

Final Statement

Complaint submitted by Global Legal Action Network (GLAN)

regarding

BHP Group Ltd (and other enterprises)

31 July 2023

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Executive Summary

1. In January 2021, the Australian National Contact Point for Responsible Business Conduct (AusNCP) received a complaint from the Global Legal Action Network (GLAN, the notifier) , concerning the Cerrejón mine in Colombia. The complaint was lodged against three multinational enterprises then invested in the mine, including BHP Group Limited (BHP, the enterprise). GLAN asserted BHP and the other companies had not met the standards expected of them under the OECD Guidelines for Multinational Enterprises (OECD Guidelines).
2. The same complaint was also lodged with the National Contact Points (NCPs) of Switzerland and the United Kingdom (UK), regarding the other multinationals. The NCPs each conducted their own initial assessment and decided the complaint was suitable for good offices under the OECD Guidelines, aimed at assisting the parties to reach a mutually agreed resolution.
3. All parties and NCPs agreed the good offices would be conducted by the Switzerland NCP. The good offices commenced in January 2022 but were terminated by the notifier’s withdrawal of the complaint in August 2022 and request for a final statement. The Switzerland NCP published its final statement in December 2022.
4. As the good offices did not resolve the complaint to the AusNCP, this reverted to be progressed according to the AusNCP’s procedures. In accordance with those procedures, this final statement summarises the process but makes no assessment of the issues raised because of how the good offices concluded.
 - 4.1. The complaint raised concerns about the enterprise's conduct regarding alleged impacts in Colombia. During the initial assessment, the notifier indicated that the issues they wanted the NCPs to address arose in Australia (as well as Switzerland and the UK).
 - 4.2. The AusNCP proposed good offices, to be conducted by the Switzerland NCP, included addressing the issue of the enterprise’s compliance with the OECD Guidelines in Australia and the expectations to address impacts directly linked to their operations, products or services, even if the enterprise does not contribute to those impacts.
 - 4.3. The good offices offered by the Switzerland NCP included the nature, adequacy and results of the enterprise’s due diligence processes. The good offices were facilitating access to a mediation to assist the parties in dealing with the issues, consistent with the OECD Guidelines.
 - 4.4. The notifier, and its supporting organisations, decided not to proceed with the good offices.
 - 4.5. This is analogous to the situation under the AusNCP procedures where a notifier does not agree to proceed with the good offices, which requires the AusNCP to ‘prepare a final statement summarising the process followed to date but will not make any further assessment of the issues raised’.
5. This statement is not a determination on the merits of the claims presented, nor is it an assessment of whether the enterprise’s actions regarding the Cerrejón mine were consistent with the OECD Guidelines.

6. This statement has been prepared with reference to the 2011 version of the OECD Guidelines and the 2022 version of the AusNCP complaint procedures and is available on the AusNCP website at www.ausncp.gov.au.

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Parties and process

7. On 19 January 2021, the AusNCP received the complaint from GLAN about the Cerrejón mine in Colombia, concerning the actions of the enterprise as well as Anglo American plc (Anglo American) and Glencore International AG (Glencore).
8. The notifier, GLAN, is a non-profit organisation based in the UK and Ireland. The notifier explained the complaint was ‘supported by Christian Aid, the Centro de Investigación y Educación Popular (CINEP), the Colectivo de Abogados ‘José Alvear Restrepo’ (CAJAR), the Interamerican Association for Environmental Defense (AIDA), Arbeitsgruppe Schweiz Kolumbien (ask!), and ABColombia’, which are non-profit organisations in Europe and Latin America.
9. The notifier and the enterprise differed in their characterisation of the relevant organisations and responsibilities.
 - 9.1. The notifier identified two Colombian companies as involved in the mine’s operation, and described the enterprise, Anglo American and Glencore as ‘the consortium which owns the mine’. The notifier alleged that consortium ‘has caused adverse human rights and environmental impacts; has failed to carry out adequate due diligence; and has failed to disclose material information about the impacts of its operations’, contrary to the OECD Guidelines.
 - 9.2. The enterprise stated ‘Cerrejón is not a subsidiary of BHP, is not under the control of BHP and is not subject to BHP policies and procedures’ and also explained ‘each of the current Shareholders only has an indirect, one-third shareholding in Cerrejón, [and] none of the current shareholders is able to exercise management or control over Cerrejón’s activities’. The enterprise also said ‘as a result of BHP’s oversight and its participation in Cerrejón’s governance structures, BHP believes that Cerrejón management has taken, and is continuing to take, suitable steps to prevent and mitigate the impact of its operations’.
10. A previous complaint under the OECD Guidelines regarding the Cerrejón mine was submitted in 2007 to the AusNCP concerning BHP-Billiton (now BHP), and to the Switzerland NCP concerning Xstrata (since acquired by Glencore). With the agreement of the parties and the two NCPs, a joint good offices process was facilitated by the AusNCP in 2007-2009. The parties reached an agreement, which was reported by the AusNCP in 2009.¹
11. The 2021 complaint submitted by the notifier asserted that there was a lack of community representation and involvement in the good offices process undertaken in the 2007 AusNCP complaint.
12. The 2021 complaint was also submitted to the NCPs of Switzerland (Glencore’s headquarters) and the UK (Anglo American’s headquarters).

