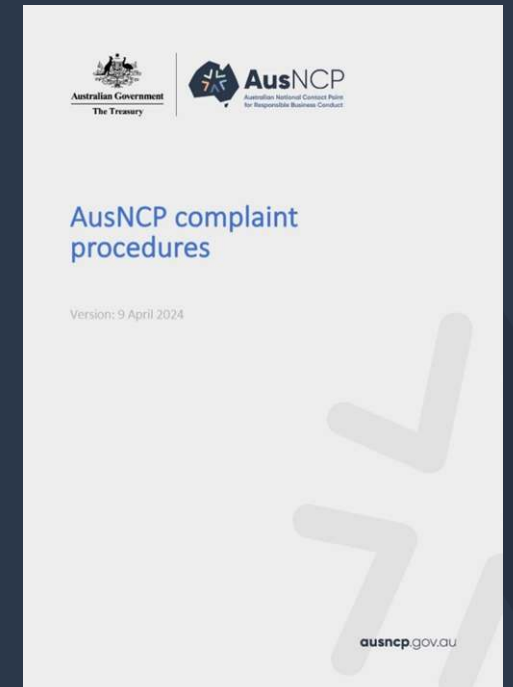
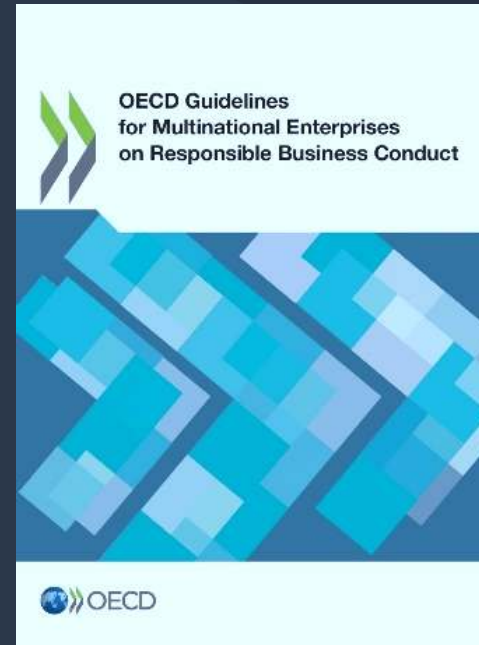




# *OECD Guidelines* and the AusNCP

Presentation to Diplomacy Training Program  
Webinar

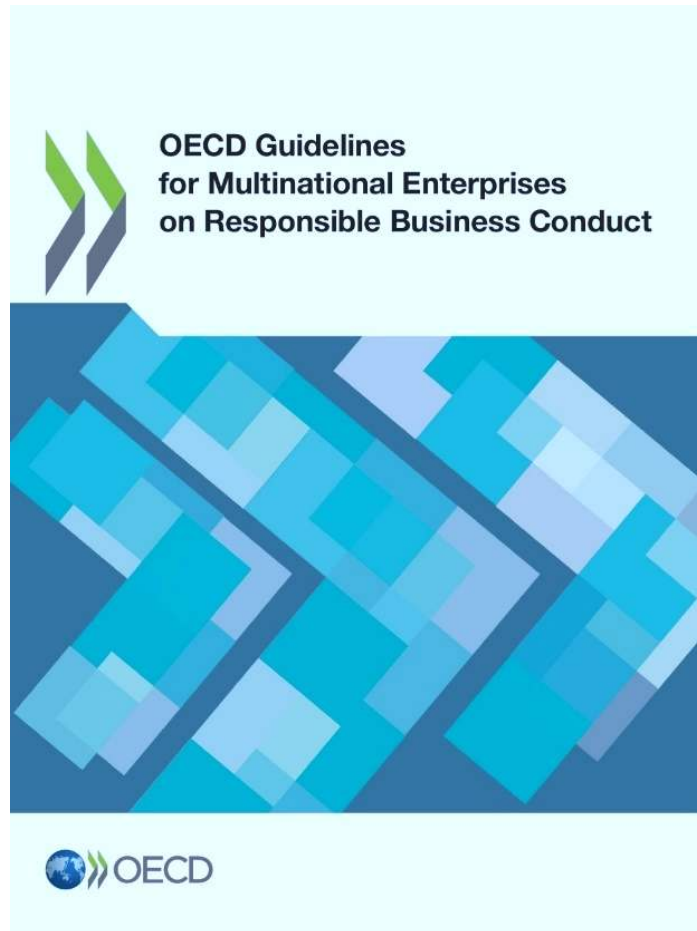
20 February 2025



# 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

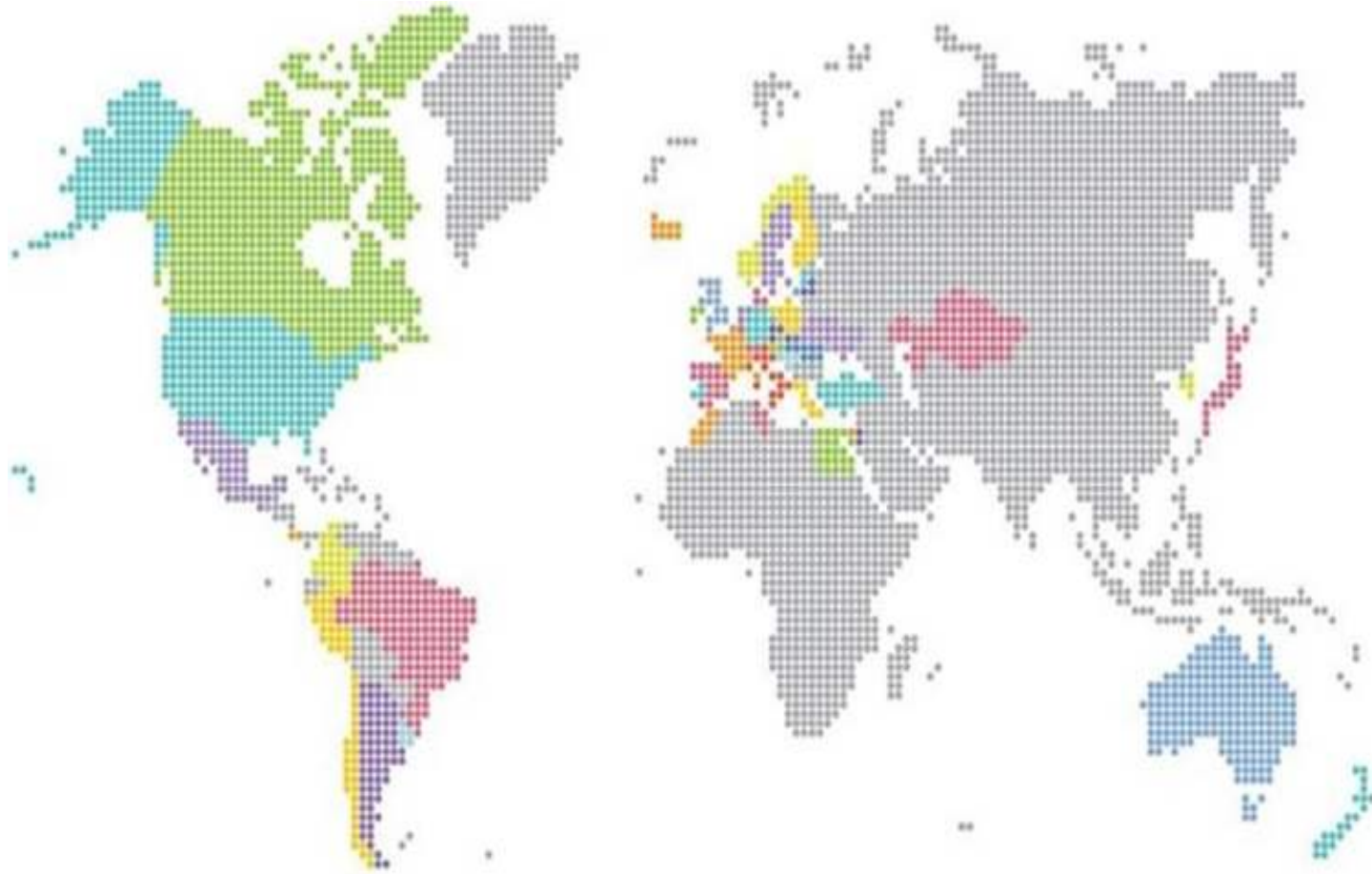


Consumer  
Interests



Taxation

# To whom do they apply?



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

# Adherent countries

- All 38 OECD countries

Plus

- 14 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)
  - Mauritius (2024)



# 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

# Types of NCPs

## Institutional arrangements

NCP institutional arrangements refer to the structuring and operations of an NCP, including how they engage with or incorporate stakeholder participation. Governments have flexibility in how they structure their NCPs so long as they make available the human and financial resources necessary for the NCP to fulfil their responsibilities.

### 19 Single agency NCPs

The NCP is composed of one official in a single ministry, or by a group of officials belonging to the same service in the same ministry.

### 9 Interagency NCPs

The NCP is composed of a group of representatives from several ministries or government agencies, usually with the Secretariat located on one of these ministries, composed of one or more officials.

### 17 Multipartite NCPs

The NCP is composed of a group of government officials and stakeholder representatives, usually with a Secretariat located in one of the government agencies represented in the NCP.

### 4 Expert-based NCPs

The NCP is composed of experts who are appointed by, but external to, the government.

### 2 Hybrid NCPs

Composed of elements derived from different models above.

Note: Some NCPs choose to support their main structural body with a multi-stakeholder or interagency advisory body.

