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AusNCP
Australian National Contact Point for Responsible Business Conduct

Initial Assessment

Complaint submitted by Maurice Blackburn Lawyers and Macquarie University's Business & Human Rights Access to Justice Lab (representing communities near the Cerro Matoso mine in Colombia) concerning South32 Limited

14 August 2026

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Executive summary

1. In October 2025, the Australian National Contact Point for Responsible Business Conduct (**AusNCP**) received a complaint from Maurice Blackburn Lawyers and Macquarie University's Business & Human Rights Access to Justice Lab (**the notifiers**), concerning the activities of South32 Limited (**South32**) and Cerro Matoso S.A. (**CMSA**), a Colombian company that was, at that time, owned by South32. The complaint concerns alleged impacts on communities near the Cerro Matoso mine in Colombia, and the relevant expectations on South32 under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (**OECD Guidelines**).

2. An AusNCP Independent Examiner considered the material presented by the notifiers, South32, and publicly available information. The Initial Assessment found that parts of the complaint satisfied the six admissibility criteria set out in the AusNCP complaint procedures and the OECD Guidelines' Implementation Procedures.

   2.1 For example, the notifiers and the communities they represent had a relevant interest; several issues were assessed as 'material' and 'substantiated' (within the meaning of the AusNCP complaint procedures); and South32 was covered by the OECD Guidelines and connected to aspects of the complaint. This includes some issues that are appropriate for South32 to consider under the OECD Guidelines, particularly in relation to its divestment of its interest in CMSA to a subsidiary of a company with an existing presence in Colombia.

   2.2 However, other issues raised in the complaint were not considered appropriate for the AusNCP to progress, particularly those requiring an objective understanding of the events, parties, and regulation in Colombia. Accepting these issues raised by the notifiers would not contribute to the purposes and effectiveness of the OECD Guidelines.

3. The AusNCP will offer its dispute resolution ('good offices') process to the parties, to be facilitated by an Independent Examiner, with a focus on divestment and disengagement (explained in paragraph 77 of this statement), namely:

   3.1 the due diligence South32 undertook in relation to the divestment, including how it identified and responded to actual or potential adverse impacts associated with the sale (such as issues relating to the right to an effective remedy and meaningful stakeholder engagement, insofar as those matters relate to the complainant communities represented by the notifiers)

   3.2 how South32 assessed the new owner's capacity and commitment to respect human rights and environmental standards of the OECD Guidelines

   3.3 any action taken by South32, arising from the above two steps, to ensure that the divestment was consistent with the OECD Guidelines.

4. Under the AusNCP complaint procedures, if the dispute resolution process does not reach a mutually agreed resolution, or if South32 does not accept the offer of dispute resolution, then

the matter will progress to an examination of the issues identified above (unless the notifiers do not wish to proceed with dispute resolution), as explained in paragraph 78 of this statement.

5. This Initial Assessment is not a determination on the merits of the claims presented, nor is it an assessment of whether South32's actions are consistent with the OECD Guidelines.

6. This statement is available on the AusNCP website at www.ausncp.gov.au.

John Southalan

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Initial Assessment

7. On 10 October 2025, the AusNCP received a complaint from the notifiers, alleging that South32 had acted inconsistently with the OECD Guidelines.[1] This complaint has been assessed by an AusNCP Independent Examiner and in accordance with the AusNCP complaint procedures.[2]

Parties

8. The notifiers:

   8.1 are Maurice Blackburn Lawyers, who describe themselves as '*Australia's leading plaintiff law firm*',[3] and the Business & Human Rights Access to Justice Lab, which is part of Macquarie University in Sydney and describes its activities as including '*assist[ing] affected individuals and communities in seeking access to justice for corporate human rights abuses*'[4]

   8.2 explained that they '*are acting in a pro bono capacity and in the interests of communities surrounding the Cerro Matoso mine*', which they subsequently clarified as meaning two community groups that they represent for the purposes of this complaint.

9. The Cerro Matoso mine is an open-cut mine and associated facilities that produce ferronickel and have operated since the 1980s under various owners (including, at earlier points, the Colombian Government). Relevant to this complaint, the mine is owned and operated by a Colombian company, CMSA (as abbreviated by the parties). CMSA was owned by South32 from May 2015 until 1 December 2025, when South32 sold its interest in CMSA to a subsidiary of CoreX Holding B.V. (**CoreX**), whose operational headquarters are in Türkiye. The proposed transaction had been publicly known since at least July 2025.[5]

10. The enterprise is South32, an Australian-based multinational mining company that describes itself as '*a global mining and metals company, creating value by producing commodities that are used in many aspects of modern life*'.[6] South32 is headquartered in Perth and was created as part of BHP Group Limited's demerger of various assets, including CMSA and the Cerro Matoso mine, which became owned by the newly formed independent entity (South32) in May 2015.[7]

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[1] Organisation for Economic Co-operation and Development (**OECD**), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (**OECD Guidelines**), OECD Publishing, 8 June 2023.

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

[3] https://www.mauriceblackburn.com.au/about-us/, accessed March 2026.

[4] https://www.mq.edu.au/faculty-of-arts/schools/macquarie-law-school/our-research/corporate-citizenship-and-integrity/b-and-hr-access-to-justice-lab

[5] South32 Limited (**South32**) explained the proposed transfer in a notice to the Australian Stock Exchange on 7 July 2025: *Agreement to divest Cerro Matoso*.

[6] https://www.south32.net/about-us/south32-at-a-glance.

[7] Demerger of South32 by BHP Billiton: Shareholder Circular, 16 March 2015.

Complaint and outcomes sought by the notifiers

11. The complaint describes environmental and human rights concerns raised by members of communities that live near the Cerro Matoso mine. The notifiers provided extensive materials and submissions on these issues, as well as on responsible disengagement obligations in light of South32's then planned sale of CMSA to CoreX, which had been announced and was underway but not yet completed when the complaint was submitted to the AusNCP.

12. When submitting the complaint in October 2025, the notifiers identified nine outcomes they would be seeking from South32 through any potential AusNCP-facilitated dispute resolution process (see below). The notifiers also requested that the AusNCP expedite its Initial Assessment process, in light of South32's announcement that divestment of the Cerro Matoso mine would occur by the end of 2025. As anticipated, the transfer of CMSA from South32 to CoreX occurred while the AusNCP was still considering materials for the Initial Assessment. Because of this, the Independent Examiner asked the notifiers to confirm what outcomes they continued to seek from the complaint (which they did in a submission dated 23 January 2026), and for these requests to be shared with South32. The nine 'requests' raised by the notifiers, and their supporting justifications, can be summarised as follows:

    12.1 *responsible disengagement*: South32 should disclose and explain the stakeholder-informed due diligence undertaken in relation to the divestment of its interest in the Cerro Matoso mine, including how actual and potential adverse impacts associated with the sale were identified and assessed. Any outstanding responsible disengagement steps should be taken, with an appropriate monitoring mechanism established to address ongoing harms

    12.2 *assessment of impact*: South32 should fund an independent, community-trusted and comprehensive assessment of the alleged adverse impacts raised in the complaint, as well as foreseeable adverse impacts arising from South32's disengagement from the Cerro Matoso mine project

    12.3 *remediation of harm*: South32 should repair damage allegedly caused to the environment and affected communities during its period of ownership and as a result of the divestment

    12.4 *divestment of profits*: South32 should divest itself of profits associated with alleged adverse impacts on the environment, health, and human rights of local communities arising from CMSA's activities, which South32 is alleged to have 'caused' or 'contributed to'