¹ Australian National Contact Point for Responsible Business Conduct, *Final Statement, Mr Ralph Bleechmore on behalf of parties in Colombia regarding BHP -Billiton – Cerrejon coal specific instance*, Australian Government, 2009 together with: *Announcement on Settlement of Tabaco and Independent Panel Report on Cerrejon Mine’s Social Responsibility*, accessed 6 January 2023. <https://ausncp.gov.au/complaints/view-closed-complaint>.

- 12.1. The notifier contended the ‘multinational enterprise’ against which the complaint is made, and which should observe the OECD Guidelines, was every company involved.
- 12.2. The enterprise did not accept GLAN’s ‘characterisation of Cerrejón and the Shareholders as a single MNE’.
13. The complaint was submitted at the same time as the notifier submitted two similar complaints to the Ireland NCP about two Irish entities: CMC - Coal Marketing Company and the Electricity Supply Board. All complaints concern the same alleged impacts from the operation of the Cerrejón mine.
14. The notifier recommended a lead NCP should manage the complaint but did not suggest which NCP would be most suitable. The enterprise also indicated its preference for one lead NCP and suggested the NCP of Colombia. In January-March 2021, the AusNCP conferred with the NCPs of Colombia, Ireland, Switzerland and the UK. The NCP of Colombia indicated they would not act as lead NCP in relation to the complaints. The Ireland NCP indicated it would proceed to separately deal with the two complaints it received from GLAN.²
15. In June 2021, Glencore announced it would acquire BHP and Anglo American’s share in the Cerrejón operations.³ The enterprise’s announcement confirmed it would be divesting ‘its 33.3 per cent interest in Cerrejón’ and ‘Glencore would assume full ownership and operating control of Cerrejón’.⁴ Glencore announced that transaction was completed in January 2022.⁵

² In September 2022, the Ireland NCP published a Final Statement (deciding not to accept the complaint and offer good offices): Ireland National Contact Point, *Final Statement, Specific Instance Complaint against CMC Coal Marketing DAC*, Ireland Government, 2022, accessed 6 January 2023 <https://enterprise.gov.ie/en/publications/publication-files/statement-cmc-coal-marketing-dac-september-2022.pdf>.

³ Glencore ‘Glencore agrees to acquire JV partners’ shares in the Cerrejón mine and strengthens climate commitments’, 28 June 2021, accessed 3 February 2023 <https://www.glencore.com/media-and-insights/news/glencore-agrees-to-acquire-jv-partners-shares-in-the-cerrejon-mine-and-strengthens-climate-commitments>.

⁴ BHP ‘BHP announces divestment of Cerrejón interest’, 29 June 2021, accessed 3 February 2023, <https://www.bhp.com/news/media-centre/releases/2021/06/bhp-announces-divestment-of-cerrejon-interest>.

⁵ Glencore ‘Glencore completes acquisition of Cerrejón’, 11 January 2022, accessed 3 February 2023 <https://www.glencore.com/media-and-insights/news/glencore-completes-acquisition-of-cerrejon>.