Source - [OECD 2023 Annual Report on NCP Activity](#)



# 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.

# Overview of AusNCP complaints received since 2005



# Open and recent AusNCP Complaints



# Complaint tracking

<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

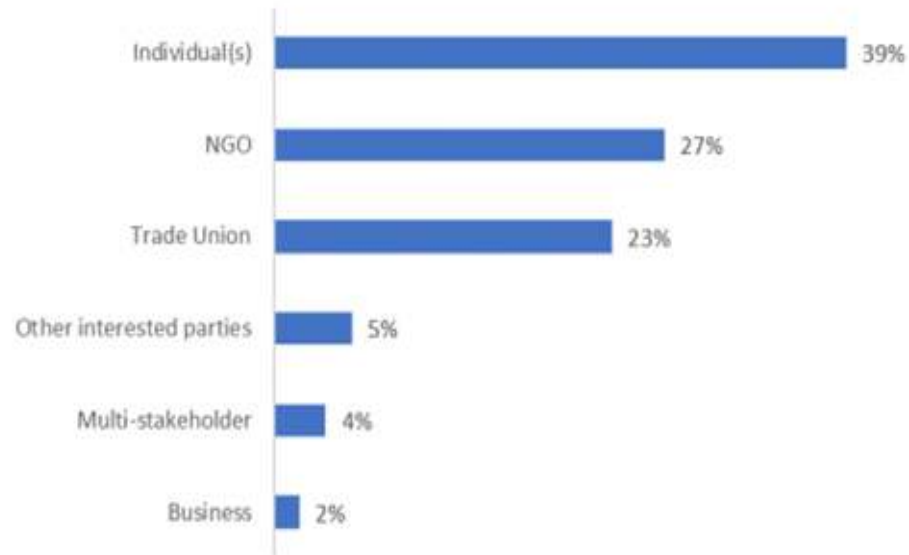
### Active complaints

ID	Notifier	Enterprise	Activity location	Status	Statements
<a href="#">Complaint 34</a> Received: July 2024	Individual	Australia-based enterprise (manufacturing / wholesale and retail trade sectors)	Australia, Japan, Sri Lanka	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="#">Update Statement - January 2025</a>  <a href="#">Initial Assessment - August 2022</a>
<a href="#">Complaint 29</a> Received: December 2021	Project Sepik and Jubilee Australia Research Centre on behalf of affected Sepik River communities	PanAust Limited	Papua New Guinea	Follow Up	<a href="#">Final Statement - October 2023</a>  <a href="#">Initial Assessment - July 2022</a>

# NCP Network complaint trends – who?

## Submitters

Figure 1.12. Submitters of specific instances in 2023



Note: N=56  
Source: NCP Annual Reporting Questionnaire (2023)

## Multinational enterprises

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



Note: N=51  
Source: NCP Annual Reporting Questionnaire (2023)

# NCP Network complaints – what sorts of issues?

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)

# AusNCP Promotion activities



## Speaking to stakeholders

### Events

- *Broad based* events reach most number of people

### Targeted events

- *Prospective notifiers* – Aid organisations and NGO networks
- *Businesses and their advisers* – Global Compact Network, law firms/councils, post grad law schools
- *Government* – in areas of overlapping interest or stakeholders (e.g. law, trade, resources)

**Informal opportunities** – providing tools for staff in overseas missions and trade commissioners to speak about RBC and the AusNCP in their day to day work with communities, governments or business



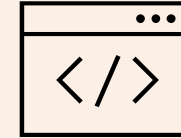
## AusNCP web presence and social media

### Updated website

- Leverage OECD documents and tools, including links to e-learning
- Events page and published presentations, include links to virtual OECD events
- Further work underway focused on notifiers and more accessible tools.

### Social media accounts

- Australian Treasury account
- Other relevant govt accounts
- Non-govt board members and examiner accounts



## Government and stakeholder platforms

### Website links and cross-promotion

- Text on the Guidelines on over 40 Australian country mission websites, some in local languages.
- Other government websites - trade promotion, export credit agency, bribery prevention network, antislavery hub (more to come).
- **Monthly board newsletter** provides links to social media, events and/or short texts for our stakeholders to use in their member communications and platforms.

# NCP process and case examples



# Take aways – details to follow

1. **Guidelines NOT judicial remedy mechanism**
2. **Many factors contribute to any NCP outcome**
3. **Stay current with NCP developments/statements**

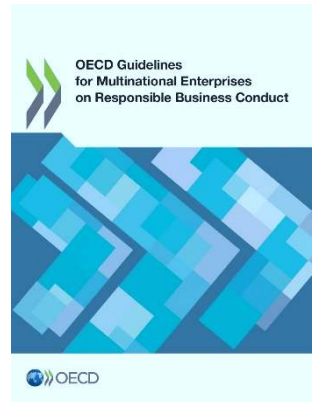
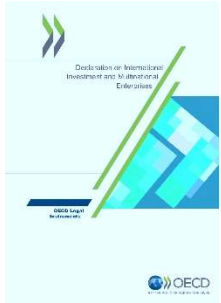
# Guidelines: origins & obligations

Contained in 1976 [Declaration on International Investment and Multinational Enterprises](#) (amended 2023).

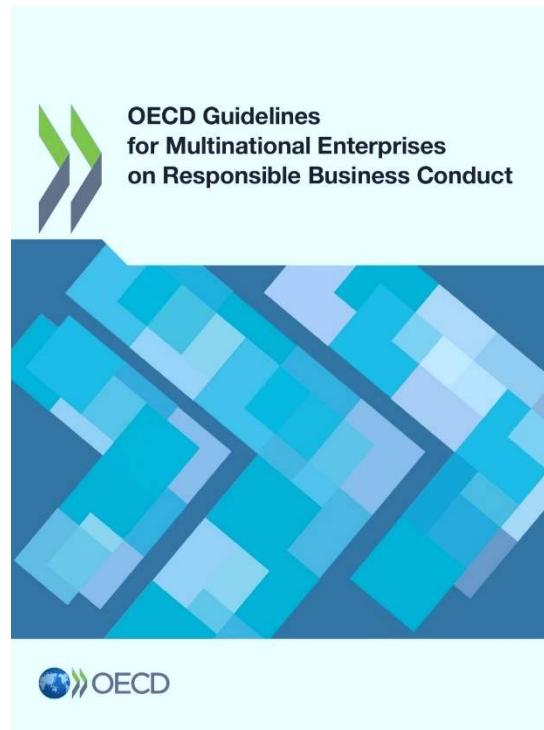
- In the Declaration, governments ‘recommend to multinational enterprises operating in or from their territories the observance of the Guidelines’: I

OECD members and others (52 nations) ‘adhere to’ the [Guidelines](#), including:

- ‘**encourage the enterprises operating in or from their territories to observe the Guidelines** wherever they operate’: I, [3];
- ‘**...set up National Contact Points** ...to... (a) promote awareness ...[and] support coherence of policies to promote responsible business conduct’: Decision, I, [1]
- ‘The NCP will...contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances’: Procedures, I, C.



# Guidelines & domestic regulation<sup>12</sup>



## I. Concepts and Principles

1. The *Guidelines* are recommendations jointly addressed by governments to multinational enterprises. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. Observance of the *Guidelines* by enterprises is voluntary and not legally enforceable. Nevertheless, some matters covered by the *Guidelines* may also be regulated by national law or international commitments.
2. Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for, nor should they be considered to, override domestic law and regulation. Failure of governments to uphold the principles and standards consistent with the *Guidelines* or their associated international commitments does not diminish the expectation that enterprises observe the *Guidelines*. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the *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.
3. Since the operations of multinational enterprises extend throughout the world, international co-operation in this field should extend to all countries. Adherents to the *Guidelines* encourage the enterprises operating in or from their territories to observe the *Guidelines* wherever they operate, while taking into account the particular circumstances of each host country.
4. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. While the *Guidelines* allow for a broad approach in identifying which entities may be considered multinational enterprises for the purposes of the *Guidelines*, the international nature of an enterprise's structure or activities and its commercial form, purpose, or activities are main factors to consider in this regard. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of other entities in a group, their degree of autonomy within the group may vary widely from one multinational enterprise to another. Ownership may be private, State, or mixed. The *Guidelines* are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the *Guidelines*.
5. The *Guidelines* are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to the same expectations in respect of their conduct wherever the *Guidelines* are relevant to both.
6. Governments wish to encourage the widest possible observance of the *Guidelines*. While it is acknowledged that small- and medium-sized enterprises may not have the same capacities as larger enterprises, Adherents to the *Guidelines* nevertheless encourage them to observe the *Guidelines*' recommendations to the fullest extent possible.

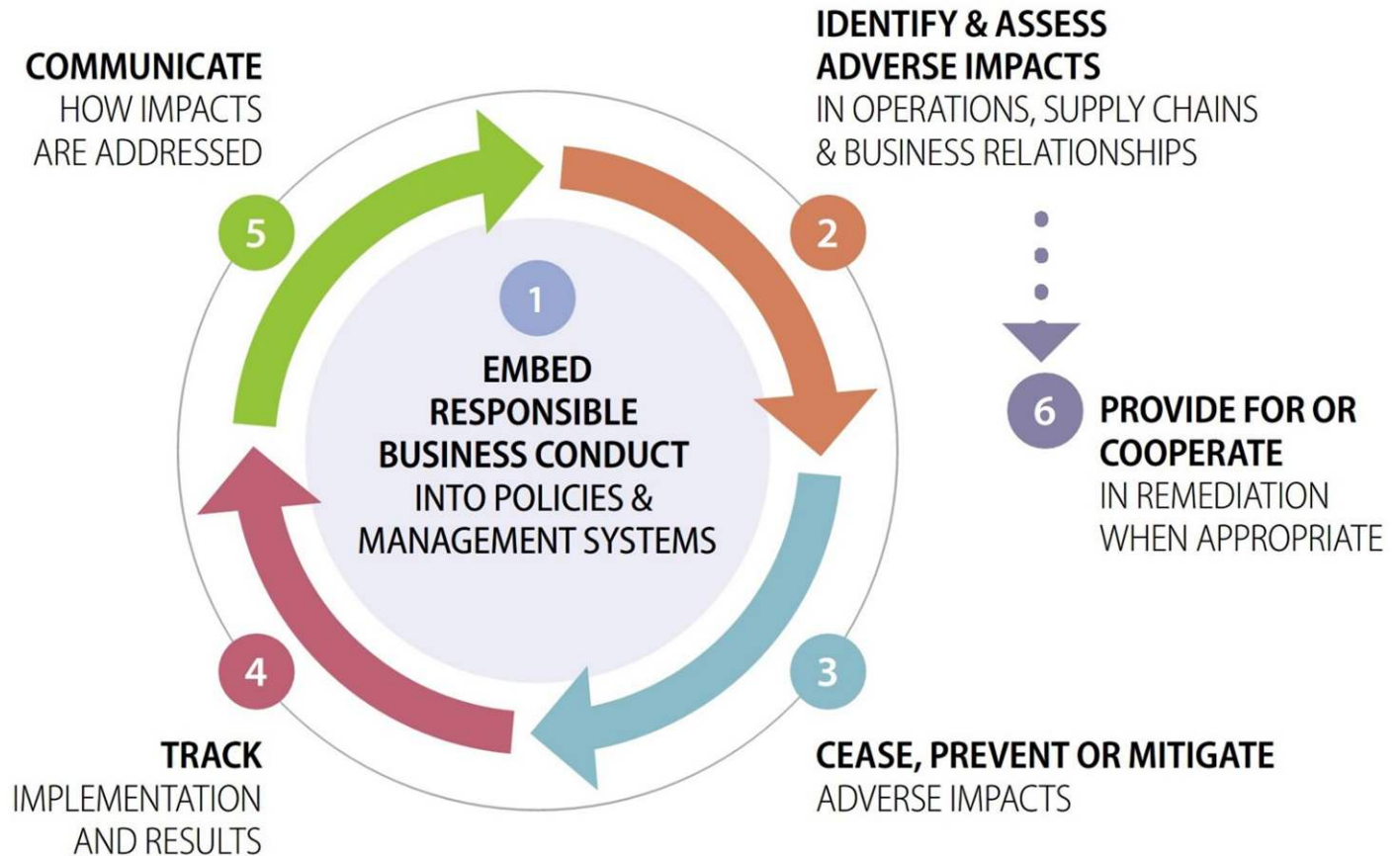
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4. A precise definition of multinational enterprises is not required for the purposes of the *Guidelines*. While the *Guidelines* allow for a broad approach in identifying which entities may be considered