    12.5 *cease causing or contributing to harm*: South32 retains responsibilities under the OECD Guidelines for alleged ongoing harms linked to its prior ownership and divestment, and should apply any remaining leverage to prevent further harm and support remediation

    12.6 *establish ongoing dialogue with affected communities*: South32 should engage in ongoing, meaningful stakeholder engagement with affected communities regarding alleged adverse impacts arising during its period of ownership, and should encourage CoreX to do the same

    12.7 *sustainable economic and social development*: South32 should assess and address the economic and social impacts of divestment on affected communities, including legacy impacts on livelihoods, employment, skills development, local sourcing, community enterprise, and economic inclusion associated with its operation of the Cerro Matoso mine

12.8 *clarify status of court-ordered remedies*: South32 should update affected communities on the status of three court orders in force at the date of sale and provide information on how rights and responsibilities under those orders will be maintained following the divestment

12.9 *public accountability and apology*: South32 should issue a public apology for failing to take timely steps to understand and address the impacts of the Cerro Matoso mine on communities and the environment during its period of ownership and in relation to its divestment process.

Process

13. The notifiers indicated that, on 26 September 2025, they sent correspondence to South32 advising of their intention to bring this National Contact Point (**NCP**) complaint forward.

14. The Independent Examiner liaised with the notifiers and South32 and received extensive submissions and material from each party (and provided the other with procedural fairness to address those materials), before making this Initial Assessment decision.

15. During this engagement, four relevant issues arose from certain aspects of the complaint that were identified by the parties or the Independent Examiner, and required the parties' attention. Three of these are addressed in the sections of this statement that concern the Initial Assessment criteria (the identity of the persons represented by the notifiers, South32's divestment, and Colombia having its own NCP). However, a fourth issue – the security of the complainants represented by the notifiers – requires separate attention.

15.1 While undertaking this Initial Assessment, the Independent Examiner learnt from the AusNCP Secretariat that the notifiers had earlier contacted the AusNCP (in March 2025) about a potential future complaint regarding the Cerro Matoso mine, to discuss possible security and reprisals concerns within an NCP process.

15.2 The notifiers' October 2025 complaint referenced material from credible sources,[8] and an independent Human Rights Risk Assessment commissioned by South32,[9] which identified risks from the presence of illegal armed groups. These included reports of serious alleged incidents in the Alto San Jorge subregion where the Cerro Matoso mine is located, such as alleged violence and intimidation of Indigenous human rights defenders by police forces, and the alleged killings of a journalist and land-rights activists.

[8] Including:
- OECD, *Responsible Business Conduct in the Extractive and Minerals Sector in Latin America and the Caribbean* (15 March 2022, OECD Publishing).
- ACLED (Armed Conflict Location & Event Data), which '*is an independent, impartial global monitor that collects, analyses, and maps data on conflict and protest*': https://acleddata.com/about-acled.
- Global Witness, which '*is an investigative, campaigning organisation*' that works with communities to defend them and their rights: https://globalwitness.org/en/about-us/.
- The International Crisis Group, which '*is an independent organisation working to prevent wars and shape policies that will build a more peaceful world*': https://www.crisisgroup.org/who-we-are.

[9] South32, *Modern Slavery Statement 2023*, p 13.

15.3 The notifiers explained that, because of these security concerns, the complainants and their local affiliates wished to remain confidential (although they were prepared to identify themselves to the AusNCP).

15.4 During the Initial Assessment, the notifiers reported (in January 2026) that one of the complainant communities in Colombia had allegedly been contacted by a representative of CMSA to enquire about whether they were one of the communities represented in this AusNCP complaint and whether certain human rights defenders were also involved.

15.5 This enquiry regarding the AusNCP complaint was relayed (with the notifiers' consent) to South32, which responded by denying any linkage between it and the security concerns raised. This was relayed to the notifiers, and South32 further advised in this response that it understood that after the divestment had occurred, a community member had informed CMSA '*during a routine engagement*' and '*without any coercion or pressure*' that '*a complaint had … been lodged against South32 in Australia*'. It is unclear whether the notifiers and South32 are referring to the same alleged event. South32 also explained that as it no longer has any interest in CMSA, future concerns regarding allegations of this nature should be raised directly with CMSA.

16. The AusNCP complaint procedures, consistent with the OECD Guidelines' Implementation Procedures, expect parties not to threaten or take reprisals against other parties, and also enable the identities of those represented by a notifier to be anonymised where there are personal safety and reprisal risks.[10] The Independent Examiner supports the AusNCP's expectations in this regard, and notes that the OECD Guidelines' standards also expect enterprises to '*[r]efrain from and take steps to prevent the use of reprisals*' more broadly,[11] and not just in an NCP context. Any reprisal is unacceptable, whether against another party, a related entity, or NCP staff.

17. Based on the information available to the Independent Examiner, there is no evidence indicating that South32 has acted contrary to the OECD Guidelines regarding this security issue. There are, however, credible reasons to protect the identity of the complainants (which is addressed below under *Criterion 1: Identity and interest of the notifiers and complainants*).

Relevant OECD Guidelines

18. The notifiers' original complaint to the AusNCP stated that it was '*submitted under both the 2011 and 2023 [OECD] Guidelines*' (referring to the previous and current editions of the OECD Guidelines), and that:

18.1 the 2011 OECD Guidelines apply to South32's conduct prior to 8 June 2023 (the date that the current OECD Guidelines entered into force), and that the 2023 OECD Guidelines apply from that date onwards

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[10] e.g. AusNCP complaint procedures, paras [10] (anonymous complaints, safety and reprisals) and [29] (identity and security).

[11] OECD Guidelines, *II. General Policies*, p 14 [A.10].

18.2 the 2011 OECD Guidelines are relevant to harms that occurred before the 2023 update, while the 2023 OECD Guidelines apply to ongoing or unresolved harms that began earlier, as well as to any new harms from 8 June 2023 onwards.

19. The sections of the 2023 OECD Guidelines that were identified as being relevant to the complaint comprise the following four chapters:

19.1 **Chapter II: General Policies**, with the complaint referencing paragraphs of the OECD Guidelines concerning sustainable development and capital formation (paragraphs A1 and A4), respecting human rights (paragraph A2), meaningful community and stakeholder engagement (paragraphs A7 and A15), and risk-based due diligence (paragraphs A10-A12).

19.2 **Chapter III: Disclosure**, with the notifiers identifying a paragraph of the OECD Guidelines that expects enterprises to '*communicate responsible business conduct information, including as part of their responsibility to carry out due diligence*' (paragraph 3).

19.3 **Chapter IV: Human Rights**, specifically paragraphs of the OECD Guidelines that expect enterprises to respect and avoid causing or contributing to impacts on human rights in their own activities, and address them where they occur or where they are directly linked to them through a business relationship (paragraphs 1, 2 and 3); have a publicly available policy commitment to respect human rights (paragraph 4); carry out human rights due diligence (paragraph 5); and provide for or cooperate in remediation (paragraph 6).

19.4 **Chapter VI: Environment**, with the complaint referencing paragraphs of the OECD Guidelines that concern environmental management and due diligence (paragraph 1), meaningful stakeholder engagement (paragraph 2), threats of serious or irreversible damage to the environment (paragraph 3), contingency planning for addressing serious environmental and health impacts from an enterprise's operations (paragraph 4), and environmental performance (paragraph 5).