AusNCP proceedings

Initial assessment

16. For a complaint to be considered by the AusNCP, there must be a relevant connection with Australia. In this case, that is the enterprise, which is an Australian multinational enterprise. The notifier did not identify any other connections with Australia. Accordingly, the ‘admissibility criteria’ for the initial assessment process were considered in relation to the enterprise. The AusNCP consulted with the UK and Switzerland NCPs and agreed that each NCP would conduct an initial assessment regarding the company headquartered in their country.
17. AusNCP Independent Examiner Southalan conducted an initial assessment (regarding the enterprise) and decided the complaint merited further consideration and would be appropriate for ‘good offices’ within the OECD Guidelines. Good offices can include conciliation, formal mediation or facilitated discussions with the aim of arriving at a mutually agreed resolution. The AusNCP initial assessment statement was published in January 2022⁶. The NCPs of Switzerland and the UK published similar initial assessments.⁷
18. Given the complexity of issues and number of parties involved, further coordination and agreement between the parties and NCPs was proposed to facilitate any good offices. This was explained in the AusNCP initial assessment and is summarised below.
 - 18.1. The notifier’s complaint provided sufficient material addressing the OECD Guidelines’ six admissibility criteria for the initial assessment.
 - 18.2. The notifier confirmed in exchanges with the NCPs ‘while the [alleged] violations have occurred in Colombia, the issues we would like the NCP to address arise in Australia, Switzerland, and the UK’, meaning the activities of the enterprise (along with Anglo American and Glencore) in their ‘home’ countries.⁸
 - 18.3. The OECD Guidelines contain expectations of enterprises which are linked, even if not directly involved, in particular activities; and due-diligence expectations which are not limited to only those matters within a company’s direct legal control.⁹
 - 18.4. The AusNCP proposed that good offices should: (a) concern compliance with the OECD Guidelines in Australia, Switzerland or the UK by the companies, including

⁶ AusNCP, *Initial Assessment, Complaint by Global Legal Action Network (GLAN) against Anglo America Plc, BHP Group Ltd and Glencore International*, Australian Government, 2022, accessed 23 January 2023 https://ausncp.gov.au/sites/default/files/2022-01/23_initial_assessment_1.pdf (AusNCP Initial Assessment).

⁷ United Kingdom National Contact Point, *Initial Assessment, GLAN Complaint to UK NCP about Anglo American*, United Kingdom Government, 2022, accessed 6 January 2023 <https://www.gov.uk/government/publications/glan-complaint-to-uk-ncp-about-anglo-american>; Switzerland National Contact Point, *Initial Assessment, Specific Instance regarding Glencore International AG submitted by Global Legal Action Network (GLAN)*, Swiss Government 2022, accessed 6 January 2023 https://www.seco.admin.ch/dam/seco/en/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Staemmen_konkrete_F%C3%A4lle/Glencore/glencore_glan.pdf.download.pdf/Glencore%20-%20GLAN%20-%20Swiss%20NCP%20Initial%20Assessment%20-%20for%20publication.pdf.

⁸ AusNCP Initial Assessment, above n 6, [26], [41]-[44].

⁹ AusNCP Initial Assessment, above n 6, [27]-[34].

expectations for enterprises to address impacts ‘that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts’, and (b) be facilitated by the Switzerland NCP, including all parties.

19. The initial assessment noted that if the issues were not resolved through good offices, the complaint regarding the enterprise would revert to the AusNCP to proceed to final statement in accordance with the AusNCP complaint procedures. The AusNCP also confirmed it remained available to assist any requests by the Switzerland NCP to facilitate involvement from the enterprise or other issues relevant to Australia.

Good offices

20. The Switzerland NCP commenced the good offices with a mediator engaging with the parties, but this had not resolved the issues when the notifier withdrew its complaint on 29 August 2022 and requested a final statement.
21. The Switzerland NCP published a final statement in December 2022 which described the following relevant developments.¹⁰
 - 21.1. In January 2022, the Switzerland NCP proposed, subject to the consent of the parties, to lead a mediation involving the notifier and the three enterprises. The offer was accepted by the companies and the Australian and UK NCPs. The notifier provisionally accepted the offer, though stipulated certain conditions to be resolved before the start of the mediation and agreed by the parties. These conditions, which GLAN described as ‘non-negotiable issues’, included: (a) the six supporting NGOs have the equal status in the mediation as GLAN, and (b) the NCP ‘clarified its geographical jurisdiction to address Glencore’s compliance with the OECD Guidelines in Switzerland, Colombia and any other relevant location’.¹¹
 - 21.2. All parties agreed to the appointment of an external professional mediator suggested by the Switzerland NCP.
 - 21.3. In April 2022, the Switzerland NCP mandated an experienced mediator and provided draft terms of reference (ToR) for the mediation to the parties. The parties commented on the ToR and engaged with the Switzerland NCP and the mediator. This included the mediator having an online meeting with ‘GLAN and the six supporting NGOs’.
 - 21.4. In May 2022, the parties were provided with revised ToR which the Switzerland NCP described as ‘taking as much as possible account of the parties’ remarks and the Implementation Procedures of the OECD Guidelines’.¹² The revised ToR proposed the

¹⁰ National Contact Point of Switzerland, *Final Statement Specific Instance regarding Glencore International AG submitted by the Global Legal Action Network (GLAN)*, Switzerland NCP, Government of Switzerland, 20 December 2022, accessed 23 January 2023, https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/nachhaltigkeit_unternehmen/nkp/Statements_zu_konkreten_Faellen.html#accordion_4383194241675128153318 (Switzerland Final Statement).