# OECD sectoral guidances: expectations of company

 <p>OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT</p> <p>OECD</p> <p><u>General</u></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><u>Lenders</u></p>	 <p>OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector</p> <p>OECD</p> <p><u>Extractives</u></p>	 <p>OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector</p> <p>OECD</p> <p><u>Textiles &amp; Footwear</u></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><u>Investors</u></p>	 <p>OECD-FAO Guidance for Responsible Agricultural Supply Chains</p> <p>OECD</p> <p><u>Agriculture</u></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><u>Mining</u></p>	 <p>G20/OECD Principles of Corporate Governance</p> <p>OECD</p> <p><u>Corp. Governance</u></p>

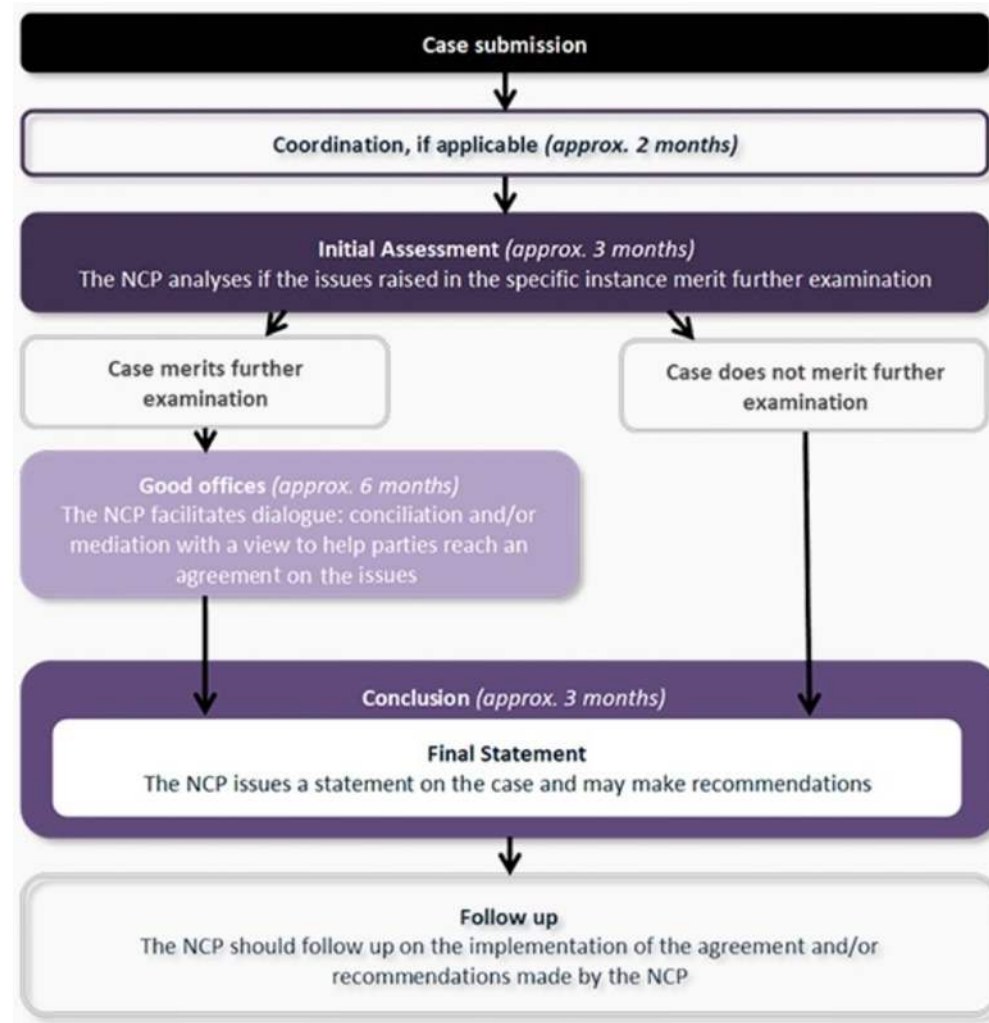
# Due diligence and OECD guidance

## DUE DILIGENCE PROCESS & SUPPORTING MEASURES



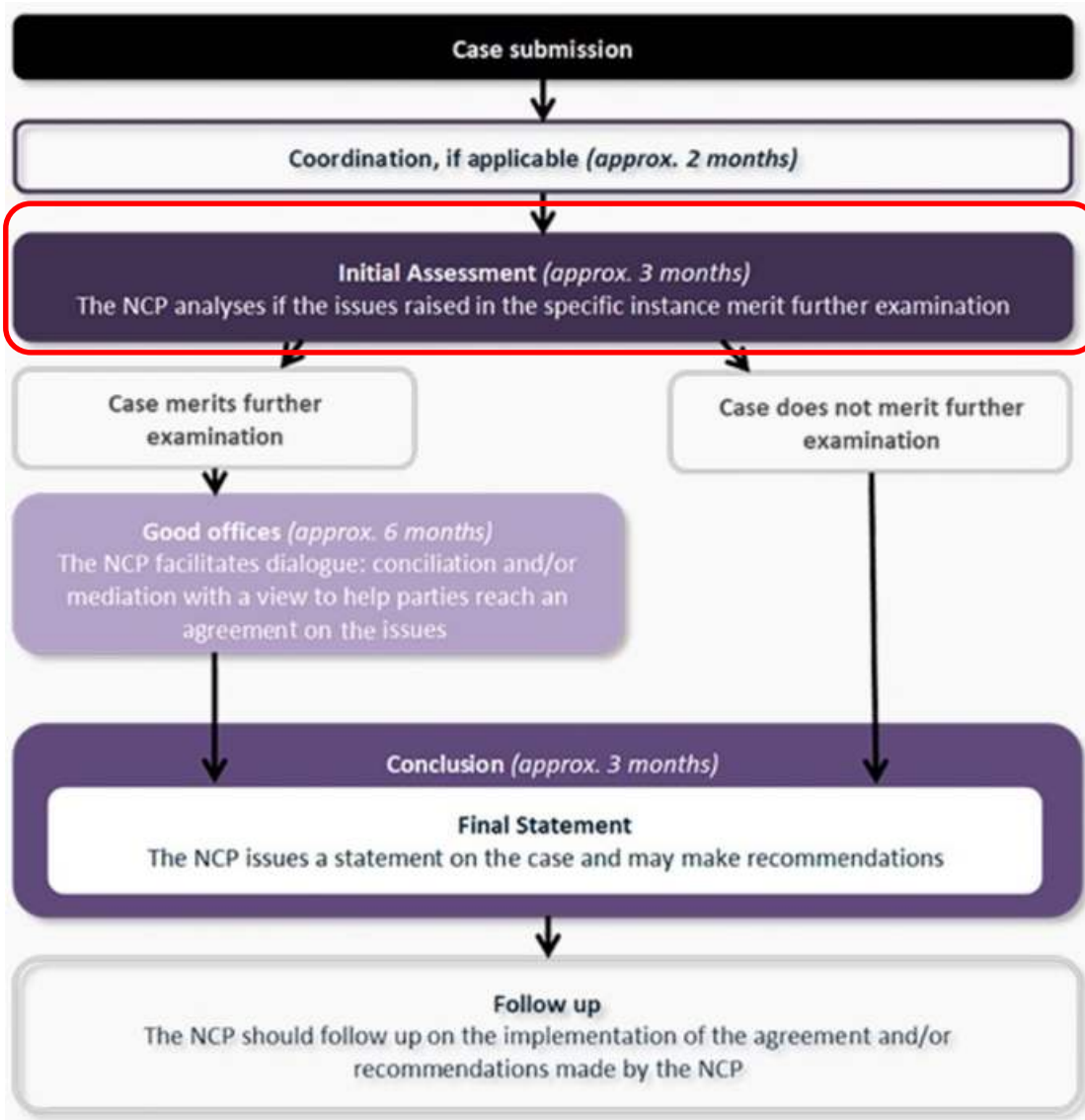
page 21 of <https://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>

# Guidelines: specific instance process



From OECD [‘How do NCPs handle cases ?’](#)

# Guidelines: specific instance process

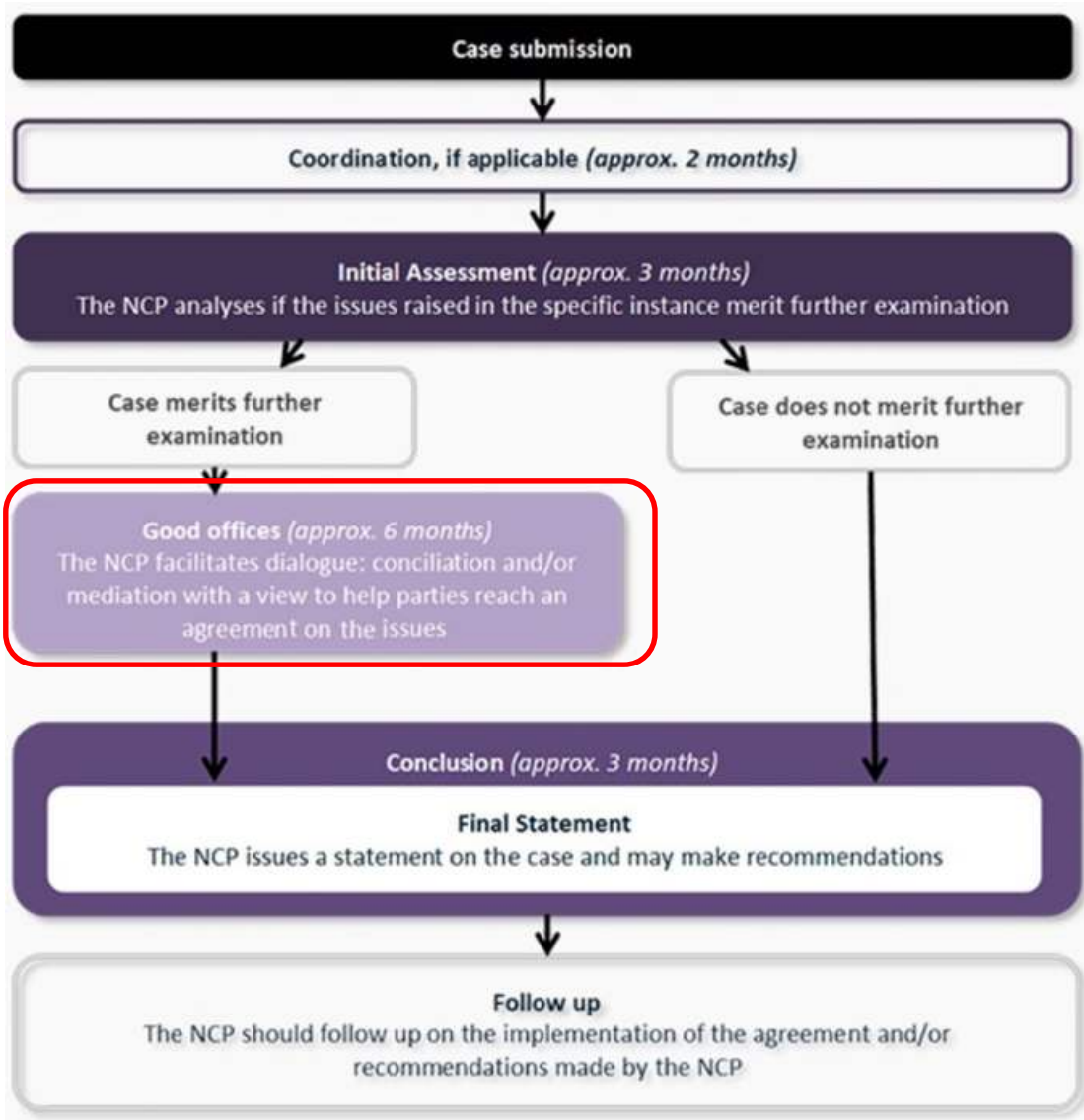


**Initial Assessment: does case merit further examination?** Procedures Commentary, [33]

1. identity of [notifier] and its interest in the matter;
2. whether issue is material (relevant to *Guidelines*) and substantiated (sufficient and credible information);
3. whether enterprise is covered by the *Guidelines*;
4. whether there [is] link between the enterprise's activities and the issue raised;
5. [does] applicable law / parallel proceedings limit NCP's ability to [help] resolution;
6. [would] examination contribute to the purposes and effectiveness of the *Guidelines*.