20. The Independent Examiner also considers relevant, for the purposes of the Initial Assessment of this complaint, paragraphs of the OECD Guidelines concerning responsibility where multiple parties, governments, and NCPs are involved. In particular:

20.1 in relation to impacts arising from a business relationship, the OECD Guidelines are not intended to shift responsibility from the entity 'causing' an adverse impact to the enterprise with which it has a business relationship[12]

20.2 generally, the NCP of the country in which the issues have arisen would be the 'lead NCP' for handling a given complaint.[13]

[12] OECD Guidelines, *II. General Policies*, p 15 [A.13].
[13] OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 69 [30].

Enterprise's response to the allegations

21. South32 was provided with the notifiers' extensive submissions and subsequent materials as part of the Initial Assessment process. In its preliminary response,[14] South32 explained its commitment to human rights (referencing various public documents, including its own policies and procedures), with a particular focus on those most vulnerable to harm, such as Indigenous Peoples. South32 further stated that it '*respects the constructive role that the AusNCP can play in the right circumstances*', but does not consider this complaint to be '*an appropriate or effective use of the AusNCP dispute resolution process*', and does not accept the allegations raised by the notifiers. South32's reasons for this position are discussed under the relevant Initial Assessment criteria in this AusNCP statement.

Assessment criteria

22. The AusNCP complaint procedures set out six criteria that an Independent Examiner must consider for an Initial Assessment of an AusNCP complaint. These criteria, which are drawn from the OECD Guidelines' Implementation Procedures, and are 'interrelated and necessitate examination as a whole',[15] are as follows:

    : the identity of the party concerned and its interest in the matter

    : whether the issue is material and substantiated

    : whether the enterprise is covered by the OECD Guidelines

    : whether there seems to be a link between the enterprise's activities and the issue raised

    : the extent to which applicable law and/or parallel proceedings limit the AusNCP's ability to contribute to the resolution of the issue and/or the implementation of the OECD Guidelines

    : whether consideration of the issue would contribute to the purposes and effectiveness of the OECD Guidelines.

23. Each of these criteria is addressed below, with reference to other relevant NCP decisions where appropriate. While previous NCP statements are not binding precedents, they are relevant given the OECD Guidelines emphasise that NCPs should operate to further '*the objectives of functional equivalence*'.[16]

24. Both parties provided extensive materials and submissions addressing the Initial Assessment criteria, which they agreed could be shared with the other party (within the confidentiality provisions of the AusNCP complaints process). The parties also responded to points raised by each other. This entailed considerable work and resources by the notifiers and by South32, and

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[14] Provided on 19 December 2025.
[15] OECD, *Guide for National Contact Points on the Initial Assessment of Specific Instances*, OECD Publishing, 31 January 2019 (**OECD Initial Assessment Guide**), p 6.
[16] OECD Guidelines, *I. National Contact Points for Responsible Business Conduct*, p 58 [A. Institutional Arrangements] and *I. Commentary on the Procedures for NCPs*, p 64 [10].

these materials greatly assisted this Initial Assessment. The Independent Examiner acknowledges the parties' careful and thorough engagement.

Criterion 1: Identity and interest of the notifiers and complainants

25. The first criterion to consider is the identity of the notifiers and their interest in the matters they raise.[17] The notifiers' identities are clear and are described in paragraph 8 of this statement. However, two matters require particular attention under this criterion: (1) the identity and interests of the two community groups represented by the notifiers (referred to as the 'complainants' – the affected parties); and (2) the notifiers' interests and arrangements in representing those complainants.

26. The notifiers also explained the following, which is relevant to understanding the relevant parties and interests:

    26.1 The Cerro Matoso mine, in northern Colombia, has mining activities concentrated around five municipalities.

    26.2 These municipalities have a total combined population of 200,000, and a 2024 sustainability report from CMSA indicates its operations have implications for around 50,000 people.[18]

    26.3 The communities surrounding the mine primarily consist of three groups: Zenú Indigenous communities, Afro-Colombian communities, and campesino (rural farming) communities.

        26.3.1 Zenú Indigenous communities live in collectives or are dispersed across rural and urban areas near the mine, and are represented by various Indigenous councils.

        26.3.2 Afro-Colombian communities near the mine primarily reside in rural and urban areas of three municipalities, and are represented by community councils.

        26.3.3 Campesino communities organise through Community Action Boards which are legally recognised grassroots bodies that facilitate local governance, development planning, and rights advocacy.

27. The Independent Examiner requested clarification from the notifiers as to whom they represent, the arrangements for that representation, and asked that this information be explained in a form that could be shared with South32. The notifiers explained that the complainants are the established leadership groups of two communities, and that each has signed a retainer with Maurice Blackburn Lawyers to act on their behalf in filing the complaint and liaising with the AusNCP and South32. The notifiers explained that they were originally contacted through various non-government organisations and lawyers (whose identities do not need to be identified in this

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[17] OECD Initial Assessment Guide, p 6; AusNCP complaint procedures, paragraph [30].

[18] CMSA's 2024 sustainability report (p 4) states (in Spanish) that '*más de 50.000 personas aproximadamente benefician de esta operación*', which translates to English as '*approximately more than 50,000 persons benefit from this operation*' (being the Cerro Matoso mine). The notifiers' complaint referenced this page of the report and communicated to the AusNCP that: '*Cerro Matoso [S.A.] reports that its operations impact at least 50,000 local people*'. That was not an accurate translation of this sentence from CMSA's public report.

statement). The notifiers' submissions distinguished between the two '*complainant communities*' represented by the notifiers and broader '*affected communities*'. The notifiers stated that they are neither in contact with, nor represent, all affected communities.

28. Through the AusNCP, South32 requested the identity of the complainant communities. South32 asserted that this information was relevant for several reasons, including that not knowing the complainants' identities prejudiced its ability to respond to whether the statements made in the complaint had already been addressed, and to assess whether those statements were made in 'good faith'.

    28.1 South32 indicated that there are many different community groups, councils, and associations in the areas surrounding the mine, of varying status and legitimacy. It noted that various parties have raised issues over the years, which have been the subject of extensive Colombian court proceedings and orders. South32 further explained, with reference to information publicly available on its website, that CMSA has previously consulted and engaged extensively with different community members and groups.

    28.2 South32 stated that '*various [community] groups have [already] received compensation and remedy*', including in relation to environmental and health issues that are the subject of this complaint.

    28.3 South32 considered the refusal by the complainants to disclose their identities to be inconsistent with the past behaviour of recognised community groups in the areas surrounding the mine, which have engaged directly (i.e. not anonymously) with CMSA and the Colombian courts.

    28.4 South32 asserted that '*[t]his [wa]s a fundamental issue of fairness – without knowing the parties to this dispute, South32 [wa]s unable to properly understand the complaint or effectively address or narrow the issues in dispute*'. South32 also identified other Initial Assessment criteria (including whether the issues were 'material' and 'substantiated', and the relevance of local proceedings), which it contended it could not properly address without knowing the complainants' identities.

    28.5 South32 advised that it would have been willing to agree to a confidentiality regime with the notifiers to enable the enterprise to learn the identities of the complainants, while providing assurances that those identities would not be disclosed by South32.