¹¹ Ibid, p 4.

¹² Switzerland Final Statement, above n 10, p 4.

good offices would 'examine in the mediation the nature, adequacy and results of the due diligence processes of Anglo American, BHP and Glencore as (previous) shareholders of Cerrejón'.¹³

- 21.5. The notifier considered there were 'a number of barriers which they said had been raised previously and were preventing their participation in the proceedings',¹⁴ including effective access to the mechanism and translation costs. The notifier also had concerns about the Switzerland NCP's coordination with the Australia and UK NCPs. The Switzerland NCP informed GLAN that the Switzerland NCP would cover translation costs and continue the ongoing coordination with the Australia and UK NCPs. The Switzerland NCP also asked the notifier for clarification on other issues.
- 21.6. The parties were invited to a further meeting 'focused on finalising the ToR' in early July 2022. The notifier indicated it would respond in writing to the second draft ToR.
- 21.7. In August 2022, the notifier provided the Switzerland NCP 'a 20-page letter stating the conviction of GLAN and the six supporting NGOs that negotiations on the TORs for the mediation had irrevocably failed, and the Switzerland NCP to make a final statement in relation to the submission it had received'.¹⁵ The notifier informed the Switzerland NCP that it had decided 'to withdraw from the procedures'.¹⁶
22. The Switzerland NCP's final statement noted it: 'regrets that it has not been possible to conduct a mediation with all parties. It recommends that Glencore, as the sole owner of the Cerrejón coal mine since early 2022, maintains a dialogue with interested NGOs on the issues alleged in the submission, some of which dated from a long time ago'.¹⁷
23. As the matter did not resolve in good offices, the complaint regarding the enterprise returned to the AusNCP to progress according to the AusNCP procedures.
24. The AusNCP procedures specify what occurs when good offices do not reach agreement:
- 5.5 *The Examiner will seek each party's agreement to proceed with [good offices] discussions and if:*
- a) *Both parties agree, the discussions will commence.*
 - b) *The notifier does not agree, the Examiner will prepare a final statement summarising the process followed to date but will not make any further assessment of the issues raised.*
 - c) *The enterprise does not agree, the Examiner will prepare a final statement which will include further assessment of the issues raised.*

¹³ Switzerland Final Statement, above n 10, p 4.

¹⁴ Switzerland Final Statement, Above n 10, p 4. These are summarised in the Switzerland NCP Final Statement as: '(1) there was no equal party status for the six supporting NGOs; (2) there were barriers to effective accessibility of the mechanism for indigenous leaders; (3) there were barriers to addressing in the mediation issues accepted in the Initial Assessments of the three NCPs; (4) the Switzerland NCP had limited its geographical jurisdiction in respect of the compliance of the companies with the OECD Guidelines; (5) there were barriers to access arising from translation costs; (6) coordination with the Australia and UK NCPs was unaddressed'.

¹⁵ Switzerland Final Statement, above n 10, p 4.

¹⁶ Switzerland Final Statement, above n 10, p 1.

¹⁷ Switzerland Final Statement, above n 10, p 1.

6.2.2 *Where the complaint was accepted but good offices did not result in an agreed outcome, or the enterprise failed to engage in the complaint process, the Examiner will include in the final statement their analysis of the issue and will where possible include a statement as to whether the enterprise's actions were consistent with the OECD Guidelines.*¹⁸