# Guidelines: specific instance process

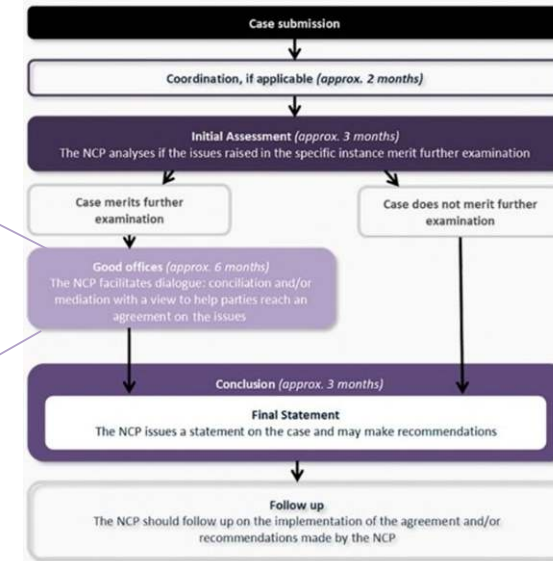
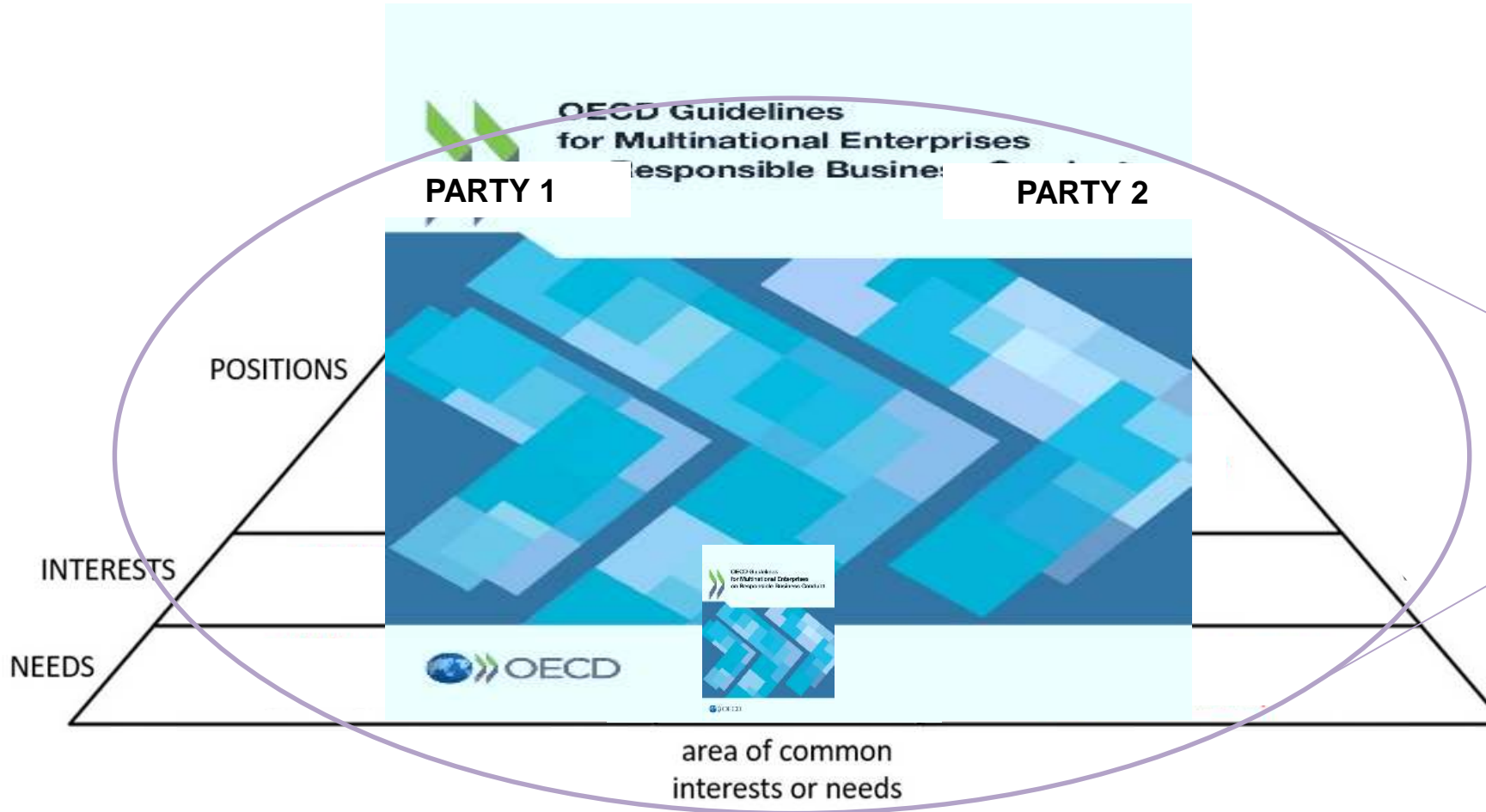


If Initial Assessment accepts: **NCP offers 'good offices'**

'The NCP will ...offer and, with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as mediation or conciliation, to assist the parties in resolving the issues' Procedures I C [3] (d)

- significant flexibility on how any 'good offices' might proceed
- often navigated/directed through procedural agreement NCP arranges with parties

# NCP 'good offices' = dialogue / mediation



# Possible outcomes

(images from OECD Watch 'Stage one: Deciding whether to file')

Actions / activities by company responding to harm

COMPANY ACTIONS TO REMEDY HARM		COMPANY ACTIONS TO PREVENT HARM	
Rehabilitate environmental damage	Apologise publicly	Establish a company-level complaints mechanism	Adopt measures to prevent future harm
Committing to not repeat the harm in future	Rehire workers fired unfairly	Align company targets with international standards	Improve human rights and environmental policies and practices
Investigate and report publicly on the harms	Repair damaged infrastructure	Strengthen ongoing community engagement	
		<b>OPEN DOOR FOR DISCUSSION</b>	
Return land or property unjustly taken	Provide monetary compensation	<p>Open door for discussion between the complainants and company on the same or similar issues in the future.</p>	

### NCP ACTIONS

The NCP can include in its public final statement:

Recommendations	Determinations	Consequences
Suggest what the company should do moving forward to better align its conduct with the Guidelines' standards.	Explain why the company did or did not meet the Guidelines' standards.	Ask other ministries to penalise or withhold benefits from the company if it did not observe the Guidelines' standards or participate in good faith in the complaint process.
Recommendations and determinations are useful to ensure that the company aligns its future policies and practices with the Guidelines to ensure no future repetition of similar harms.		

**1. NCP public statement**

### ACTIONS BY OTHERS

Complaint publicity may generate impactful action by others:

Media	Government
Media attention may open new doors to dialogue and remedy.	Government officials may issue sanctions against the company, strengthen related policy or law, or take other steps.
Investors	Other companies
Investor pressure may prompt companies to improve.	Business relations or peer companies in the sector may be encouraged to improve their own conduct.

**2. Action by other parties**

2. Action by other parties

### 3. Broader benefits

#### STRENGTHENED CIVIL SOCIETY

Communities have better access to dialogue with the company or other influential entities.	Collaboration is increased between local, national, and international civil society working on related issues.	Communities are more organised in their struggle for justice.

**3. Broader benefits**

# Possible outcomes

## COMPANY ACTIONS TO REMEDY HARM



Rehabilitate environmental damage



Apologise publicly



Committing to not repeat the harm in future



Rehire workers fired unfairly



Investigate and report publicly on the harms



Repair damaged infrastructure



Return land or property unjustly taken



Provide monetary compensation

## COMPANY ACTIONS TO PREVENT HARM



Establish a company-level complaints mechanism



Adopt measures to prevent future harm



Align company targets with international standards



Improve human rights and environmental policies and practices




Strengthen ongoing community engagement



OPEN DOOR FOR DISCUSSION


## ACTIONS BY OTHERS

Complaint publicity may generate impactful action by others:



**Media**

Media attention may open new doors to dialogue and remedy.



**Government**

Government officials may issue sanctions against the company, strengthen related policy or law, or take other steps.



**Investors**



**Other companies**

**NCP**  
The NCP can include

**Recommendations**



Suggest what the company should do moving forward to better align its conduct with the Guidelines' standards.

**Determinations**




Determine what the company should do to ensure no future repetition of similar conduct.