29. The AusNCP facilitated further engagement between South32 and the notifiers, who took further instructions from the communities. This resulted in one community group agreeing to be identified to South32 within confidentiality commitments (that community does not need to be identified in this statement), and the community's situation being explained to South32. However, the other community did not agree to be identified to South32, citing security concerns. The Independent Examiner indicated to the notifiers and the enterprise that further identification was not necessary for the purposes of this Initial Assessment. The Independent Examiner acknowledges and thanks all parties for their engagement and for accommodating the interests of others in this exchange.

30. On the information available, the Independent Examiner is satisfied that the notifiers and the two complainant communities have demonstrated a sufficient interest for the purposes of

Criterion 1. However, the complaint and the notifiers' submissions also raise issues that extend beyond the two complainant communities.[19] Some of those issues do not relate to the complainant communities, and it is not evident that the notifiers' representation has been requested or authorised by other relevant individuals or communities.[20] This is relevant to determining whether, and which aspects of, the complaint should be accepted for dispute resolution by the AusNCP, as discussed in more detail under *Criterion 6: Contribution to the OECD Guidelines' purposes and effectiveness* of this statement.

Criterion 2: Whether the notifiers' issues are material and substantiated

31. The second criterion to consider is whether the issues raised are 'material' and 'substantiated'.[21] The AusNCP complaint procedures explain that:[22]

    31.1 'material' will be taken to mean that '*the issues are plausible and related to the application of the OECD Guidelines*'

    31.2 'substantiated' will be taken to mean that '*there is a plausible link between the enterprise and the issues raised*'.

32. In an NCP process, the materiality of any issues raised should be assessed against the recommendations and standards of the OECD Guidelines, rather than in relation to domestic law[23] (such as that of Australia or Colombia). The question of any link between South32 and the issues raised is addressed more fully under *Criterion 4: Link between the enterprise's activities and the issues raised* of this statement.

33. Assessing this criterion (and the subsequent criteria) requires clarity as to the OECD Guidelines issues raised in the complaint. To this end, there appear to be four broad issues arising from the complaint and the parties' submissions, some of which overlap but also involve important distinctions:

    33.1 **issues directly concerning the complainant communities**, including aspects of the OECD Guidelines' due diligence expectations relevant to the Cerro Matoso mine's operations,[24] such as impacts and remediation, and meaningful stakeholder engagement

[19] e.g. in the complaint's requests for '*consultation with all communities affected by the mine*', reparations '*to the affected communities*', addressing '*impacts of divestment on affected communities*', '*update affected communities as to the status of … Court Orders*', and to '*address the mine's impacts on the communities and environment during the period of South32's ownership, and in relation to its divestment process*'.

[20] A relevant consideration for this criterion – see OECD Initial Assessment Guide, p 6.

[21] AusNCP complaint procedures, paragraph [30].

[22] AusNCP complaint procedures, paragraph [31] and p 20 (glossary definition of 'material and substantiated').

[23] As per OECD Initial Assessments Guide, pp 20-21.

[24] For OECD guidance on the OECD Guidelines' expectations in the extractive sector, including the types of issues that may be raised in relation to mining companies, see: *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (6 April 2016, OECD Publishing), and *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (2 February 2017, OECD Publishing).

33.2 **similar issues in relation to other parties**, namely impacts and due diligence considerations (noted above) affecting communities or persons other than the two complainant communities represented by the notifiers

33.3 **issues concerning Colombian regulatory compliance**, including the notifiers' questions regarding the status of Colombian court orders, and the relevance and implications of Colombian regulation for compliance with the OECD Guidelines

33.4 **issues relating to divestment and disengagement**, in particular the due diligence undertaken by South32 in relation to its divestment process, as part of its broader due diligence expectations under the OECD Guidelines.

34. In relation to all of these issues, the notifiers provided considerable material demonstrating the plausibility of the points they raised. The complaint did not simply comprise assertions by the notifiers, but referenced and excerpted a substantial body of material documenting impacts arising from the mine's operations over many years. This material included Colombian government reports and court rulings, including findings of non-compliance and associated fines, and court orders requiring the mine's operators to address various impacts.

35. South32 acknowledged that a number of court proceedings had occurred, but raised two points in relation to them. First, it submitted that where court proceedings had resulted in orders for remedial action following findings of non-compliance, significant steps had been taken to address the issues identified. Secondly, South32 noted that in other proceedings, claims made against the Cerro Matoso mine had been dismissed.

36. South32 also described CMSA's considerable agreements and engagements with communities near the Cerro Matoso mine, and emphasised the difficulty that South32 faced in responding to the concerns raised in this complaint. South32 stated that, without knowing the identity of the complainant communities, it was unable to assess (or explain) whether the issues raised had already been addressed, formed part of existing agreements or arrangements, or raised new concerns (see paragraph 29 of this statement).

37. In relation to the divestment, South32's July 2025 announcement to the ASX included the following statements:

> *South32 ... has entered into a binding agreement to sell Cerro Matoso (Transaction) to a subsidiary of CoreX Holding B.V. (CoreX or Buyer).*
>
> *... On completion of the Transaction, the Buyer will pay nominal consideration and assume economic and operating control of Cerro Matoso, including all current and future liabilities (except for an immaterial potential historic claim).*
>
> *... The Transaction is subject to the satisfaction or waiver of certain conditions, including international merger clearances and a reorganisation of the entity which holds Cerro Matoso.*
>
> *... South32 Chief Executive Officer … said: "... Cerro Matoso has a long and proud history in Colombia. Over the coming months we will work with the Buyer, our workforce, the local*

communities, government, customers and suppliers to support a successful transition of ownership.”[25]

38. This ASX announcement highlights two points relevant to this complaint: (1) the payment of ‘*nominal consideration*’ and the assumption of all of CMSA’s ‘*current and future liabilities*’, except for ‘*an immaterial potential historic claim*’; and (2) the statement by South32’s CEO that South32 would work with the local communities to support a successful transition of ownership. Both points relate to arrangements relevant to issues of responsible disengagement, which are ‘material’ and ‘substantiated’ (within the meaning of the AusNCP complaint procedures. These matters can be considered further in any subsequent AusNCP-facilitated dispute resolution or examination process.[26]

39. Returning to the earlier categorisation of issues, which assists in summarising the Independent Examiner’s assessment of Criterion 2 (with aspects of these also arising in later criteria):

    39.1 Some issues are ‘material’ and ‘substantiated’ within the meaning of the AusNCP complaint procedures, including those directly concerning the complainant communities and those relating to divestment and disengagement. This assessment – that some issues are ‘material’ and ‘substantiated’ – is not a factual finding or determination by the AusNCP. Rather, it is the Independent Examiner’s decision that the material provided by the parties demonstrates that some issues raised by the notifier are sufficiently plausible and relate to matters covered by the OECD Guidelines.

    39.2 In terms of similar alleged issues arising from the Cerro Matoso mine’s operations in relation to other parties (that is, communities other than the complainant communities), those matters are ‘material’ to understanding South32’s consistency with the OECD Guidelines. However, it is not evident that they are ‘substantiated’, given the uncertainty as to whether those other parties hold similar concerns to the complainant communities represented by the notifiers, and whether some aspects have already been addressed through existing arrangements.

    39.3 In relation to issues concerning Colombian regulatory compliance, these issues are ‘substantiated’ within the meaning of the AusNCP complaint procedures, as the notifiers have identified and provided the AusNCP with relevant public decisions and reports. It is less clear, however, whether those matters are ‘material’ to the application of the OECD Guidelines. While domestic law and regulatory action may provide relevant context, compliance with domestic law is not determinative of consistency with the OECD Guidelines, nor is it a matter appropriately resolved through an NCP process. Relevance arises where the substance of domestic law or regulatory action demonstrates, or provides insight into, an enterprise’s consistency with the OECD Guidelines.

