-type: none"> • Dow's feedback on the draft Final Statement received by the AusNCP 	20 February 2026
<ul style="list-style-type: none"> • Embargoed copy of the Final Statement provided to the parties 	28 April 2026
<ul style="list-style-type: none"> • Bayer's feedback on the embargoed copy of the Final Statement received by the AusNCP 	5 May 2026
<ul style="list-style-type: none"> • Embargoed copy of the Final Statement provided to the relevant NCPs (Germany, the Netherlands, and the US) and the AusNCP Board 	8 May 2026
<ul style="list-style-type: none"> • Final Statement published on www.ausncp.gov.au and reported to the OECD 	22 May 2026

Annex C: Publications and references

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Annex D: Institutional arrangements

- The Australian Government is committed to promoting the use of the OECD Guidelines and implementing them effectively and consistently. Through business cooperation and support, the OECD Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.
- The OECD Guidelines are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. Enterprises operating in Australia and Australian enterprises operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines and to perform to the standards they recommend. In countries where domestic laws and regulations conflict with the principles and standards of the OECD Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent, which does not place them in violation of domestic law.
- The OECD Guidelines represent international standards of behaviour, which in some areas, may impose higher standards than Australian law. Importantly however, while Australia is an adhering country to the OECD Guidelines and the OECD Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law.
- The OECD Guidelines can be seen as:
 - A useful aid to business in developing their own code of conduct. They are not aimed at replacing or preventing enterprises from developing their own codes.
 - Complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery. For example, the human rights chapter in the OECD Guidelines as well as other key concepts align with the [United Nations Guiding Principles on Business and Human Rights](#).
 - Providing an informal structure for resolving issues that may arise in relation to implementation of the OECD Guidelines in complaints.

Annex E: Governance

- Governments adhering to the OECD Guidelines have flexibility in organising their NCPs, which are expected to meet core effectiveness criteria, by operating in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the OECD Guidelines. NCPs are also expected to seek the active support of social partners, other stakeholders and relevant government agencies.
- Accordingly, the OECD Guidelines stipulate that:
 - NCPs will be composed, organised and sufficiently resourced to provide an effective basis for dealing with the broad range of issues covered by the OECD Guidelines, have access to expertise on all relevant aspects of the NCP mandate, and operate in an impartial manner and maintain an adequate level of accountability to the adhering government.
 - NCPs can use different forms of organisation to meet the effectiveness criteria and maintain stakeholder confidence.
 - Governments are encouraged to include representatives of the business community, worker organisations, civil society and other non-governmental organisations in advisory or oversight bodies to assist the NCP in its tasks and contribute to the effectiveness of the OECD Guidelines.
- The [AusNCP Board](#) includes representatives from Australian Government agencies, business, civil society and unions. The AusNCP Board provides independent expert advice and assistance to the AusNCP and the Independent Examiners on complaints handling. Board members use their networks, events and publications to promote responsible business conduct standards under the OECD Guidelines and the AusNCP services. The AusNCP Board is consulted on all AusNCP statements.
- The AusNCP Board helps to ensure that the AusNCP meets the effectiveness criteria of the OECD Guidelines. AusNCP Board Members may be called on to conduct procedural reviews of AusNCP complaints and may be consulted on various operational and administrative matters as needed.