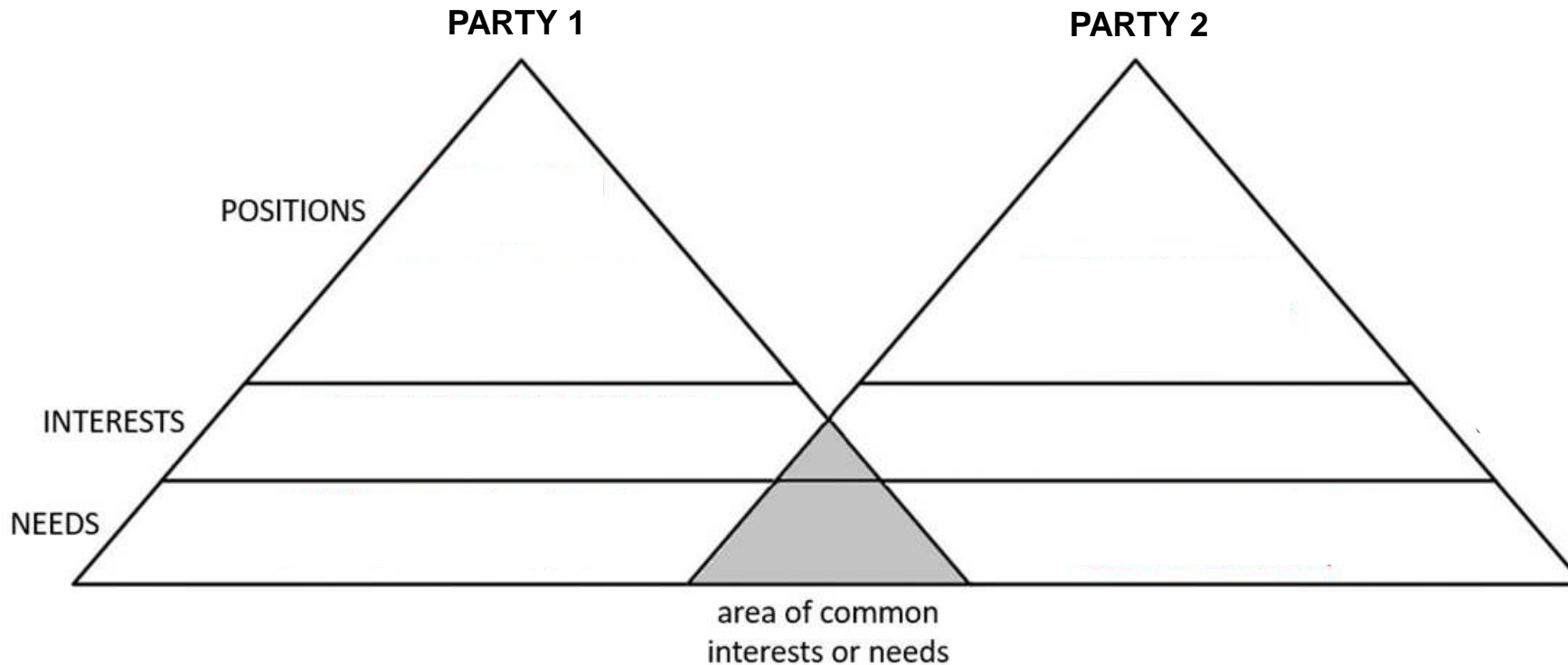
Recommendations and determinations are used to ensure the company aligns its future policies and practices to ensure no future repetition of similar conduct.

**3**

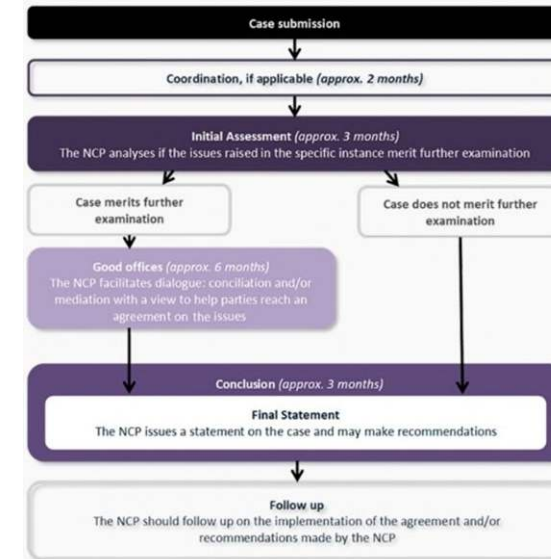
**STRENGTHEN**



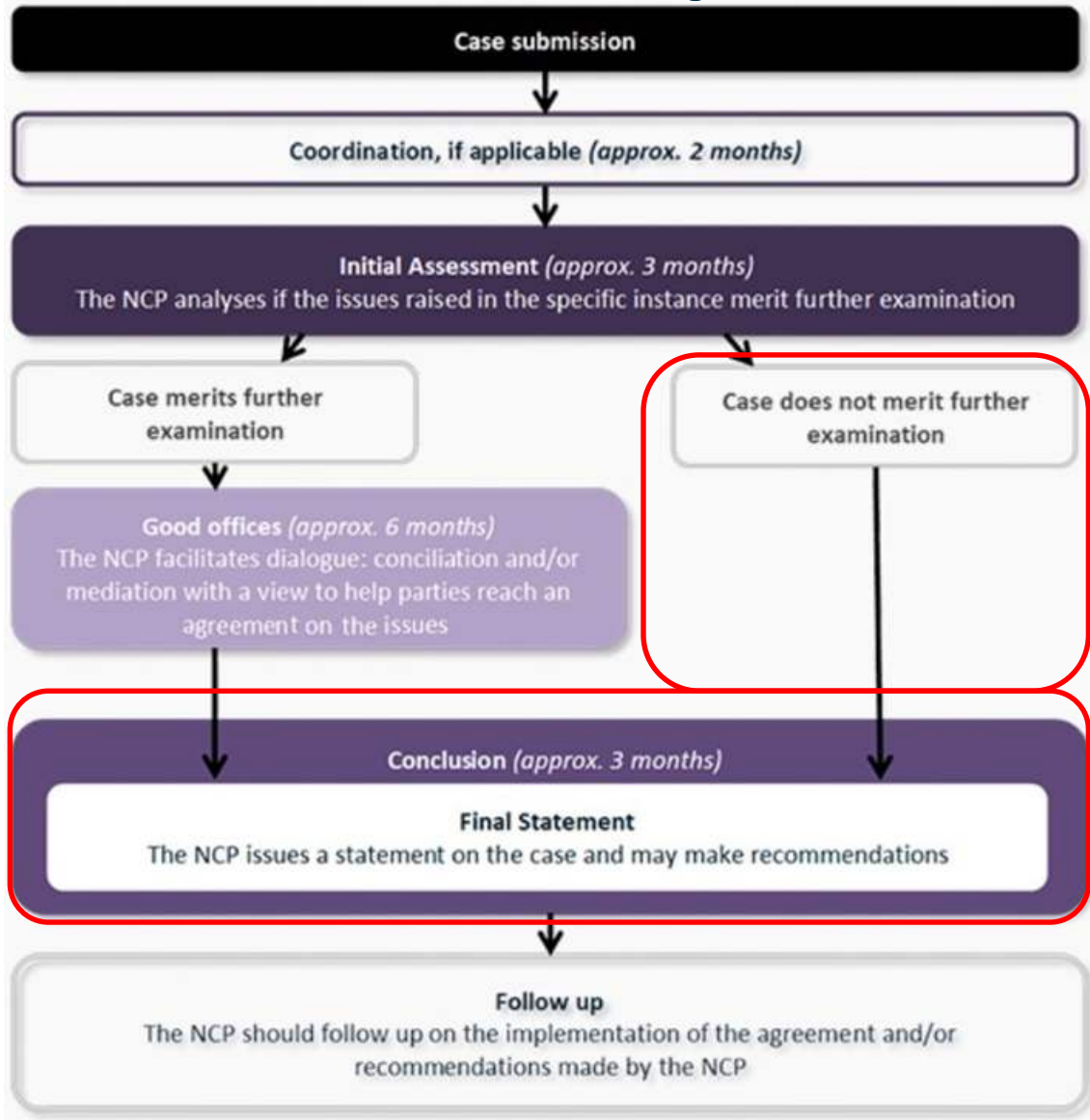
# NCP 'good offices' = dialogue / mediation



**Only path for direct action from company from 'good offices' = company agreement**



# Guidelines: specific instance process

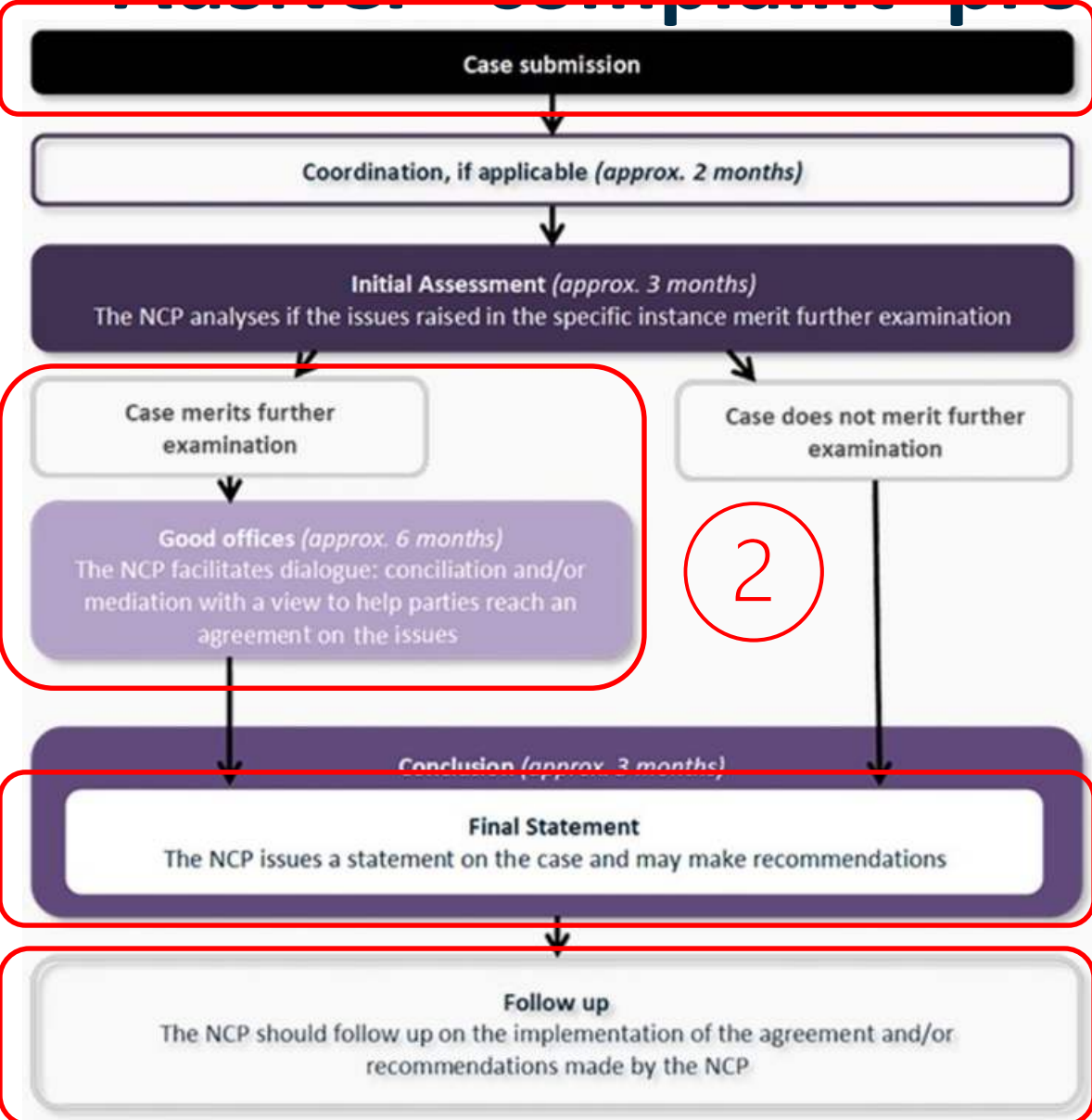


At conclusion **NCP must always issue PUBLIC final statement**  
Procedures I C [4]