25. The AusNCP did not conduct the good offices for this complaint, and all parties accepted the process would be conducted by the Switzerland NCP. As recorded in the Switzerland NCP final statement, GLAN had the opportunity to engage in good offices with the enterprise which would have included 'the nature, adequacy and results of the due diligence processes of ...BHP'. GLAN was also invited by the Switzerland NCP to clarify other issues it contended were a barrier to participation in good offices and to join a first mediation meeting with the parties, focussing on finalising the good offices ToR. GLAN declined the offer and informed the Switzerland NCP it was withdrawing from the process.¹⁹
26. From the description in the final statement of the Switzerland NCP, it appears the options and opportunities presented by the Switzerland NCP good offices were sufficient to enable the notifier to engage with the enterprise on the issues in the AusNCP's initial assessment.
- 26.1. The AusNCP's initial assessment relied on GLAN's statement that 'while the [alleged] violations have occurred in Colombia, the issues we would like the NCP to address arise in Australia, Switzerland, and the UK'.²⁰ The good offices envisaged by the AusNCP were framed accordingly:
- [T]he 'good offices' should solely be about the Guidelines' issues which arise in Australia, Switzerland, or the UK, including application and fulfillment of the Guidelines' expectations for enterprises to seek ways to prevent or mitigate adverse human rights impacts that are directly linked ... even if they do not contribute to those impacts.*²¹
- 26.2. The Switzerland NCP's offer of good offices to GLAN included 'the nature, adequacy and results of the due diligence processes of Anglo American, BHP and Glencore'.²² That was similar to the good offices proposed by the AusNCP.
- 26.3. The notifier raised concerns about the status of the six supporting NGOs. The mediator engaged with GLAN and those NGOs, revised the proposed ToR, and invited GLAN and the companies to a mediation meeting to finalise the ToR. The notifier considers that concerns it identified and consistently raised (particularly regarding 'no equal party status for the six supporting NGOs ...[and] ... the Switzerland NCP had limited its geographical jurisdiction in respect of the compliance of the companies with the OECD Guidelines'), were not accommodated in the good offices being offered through the Swiss NCP. GLAN considered 'that (as) negotiations on the TORs for the mediation had irrevocably failed', it had decided 'to withdraw from the procedure' and requested a final statement from the Switzerland NCP.

¹⁸ Australian National Contact Point (AusNCP), *Complaint procedures*, AusNCP, Australian Government, 2022, accessed 7 January 2023, <https://ausncp.gov.au/index.php/complaints/ausncp-procedures>.

¹⁹ Switzerland Final Statement, above n 10, p 1.

²⁰ AusNCP Initial Assessment, above n 6, [26], [41]-[44].

²¹ AusNCP Initial Assessment, above n 6, [44].

²² Switzerland Final Statement, above n 10, p 4.

- 26.4. This is analogous to the situation outlined in 5.5(b) of the AusNCP procedures, where a notifier has not agreed to the proposed good offices: ‘the Examiner will prepare a final statement summarising the process followed to date but will not make any further assessment of the issues raised’.
27. This AusNCP final statement will not, therefore, make any assessment of the issues raised in the complaint about the enterprise’s consistency with the OECD Guidelines regarding the identified events at the Cerrejón mine in Colombia.
28. In accordance with AusNCP procedures, a draft of this final statement was provided to the AusNCP Governance and Advisory Board, to the other NCPs, and to the parties. Each parties’ comments were also provided to the other. All comments were considered by the Independent Examiner, in finalising this Statement, with the decision remaining the responsibility of the Independent Examiner.
29. The notifier considers this statement is inaccurate and inconsistent with the AusNCP’s procedures. Essentially, the notifier considers the good offices proposed by the AusNCP’s initial assessment were not what was progressed by the Switzerland NCP and, when those good offices ended, the matter should revert to mediation/examination by the AusNCP.²³ The Independent Examiner considers that course inappropriate, for the reasons above, which are fundamentally:
- 29.1. the complaint raised concerns about the enterprise’s conduct regarding impacts in Colombia
 - 29.2. during the initial assessment, the notifier indicated that ‘while the [alleged] violations have occurred in Colombia, the issues we would like the NCP to address arise in Australia, Switzerland, and the UK’
 - 29.3. the good offices proposed by the AusNCP were to ‘solely be about the Guidelines’ issues which arise in Australia, Switzerland, or the UK, including application and fulfillment of the Guidelines’ expectations for enterprises to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts’
 - 29.4. the good offices offered by the Swiss NCP included ‘the nature, adequacy and results of the due diligence processes of BHP’
 - 29.5. those good offices were facilitating access to a mediation to assist parties in dealing with the issues, which is consistent with good offices under the OECD Guidelines
 - 29.6. the notifier, and its supporting organisations, withdrew from good offices
 - 29.7. this is analogous to the situation under the AusNCP procedures where a notifier does not agree to proceed with good offices.²⁴

²³ AusNCP procedures, above n18, which includes an analysis of the issue and whether the enterprise’s actions were consistent with the OECD Guidelines.

²⁴ This requires the examiner to ‘prepare a final statement summarising the process followed to date but will not make any further assessment of the issues raised’: AusNCP procedures (above n19), 5.5(b).

Application of the OECD Guidelines

30. The complaint submitted by the notifier alleged that ‘the consortium which owns the mine ... has failed to meet these minimum standards [of the OECD Guidelines regarding] ... adverse human rights and environmental impacts ... adequate due diligence; and ... to disclose material information about the impacts of its operations’.
31. The notifier identified chapters of the Guidelines it considered relevant, being Chapter II. General Policies, Chapter IV. Human Rights and Chapter VI. Environment.
32. The AusNCP accepted the complaint and, applying the OECD Guidelines, proposed the good offices described earlier.