[25] South32, *Agreement to divest Cerro Matoso* (see footnote 5).

[26] Noting that South32 declined the AusNCP’s offer of dispute resolution.

Criterion 3: Whether the enterprise is covered by the OECD Guidelines

40. The third criterion to consider is whether the enterprise is covered by the OECD Guidelines.[27] The OECD Guidelines apply the term 'multinational enterprise' broadly, and are addressed to all entities within an ownership structure, including parent companies and local entities,[28] as well as outlining expectations regarding supply chains and business relationships.[29]

41. South32 has described itself as '*operat[ing] in Australia, Southern Africa and the Americas, producing minerals and metals critical to the energy transition*', including at the time that the Cerro Matoso mine was part of its portfolio.[30]

42. On this basis, Criterion 3 is satisfied.

Criterion 4: Link between the enterprise's activities and the issues raised

43. The fourth criterion to consider is whether there seems to be a link between the enterprise's activities and the issue raised in the complaint.[31]

44. South32 outlined many agreements that CMSA has reportedly made with local communities about the Cerro Matoso mine (under Colombian regulatory arrangements), and reiterated the difficulty in being able to address the complaint's allegations without knowing the identity of some complainants. South32 also identified considerable activities and documents (both public and internal) relevant to due diligence and related expectations under the OECD Guidelines. This included the following:

    44.1 CMSA's public Annual Sustainability Report, which, while not available online at this time, described CMSA's practices, including regular meetings concerning social investment agreements; accessible grievance mechanisms available both verbally and in writing (with South32 explaining that CMSA maintained a complaints and grievance mechanism '*that is communicated and actively used by stakeholders, including communities*', and that CMSA had previously engaged with communities as part of a review and update of that mechanism); and participatory work routes (consultation methodologies) agreed with communities for future projects, aimed at managing expectations and impacts.

    44.2 Regular Human Rights Impact Assessments of South32's operations (and those of its then subsidiary, CMSA), with the most recent assessment relating to the Cerro Matoso mine conducted in 2022. South32 described this assessment as involving external consultants, interviews with 270 individuals (241 identified as rightsholders, including 53 representatives from 25 communities), and the provision of recommendations. South32 also explained the actions undertaken by CMSA in response to key recommendations from

[27] AusNCP complaint procedures, paragraph [30].
[28] OECD Guidelines, *I. Concepts and Principles*, p 12 [4].
[29] e.g. OECD Guidelines, II. General Policies, p 15 [13].
[30] South32, *Annual Report 2025*, p 10.
[31] AusNCP complaint procedures, paragraph [30].

this assessment, which related to rightsholder participation, environmental monitoring, improved communications, and Indigenous rights.

44.3 An October 2024 Human Rights Risk Self-Assessment, which '*did not identify any additional issues or human rights-related risks at CMSA*', according to South32.

44.4 Colombian regulatory regimes that address environmental impacts and proposed mitigation measures, with government licences containing conditions that must be complied with, including any measures agreed with communities. South32 stated that this includes regular compliance self-assessments submitted to the National Environmental Licensing Authority, which attends the mine, monitors operations annually, and may request further information or impose measures in accordance with its findings.

45. These points are also relevant to the other Initial Assessment criteria. They are noted here because, regarding Criterion 4, South32 contended that CMSA had operational responsibility for the mine, including responding to and managing complaints or issues raised by local communities. South32's position was that, in these circumstances, there was no proper basis to find a link between its actions and the environmental and human rights allegations raised in the complaint.

46. The Independent Examiner notes that the fact that a subsidiary undertakes various activities (or is responsible for them under domestic or contract law) does not mean that a parent company has no responsibility in respect of those activities. The OECD Guidelines encompass a range of connections that an enterprise may have with an alleged adverse impact (i.e. 'caused', 'contributed to', and/or 'directly linked'), and outline what enterprises are expected to do, as well as the differing due diligence expectations for each type of connection. The OECD Guidelines' expectations may be engaged regardless of the contractual mechanism through which those arrangements operate.

47. There is sufficient material to suggest some relevant relationship (e.g. 'caused', 'contributed to', or 'directly linked') between South32 and the issues raised in this complaint. It is not, however, necessary for the purposes of this Initial Assessment to precisely characterise the relationship between South32 and any alleged adverse impacts, or what is consequently expected of South32 under the OECD Guidelines.

48. Criterion 4 is satisfied.

48.1 There is a sufficient link between South32's activities and the issues raised in the complaint that allegedly directly affect the complainant communities (for example, aspects of the OECD Guidelines' due diligence expectations relevant to the Cerro Matoso mine's operations, including impacts and remediation, meaningful stakeholder engagement, and divestment and disengagement). The existence and nature of this link can, where necessary, be examined during subsequent stages of the AusNCP complaints process.

48.2 It is less evident that there is a link between South32 and CMSA's legal compliance (for example, the status of Colombian court orders and the relevance or implications of Colombian regulation for compliance with the OECD Guidelines). While the actions or decisions of CMSA – a former subsidiary of South32 that allegedly impacted the communities represented by the notifiers – may have a link to an issue raised under the

OECD Guidelines, CMSA's consistency with Colombian law does not automatically constitute a link with South32.

Criterion 5: Limitations from applicable law and/or parallel proceedings

49. The fifth criterion to consider is the extent to which applicable law and/or parallel proceedings may limit the ability of the AusNCP to contribute to the resolution of the issues and/or the implementation of the OECD Guidelines.[32]

50. The AusNCP's ability to facilitate engagement on issues arising under the OECD Guidelines (specifically, by accepting a complaint) is not precluded solely because parallel proceedings have been conducted, are underway, or are available to the parties.[33] The key consideration is whether offering dispute resolution (or 'good offices') '*could make a positive contribution to the resolution of the issues raised and/or the implementation of the [OECD] Guidelines going forward*', and '*would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation*'.[34]

51. Both parties provided extensive information and submissions concerning Colombian court and regulatory processes involving CMSA and various parties, some of whom are involved in this AusNCP complaint.

    51.1 The notifiers contended that Colombian laws and proceedings would not preclude the AusNCP from accepting the complaint and offering dispute resolution. They further alleged that there was '*a gap between CMSA's compliance and the experience of the communities*', raising concerns as to whether domestic proceedings were capable of resolving the issues in dispute.

    51.2 South32's position was that many of the issues raised in the notifiers' complaint are the subject of active court orders, extensive and long-running implementation plans and programs, and consultation agreements. South32 contended that these matters were not appropriate to be '*re-agitated through a non-judicial mechanism against a different enterprise in a different country*'.

52. It is difficult for the AusNCP to determine the extent to which Colombian laws or proceedings would be prejudiced were the AusNCP to accept the complaint, which would entail facilitating engagement between the notifiers and South32 (and CMSA) in relation to the issues raised. At a preliminary level, the potential for prejudice appears more likely in relation to issues concerning CMSA's actions in Colombia, and less likely in relation to issues concerning South32's actions in relation to its divestment process.

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[32] AusNCP complaint procedures, paragraph [30].

[33] OECD Initial Assessment Guide, pp 9-10. Per the AusNCP complaint procedures, the '*AusNCP can consider complaints even if the same complaint is being considered in other proceedings*', and '*[t]his includes judicial or non-judicial proceedings*': paragraph [22].