Content will depend on previous course:

- If not accepted in Initial Assessment: Final Statement will explain why
- If parties agree in good offices: content largely depends on them (some aspects may remain confidential)
- If parties don't agree in good offices: NCP makes statement on case; may include recommendations

# AusNCP 'complaint' process

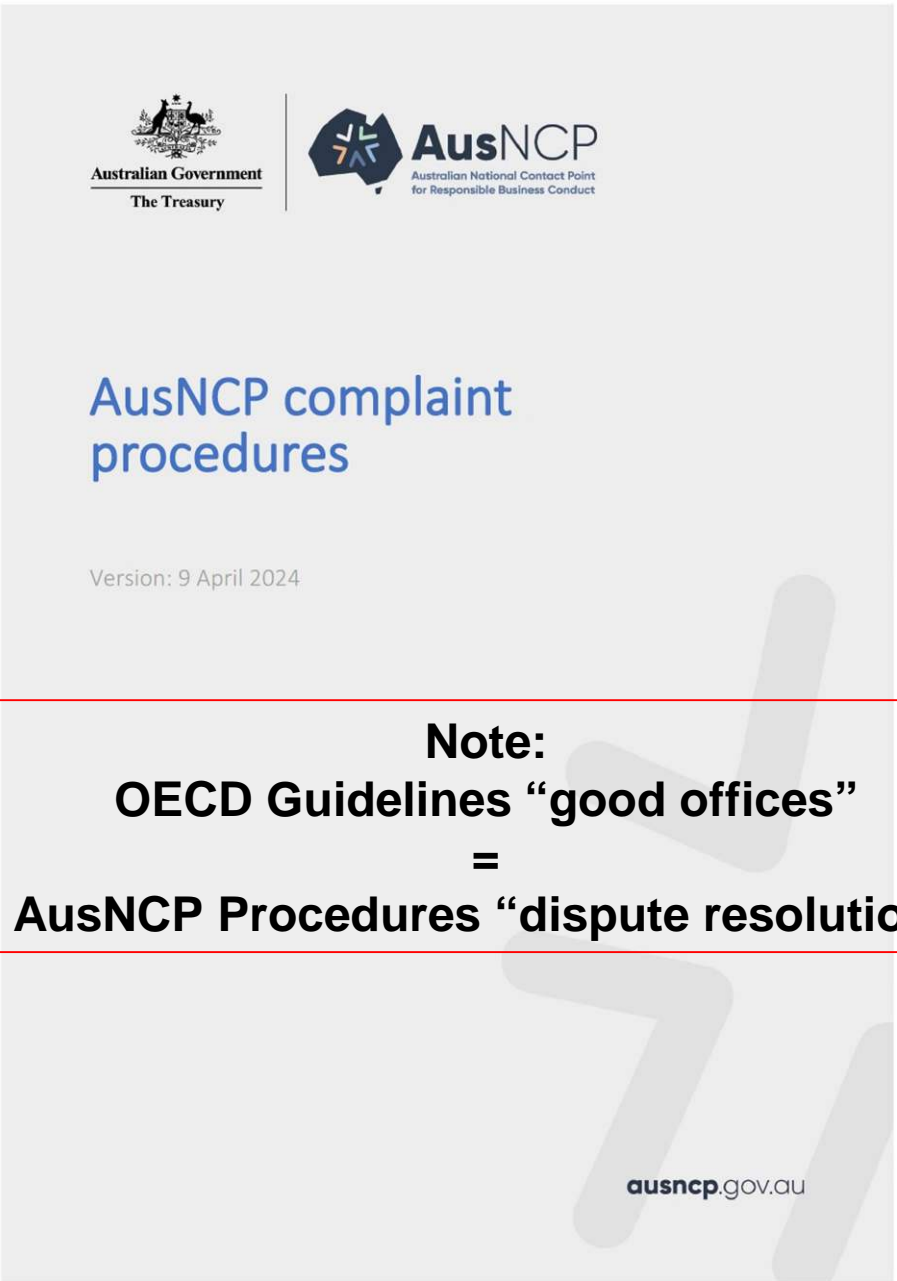


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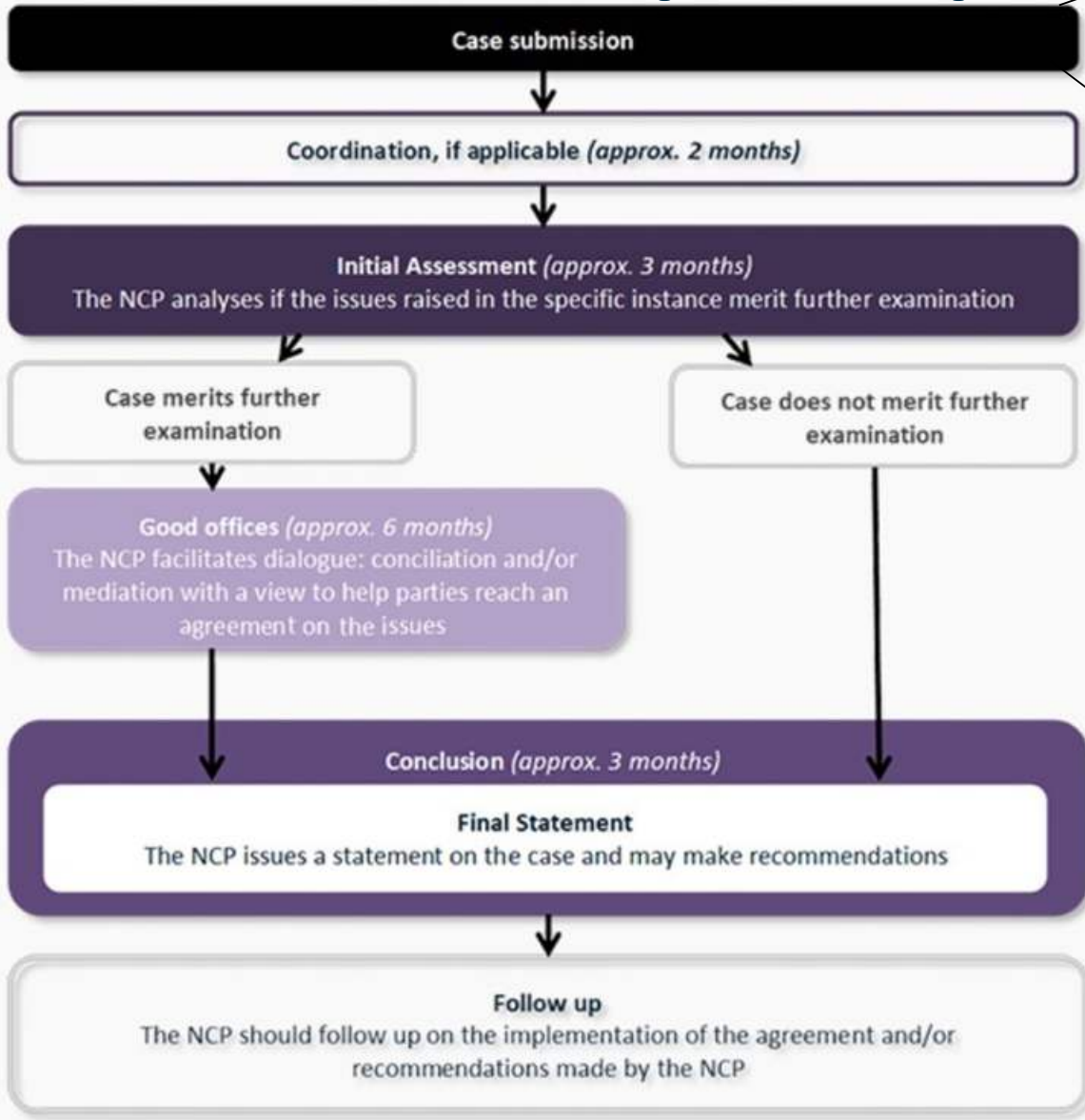
3

4



**Note:**  
OECD Guidelines “good offices”  
=  
AusNCP Procedures “dispute resolution”

# AusNCP 'complaint' process



## Case submission

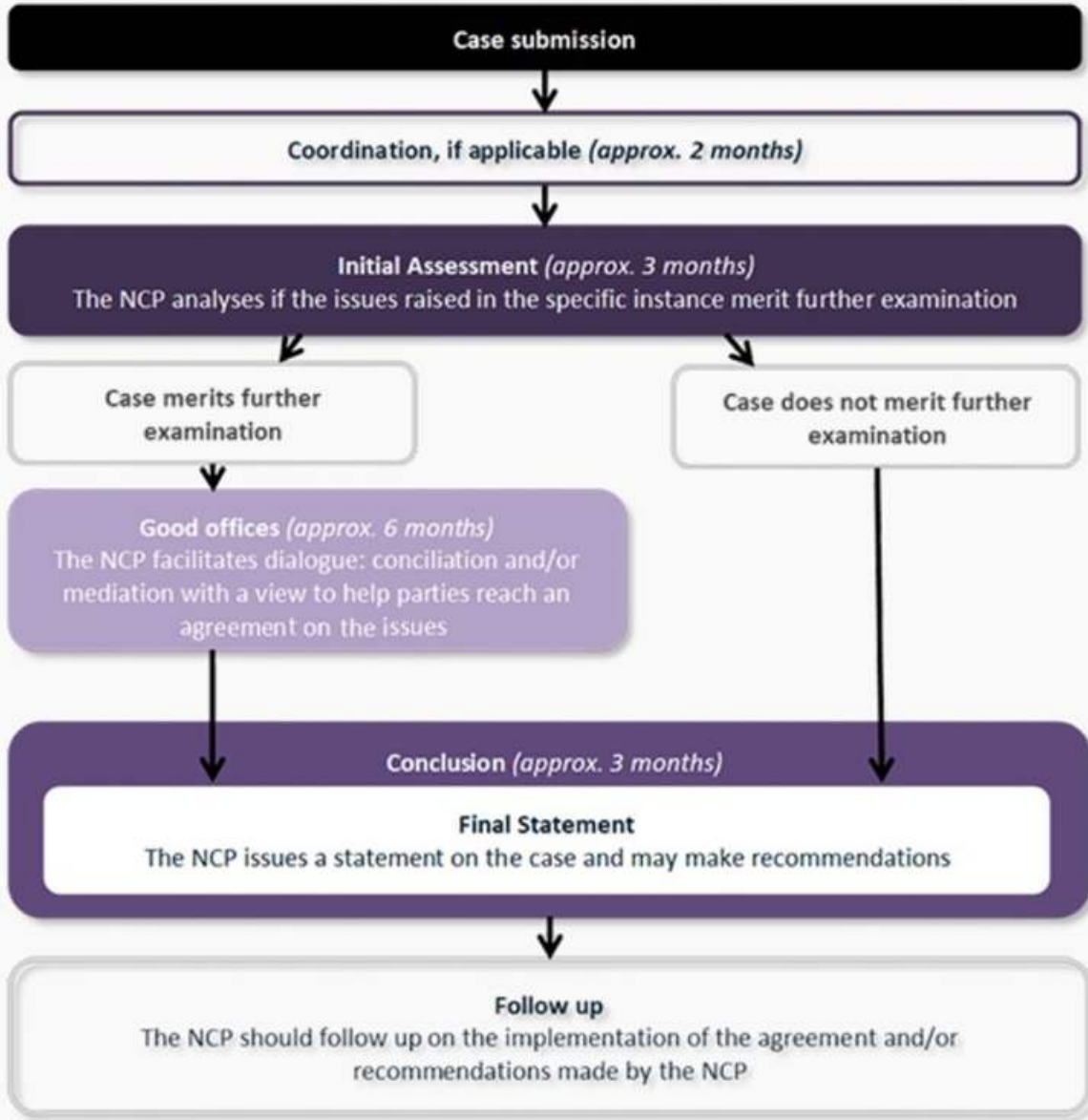
- AusNCP Secretariat assistance, including
- website submission form
  - if unable: email, translation, refer to 3P
  - ensure accessibility
  - work with notifier, explaining what needed for Initial Assessment

*AusNCP procedures [6] & [20]*

Version: 9 April 2024



# AusNCP 'complaint' process



The cover of the document features the Australian Government logo and the AusNCP logo (Australian National Contact Point for Responsible Business Conduct). The title is "AusNCP complaint procedures" in blue text. Below the title, it says "Version: 9 April 2024". A large purple box contains the text "Analysis & Examination" and "Independent Examiner analyses issues and whether enterprise's actions consistent with OECD Guidelines". At the bottom right, the URL "ausncp.gov.au" is displayed.