Conclusions and recommendations

33. As the Switzerland NCP noted in its final statement, this matter has been complex due to the many parties and issues involved and the lengthy time taken by the NCPs in coordinating and responding. The Independent Examiner endorses the observations made by the Switzerland NCP.

The Swiss NCP acknowledges that the procedure initiated by GLAN was a very complex one, involving three responding Parties headquartered in three adherent countries to the OECD Guidelines, hence three NCPs, and concerning a joint undertaking in a fourth adherent country. In addition to extensive coordination among the three NCPs having received the submission, this setting also required communication with the WPRBC [Working Party on Responsible Business Conduct] Chair, the OECD Secretariat and the Colombian NCP. This led to the Swiss NCP issuing its Initial Assessment report, along with the Australian and UK NCPs, almost 12 months after GLAN’s specific instance was received. On the side of the submitting Party, numerous organizations were involved, which made communication with the NCP difficult. Further complications of the proceedings were due to changes regarding ownership of the Cerrejón coal mine during the process as well as numerous administrative and judicial national and international parallel procedures. This led to a very complex starting position for mediation.

The Swiss NCP welcomes the continued efforts and the time and resources invested by the Parties in the proceedings, including the drafting of the TORs for the mediation. It regrets that it has not been possible to conduct a mediation, which could have established the basis for a possible future-oriented solution to the dispute between the Parties.²⁵

34. In a situation where a complaint is submitted to multiple NCPs about events occurring in a country outside those in which the NCPs are located, there will almost inevitably be complexities and delays in addressing the complaint. Even more so where the complaint is not also submitted to the NCP of the country where the alleged impacts are identified. Successful resolution of such a complaint will be unlikely without patience, diligence, and good faith from all NCPs and parties concerned.

²⁵ Switzerland Final Statement, above n 10, pp 4-5.

35. The work of the Switzerland and UK NCPs in dealing with this complaint is part of the expectation in the OECD Guidelines for ‘enhancing the effectiveness of the Guidelines and fostering functional equivalence of National Contact Points’.²⁶ The Independent Examiner wishes to specifically acknowledge the commitment of the Switzerland NCP in undertaking the good offices.
36. In this instance, from when the complaint was filed, the enterprise responded in accordance with the expectations of the OECD Guidelines. It engaged with the AusNCP, responding to enquiries and the complaint. When the initial assessment proposed good offices, the enterprise engaged appropriately with that process, as described in the Switzerland NCP’s final statement.
37. The withdrawal from the Switzerland good offices resulted in the NCP process being unable to assist the parties in resolving the issues raised in these complaints.

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²⁶ See in OECD Guidelines, *Implementation Procedures*: ‘Amendment of the Decision of the Council’ II [5], ‘Procedural Guidance’ II [2], and ‘Commentary’ [7].