[34] OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 70 [35].

Criterion 6: Contribution to the OECD Guidelines' purposes and effectiveness

53. The final criterion to consider is whether consideration of the issue would contribute to the purposes and effectiveness of the OECD Guidelines.[35] This assessment is undertaken in relation to the specific complaint made by the notifiers. It is not a general investigation or assessment by the AusNCP of every possible issue under the OECD Guidelines.

54. The essence of the NCP complaint process, as summarised in the OECD Guidelines, is to '*serv[e] as a non-judicial grievance mechanism*' and '*contribut[e] to the resolution of issues that … relat[e] to the implementation of the [OECD] Guidelines*' and arise in specific instances.[36] Relevant to this criterion is whether resolution of such issues would be supported or encouraged by an NCP accepting a complaint and facilitating an exchange between the parties, including by:

- clarifying issues and expectations under the OECD Guidelines
- supporting dialogue about possible resolution
- developing meaningful recommendations regarding the relevant conduct of the enterprise.

55. Consistent with the approach taken for Criterion 2, this issue is best considered by reference to the different issues raised in the complaint (see below).

Issues directly concerning the complainant communities, and similar alleged issues arising from the mine's operations in relation to other parties

56. The primary issues raised in the complaint concern actions and impacts alleged to have occurred in Colombia that are relevant to the OECD Guidelines' due diligence expectations in relation to extractive operations, including impacts and remediation, and meaningful stakeholder engagement. These issues involve both the complainant communities and other communities (matters identified in paragraph 33 of this statement).

57. The notifiers referred to previous AusNCP complaints that have led to some of the remedial actions requested in this complaint, such as the divestment of profits,[37] and the establishment of an independent impact assessment process.[38] The Independent Examiner notes that those cases differ significantly from the present complaint.

    57.1 The other complaints concerned impacts in Cambodia and in Bougainville, Papua New Guinea. Neither of those jurisdictions has an NCP.

    57.2 In both complaints, the relevant notifiers explained the extensive representation process undertaken, had direct involvement from impacted parties, and did not indicate the existence of a large number of other affected communities that were not represented or

[35] AusNCP complaint procedures, paragraph [30].

[36] OECD Guidelines, *I. National Contact Points for Responsible Business Conduct*, p 59 [C. Specific Instances].

[37] AusNCP, *Follow Up Statement regarding complaint submitted by Equitable Cambodia and Inclusive Development International on behalf of Cambodian families concerning ANZ* (27 February 2020), pp 4 and 6.

[38] AusNCP, *Update Statement regarding complaint submitted by the Human Rights Law Centre (on behalf of affected individuals) concerning Rio Tinto* (13 December 2024), p 2.

involved. In each case, the arrangements were accepted by the relevant enterprises as appropriate for engagement through AusNCP-facilitated dispute resolution.[39]

57.3 In contrast, the notifiers in this complaint have indicated that they represent only two communities, among many other parties that have been allegedly affected by the Cerro Matoso mine. This raises questions as to how an AusNCP process could appropriately address some of the issues or requests raised in the complaint, such as divestment of profits (to whom) and the undertaking of impact assessments (involving whom).

58. Regarding representation, the Independent Examiner explained the relevant criteria and inquired of the notifiers as to the arrangements between them and the complainants. The notifiers' response was shared with South32, and both parties made submissions relevant to Criterion 6.

58.1 The notifiers contended that South32 had engaged unequally with affected communities. South32 stated that the lack of distinction between CMSA and South32 in the complaint, together with the non-identification of some complainants, made this difficult for South32 to address.

58.2 The notifiers explained that security concerns and limited resources meant they were unable to investigate or understand the experience and perspective of every community surrounding the mine. They stated that they did not have the capacity '*to engage with all communities in the region and formally represent all communities*', but intended for the complaint to encourage South32 towards meaningful stakeholder engagement with all communities impacted by the mine, not only the complainants. The notifiers stated that their intention was to act in the interests of communities allegedly impacted by the mine more generally, rather than exclusively in the interests of the complainant communities.

58.3 The notifiers also considered it appropriate for other affected communities, whom they did not represent, to have an opportunity to engage in any dispute resolution process offered, if a fair process could be organised to enable those communities' perspectives to be heard.

59. South32 asserted that many of the concerns raised in the complaint had already been addressed through existing processes, which it considered responded to the OECD Guidelines' human rights expectations. The notifiers, by contrast, contended that South32's Human Rights Impact Assessments and Human Rights Risk Self-Assessments '*lacked transparency and stakeholder engagement*'. In particular, the notifiers alleged that some affected communities reported exclusion from consultations, limited access to information, and ineffective grievance mechanisms. More broadly, in relation to public reporting by South32 and CMSA, the notifiers stated that ultimately, '*it is difficult to discern whether this component of the due diligence process has been sufficiently complied with due to a lack of transparency*'.

[39] In the case of AusNCP Complaint 11 (*submitted by Equitable Cambodia and Inclusive Development International on behalf of Cambodian families concerning ANZ*), it is important to note that, although the Initial Assessment accepted the matter for 'dispute resolution', the process was ultimately unsuccessful (see Final Statement, 27 June 2018, p 9). The remedial actions referred to in this complaint by the notifiers of AusNCP Complaint 41 emerged only during the dispute resolution discussions offered as part of the AusNCP's Follow Up process for that matter.

60. Taken together, these issues present considerable obstacles to the AusNCP being able to make a positive contribution by facilitating engagement between South32 and the notifiers[40] if the process were to cover every issue raised in the complaint.

61. The OECD Guidelines encourage complaints to be handled by the NCP of the country in which the issues have arisen.[41] This reflects the fact that a local NCP operates in the relevant language, and is best placed to understand and engage in the context within which the relevant actions have occurred. In the circumstances presented here, there is little congruence between the notifiers and South32 about the relevant events. To reach some common understanding on the breadth of issues in the complaint – or at least an objective basis sufficient to enable meaningful engagement – would require detailed engagement with Colombian materials and parties other than the notifiers and the complainants. That is not self-evidently something that can readily be facilitated by the AusNCP. If, however, the issues were narrowed only to the complainants' situation and the enterprise's relevant actions, the need for other parties and information would be reduced. This would make it more feasible for the AusNCP to facilitate engagement between South32 and the notifiers, and the complainant communities they represent.

Issues regarding Colombian regulation

62. One of the issues in the complaint was an update on Colombian court orders relating to CMSA and the Cerro Matoso mine. As part of its submissions, South32 provided a detailed response outlining its understanding of those matters, subject to consideration of whether, and in what form, that information could be made available to the complainants or other communities.

63. An NCP process is not intended to police local regulation. However, awareness of domestic regulatory frameworks may be relevant insofar as such frameworks address matters also covered by the OECD Guidelines, and may provide context for an enterprise's consistency with those expectations.

    63.1 In this complaint, South32 explained that the Cerro Matoso mine operates under a range of required authorisations and approvals issued by Colombian government authorities, including a mining approval granted through a mining contract with a government agency, and environmental licences issued by a government regulator. South32 also explained that prior consultation agreements had been entered into with certain communities and endorsed by a government official, and that these agreements are a mandatory prerequisite to applying for an environmental licence. South32 further contended that CMSA had undertaken a range of environmental and human rights due diligence activities, and that the entity is subject to extensive regulation and regulatory oversight under Colombian law.