## AusNCP complaint procedures

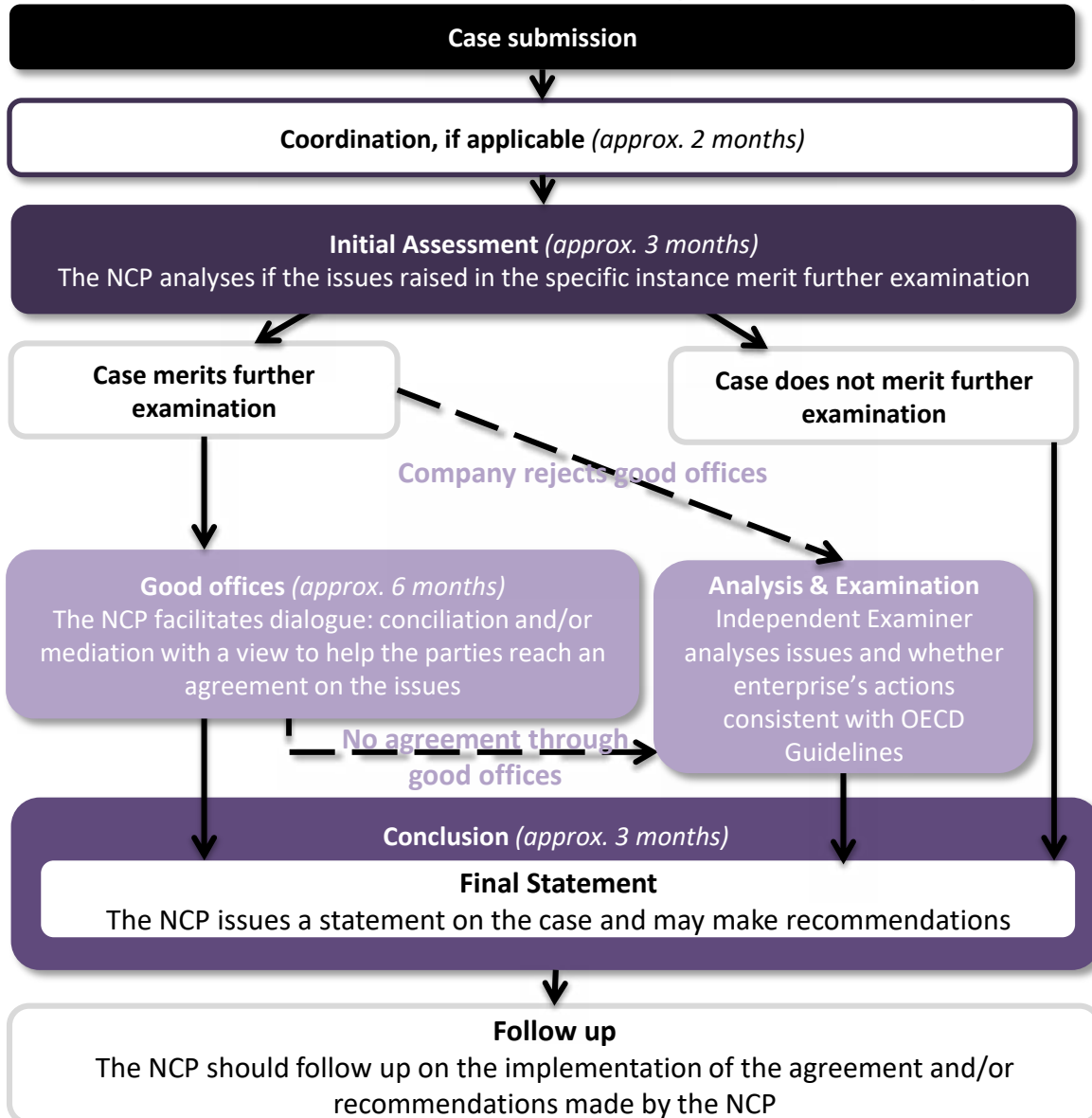
Version: 9 April 2024

### Analysis & Examination

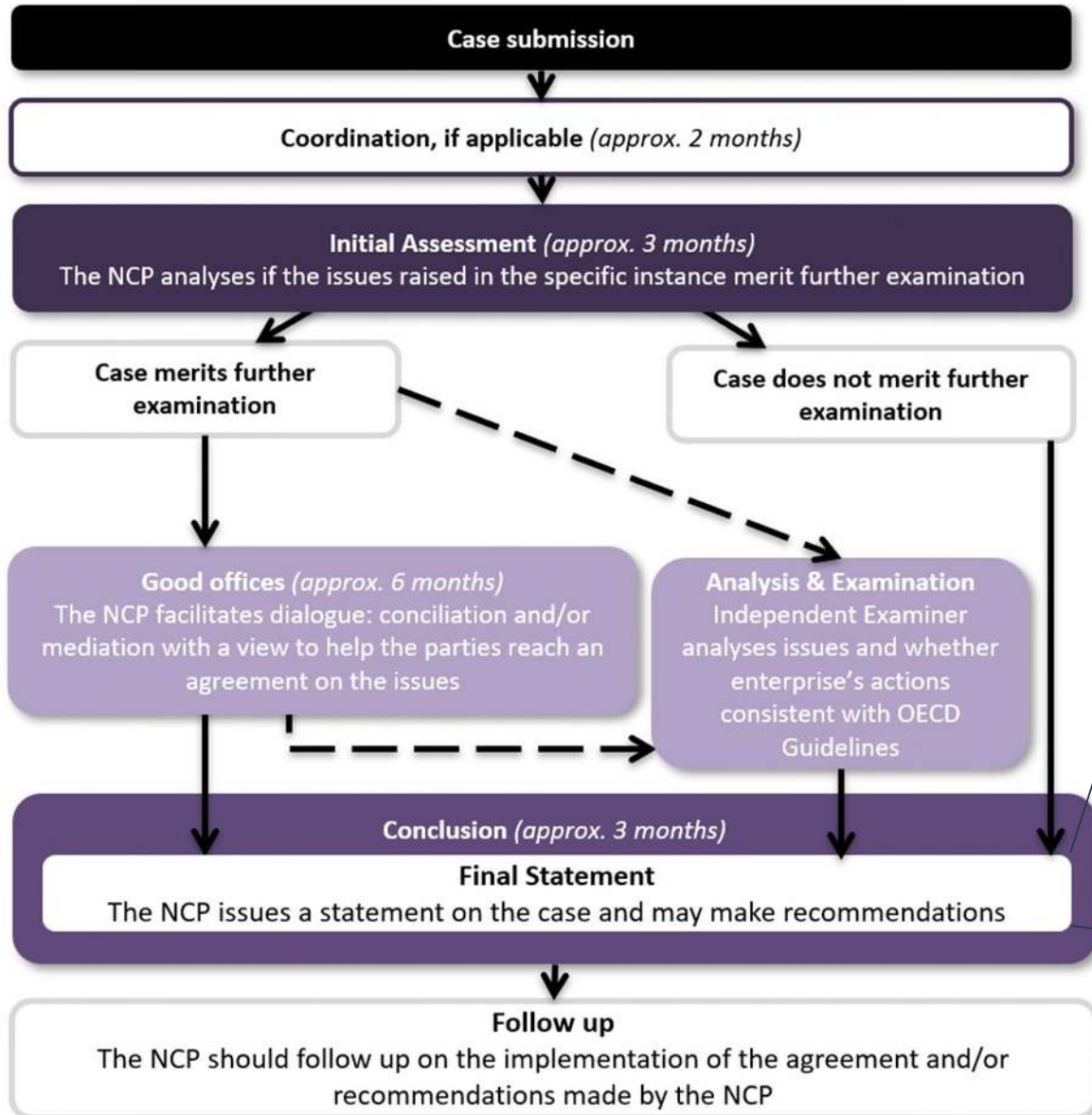
Independent Examiner analyses issues and whether enterprise's actions consistent with OECD Guidelines