Annexes

Annex A: Schedule of events

Submission	Date
<ul style="list-style-type: none"> Complaint submitted to and acknowledged by the AusNCP 	19 January 2021
<ul style="list-style-type: none"> OECD notified, website updated, conflicts of interest registered 	20-21 January 2021
<ul style="list-style-type: none"> BHP notified about new complaint and invited to respond 	20 January 2021
Initial assessment and NCP coordination	
<ul style="list-style-type: none"> BHP: responses received 	29 January - 2 February 2021
<ul style="list-style-type: none"> Coordination: NCP group meeting 	29 January 2021
<ul style="list-style-type: none"> Coordination: MNE responses shared (with permission) and draft correspondence to the MNEs finalised 	4 February 2021
<ul style="list-style-type: none"> Coordination: correspondence with the Colombian NCP 	3-9 and 15 February 2021
<ul style="list-style-type: none"> Coordination: NCP group meeting 	11 February 2021
<ul style="list-style-type: none"> BHP: update provided 	16 February 2021
<ul style="list-style-type: none"> Coordination: correspondence from Australia, on behalf of the NCP group, to OECD Working Party Responsible Business Conduct Chair seeking assistance to identify suitable lead NCP 	18 February 2021
<ul style="list-style-type: none"> Coordination: follow up call with the OECD 	15 March 2021
<ul style="list-style-type: none"> Coordination: NCP group meeting, including the OECD 	22 March 2021
<ul style="list-style-type: none"> Coordination: correspondence regarding approach and party correspondence 	25 March – 15 April 2021
<ul style="list-style-type: none"> Coordination: NCP group meeting and correspondence confirming next steps 	19-22 April 2021
<ul style="list-style-type: none"> Governance and Advisory Board (AusNCP Board): update provided at meeting 	21 April 2021
<ul style="list-style-type: none"> GLAN and BHP: correspondence sent providing an update on the Australian procedure and seeking further information 	26 April 2021
<ul style="list-style-type: none"> Coordination: MNE updates shared and party response deadlines agreed 	4-12 May 2021
<ul style="list-style-type: none"> BHP: correspondence regarding procedures 	30 April – 12 May 2021
<ul style="list-style-type: none"> GLAN: deadline extension granted 	21 May 2021
<ul style="list-style-type: none"> Coordination: NCP correspondence on progress and MNEs 	21 May – 2 June 2021
<ul style="list-style-type: none"> GLAN: response received 	1 June 2021
<ul style="list-style-type: none"> BHP: deadline extension granted 	22 June 2021
<ul style="list-style-type: none"> Coordination: NCP correspondence on progress and MNEs 	24-28 June 2021
<ul style="list-style-type: none"> GLAN and BHP: update provided and further questions posed 	26 June 2021
<ul style="list-style-type: none"> Glencore acquisition announcement 	28 June 2021
<ul style="list-style-type: none"> Coordination: NCP updates exchanged 	29 June – 7 July 2021
<ul style="list-style-type: none"> BHP: initial response received, indicated another to follow 	6 July 2021
<ul style="list-style-type: none"> Coordination: NCP correspondence on approach and share BHP response (with permission) 	6-9 July 2021
<ul style="list-style-type: none"> BHP: correspondence on process and Glencore acquisition 	12 July 2021

- GLAN and BHP: separate correspondence updating parties 13 July 2021
- Coordination: meeting and correspondence regarding progress, agree to proceed with separate initial assessments 19-22 July 2021
- GLAN: correspondence on process and parallel arbitration proceeding 17-19 July 2021
- Ireland NCP: initial assessment statement published re GLAN and Electricity Supply Board
- GLAN and BHP: separate correspondence updating parties 23 July 2021
- BHP: subsequent response received 6 August 2021
- Coordination: NCP correspondence sharing party responses (with permission) 17 August 2021
- Statement: AusNCP draft initial assessment shared with and comments received from the NCP group and AusNCP Board, including proposed approach for good offices 7-28 September 2021
- Ireland NCP: Final Statement published re GLAN and CMC- Coal Marketing Company 8 September 2022
- Coordination: NCP conferral regarding initial assessments 21 September 2021
- AusNCP initial assessment statement: draft provided to parties for comment 29 September 2021
- Submissions from parties on draft AusNCP initial assessment October – December 2021
- AusNCP: initial assessment statement embargo copy provided to AusNCP Board, NCP group, parties and Ireland and Colombian NCPs 5 January 2022
- AusNCP: initial assessment statement published on the AusNCP website and notified to OECD 10 January 2022
- Switzerland NCP: initial assessment Statement published 10 January 2022
- UK NCP: initial assessment statement published 10 January 2022

Final statement

- Switzerland NCP: meeting with GLAN to discuss indigenous community engagement and jurisdiction in relation to impacts in Colombia 21 February 2022
- Anglo American, Glencore, BHP and the Australian and UK NCPs confirm agreement to a Switzerland NCP-led mediation 3 March 2022
- Switzerland NCP: appoint external mediator agreed by all parties 28 March 2022
- Switzerland NCP: circulated draft ToR circulated to parties 13 April 2022
- Switzerland NCP: meeting with GLAN, six supporting NGOs, and mediator to discuss outstanding issues in relation to: access to the mechanism for the six supporting NGOs and indigenous community leaders, scope of mediation and the Switzerland NCP jurisdiction 3 May 2022
- Switzerland NCP: circulated second draft ToR to parties 10 May 2022
- Switzerland NCP: meeting with GLAN and six supporting NGOs to discuss outstanding issues 26 June 2022
- GLAN: advised Switzerland NCP of their decision to withdraw from the negotiation of ToR for mediation 29 August 2022
- BHP: correspondence to AusNCP about GLAN decision to withdraw from mediation and request for final statement 14 September 2022
15 September 2022
- Coordination: NCP group discussed approach to final statements
- AusNCP: update on proposed approach to final statement provided to parties 3 November 2022
- Switzerland NCP: final statement published