    63.2 The notifiers did not agree with South32's characterisation. As outlined above, the notifiers' position was broadly that compliance with Colombian regulatory requirements had been uneven and did not ensure consistency with the OECD Guidelines.

[40] A relevant consideration per OECD Initial Assessment Guide, p 12.
[41] OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 69 [30].

64. The AusNCP is not well placed, particularly when compared with the Colombian NCP, to understand Colombian regulatory processes or to facilitate engagement informed by, or grounded in, those processes.

Issues relating to divestment and disengagement

65. Analysis of these issues is informed by how the notifiers ultimately framed their complaint or 'request' regarding disengagement, which is extracted below:

> *South32 should disclose and explain the stakeholder-informed due diligence undertaken in relation to the divestment, including how it identified and assessed actual and potential adverse impacts associated with the sale, including impacts it may have caused or contributed to. Consistent with the [OECD] Guidelines, this should include an explanation of how South32 sought to prevent or mitigate adverse impacts, how it assessed the purchaser's capacity and commitment to respect human rights and environmental standards, and what steps were taken to ensure that the divestment did not cause harm or undermine access to remedy. To the extent that adequate responsible disengagement measures have not already been taken, South32 should take the required steps immediately and revise their policies for future. South32 should also establish a monitoring mechanism to track the transition and remediate any harms caused by the divestment.*

66. Shortly after the AusNCP received the complaint, the Independent Examiner explained to both parties that an Initial Assessment typically takes several months to complete. Given the imminence of a potential change in ownership of the mine, the Independent Examiner also drew South32's attention to the OECD Guidelines' expectations relevant to divestment and disengagement (that is, where an enterprise may be changing its ownership or interests in an operation), as well as relevant NCP decisions.[42]

67. South32 subsequently provided further information regarding its divestment as part of its submissions to the AusNCP, and agreed that this information could be shared with the notifiers. South32 described, in general terms, the due diligence it had undertaken in connection with the divestment. While it is not necessary to replicate that detail in this Initial Assessment statement, the information provided did not unequivocally demonstrate consistency with the OECD Guidelines' expectations in relation to due diligence in the context of divestment. The notifiers claimed that the communities they represent were neither involved in nor informed of South32's alleged due diligence for this divestment process. An Initial Assessment is not the stage of the AusNCP complaints process at which to resolve factual disagreements between the parties. This matter is appropriately one that would benefit from further information, engagement, and analysis by the parties in understanding consistency with the OECD Guidelines.

68. Unlike other issues raised in the complaint, a focus on divestment and South32's approach to it would provide a more objective factual matrix for potential engagement between the parties. At a minimum, this would involve consideration of information credibly and publicly available to South32 at the time it was deciding on and progressing the divestment. This would include Colombian court and regulator decisions already identified by the parties, as well as materials

[42] The NCP statements referred to are identified in Appendix A of this Initial Assessment statement (Divestment / disengagement issue).

consistent with the OECD's *Due Diligence Guidance for Responsible Business Conduct*. The OECD's due diligence guidance indicates that relevant materials could include reports from international organisations, civil society organisations, national human rights institutions, government agencies, trade unions, and employer or business associations, as well as media reporting that may assist in understanding the local, regional, and national context.[43] This is not to suggest that any such material is necessarily correct, but rather that it represents information that South32 would reasonably be expected to consider as part of its divestment-related due diligence, either to confirm that issues had already been addressed, or to determine whether further action was required to ensure consistency with the OECD Guidelines' expectations.

69. A focus along these lines would provide an opportunity for the AusNCP to make a positive contribution to resolving the issues by facilitating an exchange between South32 and the notifiers, through dispute resolution (or 'good offices'), in relation to the following matters:

    69.1 the due diligence South32 undertook in relation to the divestment, including how it identified and responded to actual or potential adverse impacts associated with the sale (such as issues relating to the right to an effective remedy[44] and meaningful stakeholder engagement)

    69.2 how South32 assessed CoreX's capacity and commitment to respect human rights and environmental standards of the OECD Guidelines

    69.3 any action taken by South32, arising from the above two steps, to ensure that the divestment was consistent with the OECD Guidelines.

70. The Independent Examiner expressly notes that this framing does not include the notifiers' request that South32 '*should also establish a monitoring mechanism to track the transition and remediate any harms caused by the divestment*'. This is for two reasons. First, consistency with the OECD Guidelines may be achieved in a range of ways, and specifying a particular remedy (such as the establishment of a monitoring mechanism) should not be a condition of offering dispute resolution. Secondly, remediation of all harms allegedly caused by the divestment would necessarily entail the involvement of multiple other parties and issues within Colombia. This is not something that the AusNCP process is well placed to facilitate effectively (as explained in paragraphs 61 and 64), if encompassing all communities potentially impacted by the mining operations. There is, however, greater feasibility for the AusNCP to contribute by facilitating an exchange between the parties (on these divestment issues), only to the extent that they relate to the complainant communities represented by the notifiers (see paragraph 27 above).

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[43] OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, OECD Publishing, 1 February 2018, pp 63-64.

[44] The potential importance of right to remedy in divestments was indicated in the Norwegian National Contact Point for Responsible Business Conduct's *Final Statement on PAX and others vs. Aker BP ASA and Aker ASA* (18 June 2025), Ministry of Foreign Affairs. South32's announcement regarding the potential divestment noted that it excluded '*an immaterial potential historic claim*' (see paragraph 37 of this statement), indicating that consideration had been given to potential claims.

Different adherent countries and NCPs

71. The Independent Examiner invited submissions from the parties on the fact that the complaint raises a number of issues in another Adherent country with its own NCP (Colombia), and on the significance of that circumstance for the Initial Assessment of the complaint.

72. The notifiers contended that the issues raised in the complaint had arisen in Australia and that the complaint should therefore be handled '*in full by the AusNCP and should not be transferred to any other NCP*'. The notifiers explained that a central issue in the complaint concerned responsible divestment, which they described as '*a growing area of concern under the [OECD] Guidelines*'. Given that South32 had executed the divestment as an Australian-based parent company, the notifiers argued that the AusNCP was best placed to assess whether South32's actions aligned with the OECD Guidelines.

73. The notifiers further argued that there were three 'exceptional reasons' why the AusNCP should handle the complaint,[45] notwithstanding that it raised issues arising in another country: security, expediency, and promoting stakeholder confidence.

    73.1 In relation to security, the notifiers referred to safety concerns (see paragraph 15 of this statement) and contended that the AusNCP would ensure a safe, accessible, and effective grievance process. South32 gave commitments regarding confidentiality, and the Independent Examiner considered that, for the purposes of this Initial Assessment, it may be possible for some complainants to remain anonymised. However, for matters requiring further engagement with Colombian parties and a more detailed understanding of circumstances in Colombia, the Independent Examiner does not consider that the AusNCP would provide an effective grievance mechanism, for the reasons explained earlier.

    73.2 On expediency, the notifiers submitted that engagement with other NCPs would delay the complaint's progress, particularly given the then imminent divestment, and referred to previous complaints where such delays had occurred. The Independent Examiner explained to the parties that the Initial Assessment process itself would take a number of months, and that engagement with other NCPs was necessary, even where a complaint was not being transferred.