*AusNCP procedures [50]-[54]*

# AusNCP 'complaint' process



# AusNCP 'complaint' process

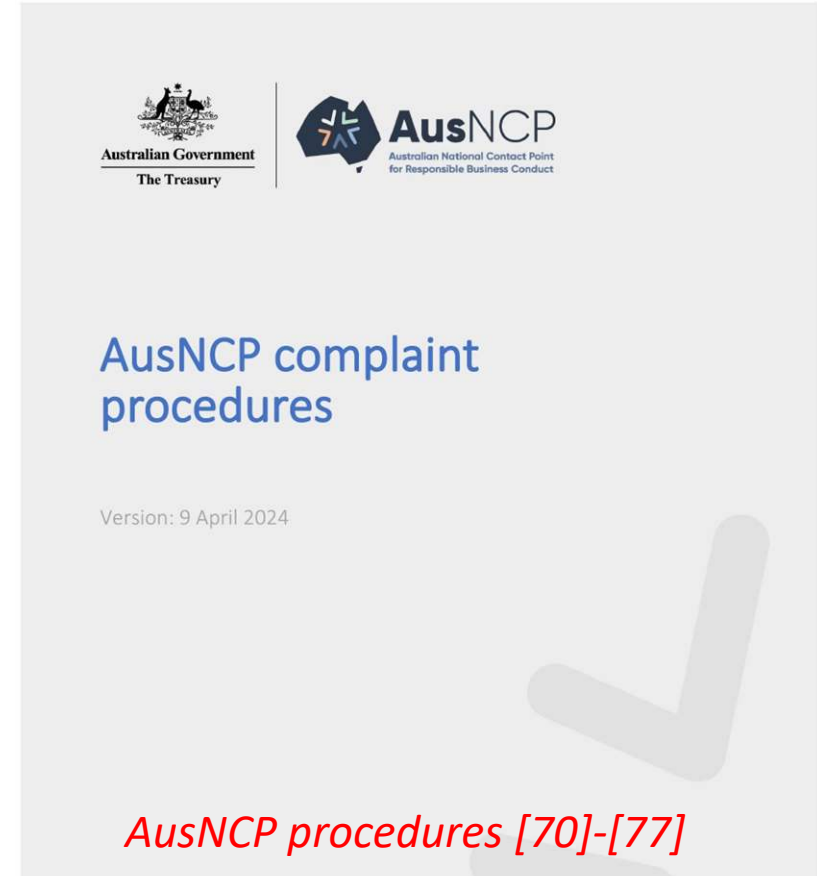
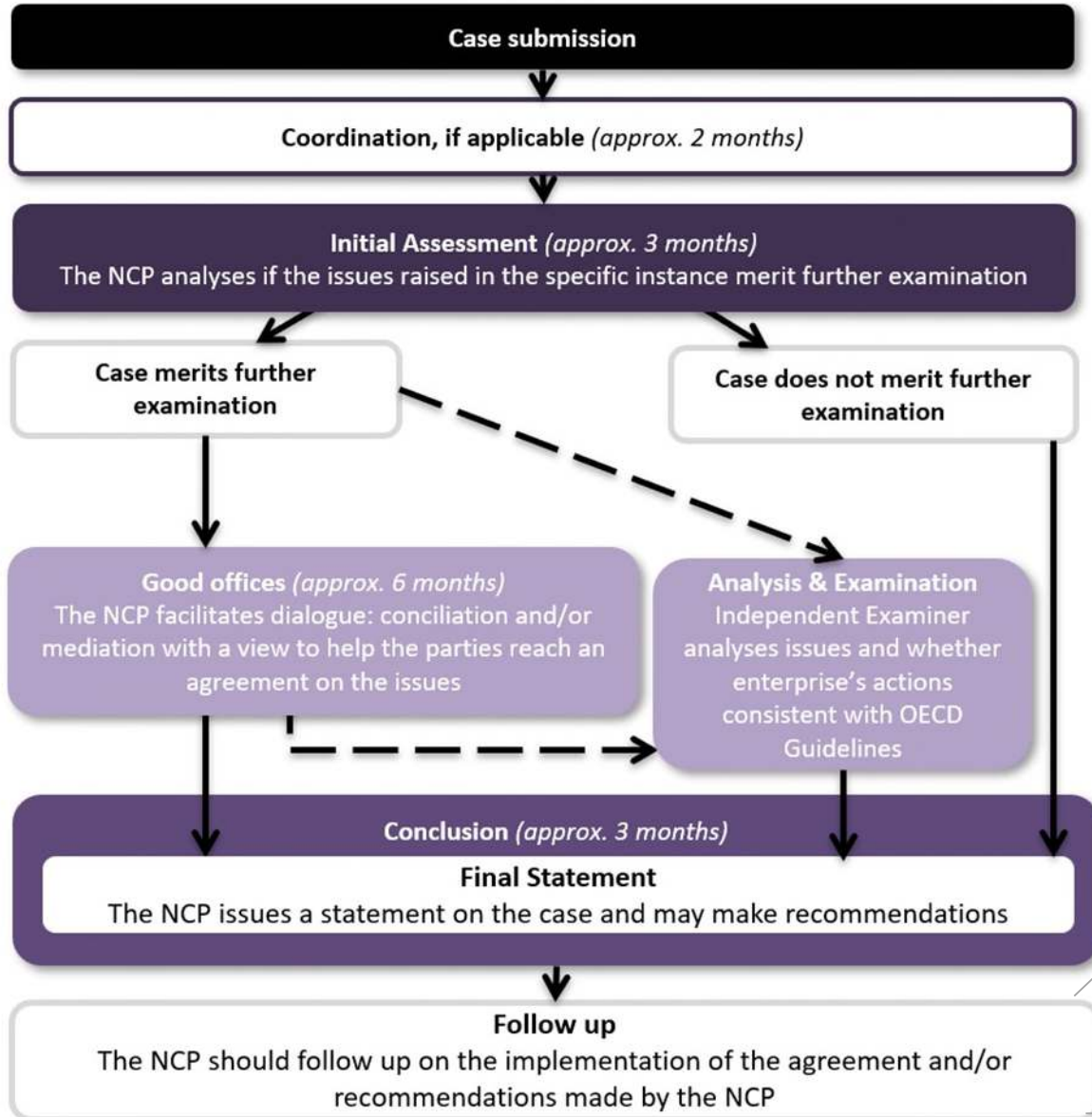


**Final Statement**

- explain issues raised, parties' engagement, agreement (if any)
- may include examiner's views on whether enterprise observed the Guidelines
- recommendations on the implementation of the Guidelines
- where appropriate, may inform other government agencies about relevant matters and conduct

ausncp.gov.au  
*AusNCP procedures [56]-[69]*

# AusNCP 'complaint' process



### Follow up

- Managed by I. examiner (either same / different)
- Aim to examine whether statement recommendations implemented
- Can offer further 'good offices'

# AusNCP examples

Parties reach **agreement outside NCP process**:

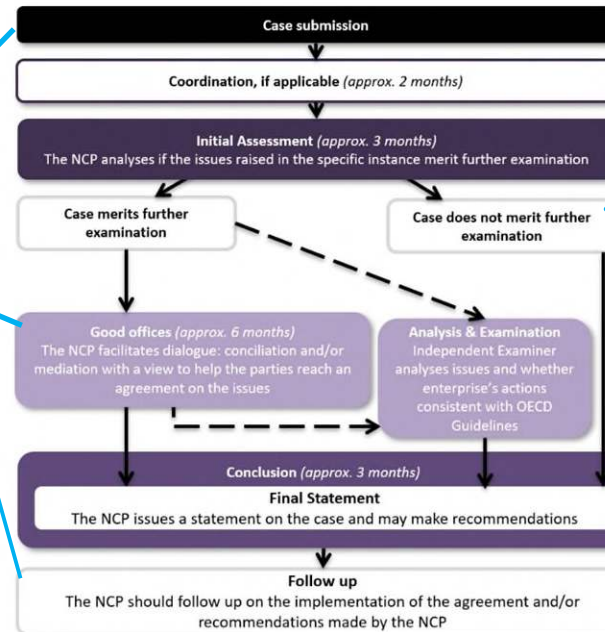
- [Parella Law](#), [33]-[35]
- [Justicia y Reparación](#), [17]-[23]

Parties reach **agreement within 'good offices'**:

- [Ansell Ltd](#), p9
- [ANZ \(Cambodia\) FuS](#), [17]-[23]

Final Statement (where GO don't agree) can include observations, eg:

- **recommend company improve governance & procedures**: [ANZ \(Cambodia\) FS](#), [46]-[48]
- **Company's actions were consistent with Guidelines**: [ANZ \(FoE\) FS](#), [64] & [70]-[72]; [AusLabS](#), [54]-[57]
- Other information contrary to complaint, so no conclusions re co'y compliance: [ElectraNet FS](#), [62]



Reasons against further examination can include:

- Notifier not shown how company caused harm: [Deutsche Bank](#), [7.3.1]
- Position and statements of notifier: [BHP \(Hedland\)](#), [52]
- Notifier **not demonstrated adequate interest/connection with issues under Guidelines**, or not substantiated them: [BHP \(Hedland\)](#), [17], [19], [23] & [52]
- **Company is addressing everything within Guidelines, so little relevant for GO**: [BHP \(Hedland\)](#), [27] & [36]
- **Notifier does not agree to good offices**: [BHP \(GLAN\)](#), [26]-[27], or withdraws complaint: [SAVEducation \(India\)](#), [25]
- Notifier not raised issues materially different from previous NCP matter: [Coca Cola](#), [25]-[28]

Final Statement (where company not engage) can include observations, eg:

- **company's actions inconsistent with Guidelines (eg. no HR policy, inadequate DD)**: [Mallee Resources](#), [128]; or **identified actions not inconsistent with Guidelines**: [PanAust](#), [3] & [94]
- **failure to engage/show Guidelines compliance is problematic**: [ElectraNet FS](#), [54] & [61]
- encourage company apology & compensation: [Mercer PR](#), [49]
- **recommend company action** eg. (1) **develop HR policy, and use leverage/influence on others to address impacts** [Mallee Resources](#), [130]; (2) **develop training & procedures** [Mercer PR](#), [49]; (3) **disseminate relevant information**: [PanAust](#), [69]-[73]; (4) **familiarisation with Guidelines** [ElectraNet FS](#), [63]

# Databases of NCP cases

<https://mneguidelines.oecd.org/database/>

FAU Friedrich-Alexander-Universität Erlangen-Nürnberg

<https://www.oecdaselaw.com/statements>

<https://www.oecdwatch.org/complaints-database/>

# Material from OECD Watch

Europe-based NGO (global network) has excellent guide about NCP complaints

<https://www.oecdwatch.org/how-to-file-a-complaint/>

Includes detail on:

- Whether to file a complaint
- Preparing complaint
- Addressing initial assessment criteria
- Engaging in mediation



Complaints

Complaints database

OECD & NCPs

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## Complaints

All of OECD Watch's web pages under **complaints** are also available in a single document in **English, French, and Spanish**.

ES: Todas las páginas web de OECD Watch relacionadas con las quejas también están disponibles en un solo documento en **inglés, francés y español**.

FR: Toutes les pages Web d'OECD Watch consacrées aux plaintes sont également disponibles dans un seul document en **anglais, français et espagnol**.

You can file a complaint under the OECD Guidelines against a company you feel has not met the Guidelines' standards. While the Guidelines and complaint system are voluntary for companies, you have higher chances of achieving remedy and promoting better business conduct if you follow OECD Watch's advice here, including on embedding your complaint in a broader strategy for justice.

- Complaints
  - Stage one: Deciding whether to file
  - Stage two: Preparing and filing the complaint
  - Stage three: Coordination between NCPs
  - Stage four: Initial assessment
  - Stage five: Mediation
  - Stage six: Final statement
  - Stage seven: Follow-up
- Other filing considerations
  - NCP parallel proceedings
  - Transparency and

# Take aways

## 1. Guidelines NOT judicial remedy mechanism

- Not an enforcement process
- Focus is business (not government) consistency with Guidelines
- That consistency may result from domestic regulation or company action/policies

## 2. Many factors contribute to any NCP outcome

- Good offices = dialogue / mediation process (engagement)
- Remedial action by the enterprise depends on enterprise's agreement
- Developments outside good offices can assist ('recommendations', 'follow up')

## 3. Stay current with NCP developments/statements

- Databases OECD's RBC Centre, OECD Watch, FAU
- Each particular NCP (its procedures, recent statements)



# Thank you

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

OECD: <https://mneguidelines.oecd.org>