- 20 December 2022
- AusNCP: draft final statement provided to AusNCP Board and NCPs of Switzerland and UK for comment 14 February 2023
- AusNCP: draft final statement provided to parties and the Colombia and Ireland NCPs for comment 16 March 2023
- BHP: submissions on draft final statement 6 April 2023
- GLAN: submissions to AusNCP on draft final statement 15 May 2023
- AusNCP: revised draft final statement provided to parties, AusNCP Board and NCPs of Switzerland and UK 24 May 2023
- Switzerland NCP: comments on revised final statement 12 June 2023
- BHP: comments on revised final statement 13 June 2023
- GLAN: comments on revised final statement 14 June 2023
- AusNCP: embargo final statement provided to AusNCP Board and parties, and NCPs of Colombia, Ireland, Switzerland and UK 19 July 2023
- AusNCP: final statement published and notified to OECD 31 July 2023

Annex B: Publications

Australian National Contact Point for Responsible Business Conduct (AusNCP), *Initial Assessment Complaint by Global Legal Action Network (GLAN) against Anglo America Plc, BHP Group Ltd and Glencore International*, The Treasury: Australian Government, 10 January 2022, accessed 23 January 2023.

https://ausncp.gov.au/sites/default/files/2022-01/23_initial_assessment_1.pdf

Australian National Contact Point, *Statement BHP -Biliton – Cerrejon coal specific instance*, Australian Government, 12 June 2009 together with: *Announcement on Settlement of Tabaco and Independent Panel Report on Cerrejon Mine’s Social Responsibility*, accessed 6 January 2023.

<https://ausncp.gov.au/complaints/view-closed-complaint>

Ireland National Contact Point, *Final Statement Specific Instance Complaint against CMC Coal Marketing DAC*, Department of Enterprise, Trade and Employment: Government of Ireland, 8 September 2022, accessed 23 January 2022.

<https://enterprise.gov.ie/en/publications/publication-files/statement-cmc-coal-marketing-dac-september-2022.pdf>

Ireland National Contact Point, *Specific Instance Complaint against from Global Legal Action Network (GLAN) against Electricity Supply Board (ESB) 19-8 July 2022*, Department of Enterprise, Trade and Employment: Government of Ireland, 8 September 2022, accessed 23 January 2023.

<https://enterprise.gov.ie/en/publications/publication-files/initial-assessment-ireland-ncp-si-esb.pdf>

National Contact Point of Switzerland, *Initial Assessment Specific Instance regarding Glencore International AG submitted by the Global Legal Action Network (GLAN)*, State Secretariat for Economic Affairs: Government of Switzerland, 10 January 2022, accessed 23 January 2023.

https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/nachhaltigkeit_unternehmen/nkp/Statements_zu_konkreten_Faellen.html#accordion_4383194241675128153318

National Contact Point of Switzerland, *Final Statement Specific Instance regarding Glencore International AG submitted by the Global Legal Action Network (GLAN)*, State Secretariat for Economic Affairs: Government of Switzerland, 20 December 2022, accessed 23 January 2023.

https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/nachhaltigkeit_unternehmen/nkp/Statements_zu_konkreten_Faellen.html#accordion_4383194241675128153318

OECD, *Global Legal Action Network and Anglo American Plc, BHP Group Ltd and Glencore International AG*, OECD Database of specific instances, n.d, accessed 23 January 2023

<http://mneguidelines.oecd.org/database/instances/au0025.htm>

UK National Contact Point, *Initial assessment: Global Legal Action Network complaint to the UK NCP about Anglo American*, Department for International Trade: Government of United Kingdom, 10 January 2022, accessed 23 January 2023

<https://www.gov.uk/government/publications/glan-complaint-to-uk-ncp-about-anglo-american/initial-assessment-global-legal-action-network-complaint-to-the-uk-ncp-about-anglo-american>

Annex C: Institutional arrangements

38. The Australian Government is committed to promoting the use of the OECD Guidelines for Multinational Enterprises (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.
39. 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. Companies operating in Australia and Australian companies 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 fully honour such principles and standards, which does not place them in violation of domestic law. Importantly, 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. They represent standards of behaviour that supplement Australian law and therefore do not create conflicting legal requirements.
40. 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 companies 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 OECD Guidelines' human rights chapter 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 D: Governance

41. Governments adhering to the OECD Guidelines have flexibility in organising their National Contact Points for responsible business conduct (NCPs). NCPs 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.
42. 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.
43. The [AusNCP Governance and Advisory Board](#) (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.
44. 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.
45. From September 2019, all new cases are managed by Independent Examiners, who are supported by the AusNCP Secretariat and the AusNCP Board.