    73.3 In terms of promoting stakeholder confidence, the notifiers referred to OECD peer reviews of different NCPs and argued that the AusNCP handling the complaint '*in its entirety ... would ensure procedural clarity, accessibility for the complainants, and a greater likelihood of constructive engagement with the enterprise*'. The Independent Examiner notes, however, that the OECD Guidelines' specific instance (or complaints) mechanism is premised on the expectation that all NCPs function with an equivalent degree of effectiveness.[46] This is reflected in the OECD Guidelines' core effectiveness criteria,[47] which

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[45] In a letter dated 13 November 2025. See also AusNCP complaint procedures, paragraph [25], which addresses when the AusNCP may decide not to transfer a complaint to another NCP.

[46] OECD Guidelines, *I. National Contact Points for Responsible Business Conduct*, p 58 [A. Institutional Arrangements] and *I. Commentary on the Procedures for NCPs*, p 64 [10].

[47] These are termed the 'Core Effectiveness Criteria for Functional Equivalence in the Activities of NCPs' (being visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the OECD Guidelines). They are required of NCPs in the OECD Guidelines' Implementation Procedures.

are expressly incorporated into the complaints mechanism and require that each NCP, acting as a non-judicial grievance mechanism, contribute to the resolution of issues relating to the implementation of the OECD Guidelines in a manner consistent with those criteria.[48] It would be inconsistent with that framework for one NCP to address issues arising in another Adherent country on the basis that it may be more effective or because this was preferred by the parties submitting the complaint.

Conclusion

74. For the reasons explained under each criterion of this Initial Assessment statement, the Independent Examiner has decided to accept parts of this complaint and offer dispute resolution to the parties in relation to South32's prior divestment and disengagement from the Cerro Matoso mine project. The Independent Examiner considers that the other issues raised in this complaint are not matters where the AusNCP's further consideration would contribute to the purposes and effectiveness of the OECD Guidelines, for the reasons explained in this statement.

75. In relation to the elements of the notifiers' complaint that have not been accepted by the AusNCP, the Independent Examiner did consider the potential transfer of them to other NCPs. The OECD Guidelines (and the AusNCP complaint procedures) envisage the potential for a complaint to be transferred to another NCP, where the issues raised take place in several adherent countries or concern enterprises established in several adherents[49] (which is the case in this complaint, with Colombia and Türkiye being relevant Adherent countries). The AusNCP conferred with the NCPs of Colombia and Türkiye as part of the Initial Assessment, and provided them with a draft of this statement for their consideration.

76. The OECD Guidelines and the AusNCP complaint procedures do not provide for transfer of 'part' of a complaint, and there would be considerable complexities in doing so. The Independent Examiner considers a transfer of the whole complaint is not appropriate, noting that:

    76.1 the issues regarding divestment are appropriately directed to South32 through the AusNCP, and could not feasibly be handled by another NCP

    76.2 the other issues are not appropriate for the AusNCP (for the reasons identified above), but their non-acceptance by the AusNCP does not preclude the notifiers or complainants from raising these, in a separate specific instance, directly with another NCP.

77. In relation to divestment, it is appropriate to treat divestment-related issues as a distinct category, specifically the due diligence undertaken by South32 in connection with its divestment process. The Independent Examiner acknowledges that this categorisation involves some overlap with other issues and considers it important that the parties have a clear understanding of the potential scope of any AusNCP dispute resolution process, so that they may make an informed decision as to whether they wish to engage. The issues for dispute resolution that the

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[48] OECD Guidelines, *I. National Contact Points for Responsible Business Conduct*, p 59 [C. Specific Instances].

[49] OECD Guidelines, *I. Commentary on the Procedures for NCPs*, p 69 [29]. This can then progress to a 'lead NCP' that has carriage of the specific instance (or complaint), with supporting NCPs also designated. This approach is incorporated into the relevant AusNCP complaint procedures through paragraph [24].

Independent Examiner considers appropriate to accept from this complaint are set out in paragraphs 61 and 68-70 of this statement, namely:

77.1 the due diligence South32 undertook in relation to the divestment, including how it identified and responded to actual or potential adverse impacts associated with the sale (such as issues relating to the right to an effective remedy and meaningful stakeholder engagement) – these issues are within scope to the extent they relate to the complainant communities represented by the notifiers, but not to non-complainant communities

77.2 how South32 assessed CoreX's capacity and commitment to respect human rights and environmental standards of the OECD Guidelines

77.3 any action taken by South32, arising from the above two steps, to ensure that the divestment was consistent with the OECD Guidelines.

78. In accordance with the AusNCP complaint procedures:

78.1 the AusNCP now formally offers the parties the opportunity to enter into a dispute resolution process[50] (regarding the issues identified above in paragraph 77 of this statement), facilitated by an Independent Examiner[51]

78.2 if South32 does not wish to proceed with dispute resolution, or if the dispute resolution process does not reach a mutually agreed resolution,[52] the matter will proceed to an examination[53] by an Independent Examiner (regarding the issues identified above)

78.3 if the notifiers do not wish to proceed with dispute resolution, the matter will not proceed to an examination[54]

78.4 a Final Statement will be published by the AusNCP explaining the outcome of the matter, including any dispute resolution or, where relevant, an examination.[55]

79. In finalising this Initial Assessment statement, the Independent Examiner considered all submissions made by the parties and consulted with the AusNCP Governance and Advisory Board (**AusNCP Board**). The Independent Examiner also provided a draft version of this statement to the parties for comment and took their subsequent views into account in finalising this statement.

80. This statement is available on the AusNCP website at www.ausncp.gov.au.

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[50] AusNCP complaint procedures, paragraph [33].
[51] AusNCP complaint procedures, paragraphs [37]-[45].
[52] AusNCP complaint procedures, paragraph [51].
[53] AusNCP complaint procedures, paragraphs [50]-[55].
[54] AusNCP complaint procedures, paragraph [45.1]. A Final Statement would then summarise the process followed.
[55] AusNCP complaint procedures, paragraphs [45.1] and [56]-[69].

Appendices

Appendix A: Divestment / disengagement issue

The OECD Guidelines application and relevance to an enterprise's divestment and disengagement has been addressed in previous NCP statements.

- National Contact Point for Responsible Business Conduct Norway, *Centre for Research on Multinational Corporations (SOMO) on behalf of 474 Myanmar-based civil society organisations vs. Telenor ASA*, Final Statement, 11 December 2025.

- National Contact Point for Responsible Business Conduct Norway, *PAX and others vs. Aker BP ASA and Aker ASA*, Final Statement, 18 June 2025.

- United States National Contact Point for the OECD Guidelines, *Specific Instance between André Amisi Rushingwa, Delvaux Bwisibo Mukunda, and Raymond Minani Muganira (submitters), and Strategos Group LLC regarding events in the Democratic Republic of the Congo*, Final Statement, 8 August 2024.

- National Contact Point of Switzerland, *Specific Instance regarding Holcim AG submitted by Twerwaneho Listeners' Club and Clouds Fm*, Final Statement, 16 July 2024.

- Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct, *Specific Instance regarding A.P. Moeller - Maersk A/S*, Final Statement, 6 May 2024.

- AusNCP, *Complaint submitted by Publish What You Pay Australia, the Myanmar Alliance for Transparency and Accountability and the Bawdwin Labour Union concerning Mallee Resources Limited*, Final Statement, 2 August 2023.

Appendix B: Publications

AusNCP, 'Final Statement regarding specific Instance submitted by Equitable Cambodia and Inclusive Development International on behalf of Cambodian families concerning ANZ', 27 June 2018, https://ausncp.gov.au/sites/default/files/2023-01/11_AusNCP_Final_Statement.pdf.

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Appendix C: 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, 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.

Appendix D: 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.