

New Zealand National Contact Point procedures for dealing with complaints brought under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct



Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

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1. Introduction

- 1.1. National Contact Points help resolve complaints about multinational enterprises (“MNEs”) breaching the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (“the Guidelines”) by providing access to mediation and conciliation services. The New Zealand (“NZ”) National Contact Point (“NCP”) is based in the Ministry of Business, Innovation and Employment (“MBIE”). General oversight of the NCP has been delegated to the Secretariat, which has a consulting Liaison Group that includes external members.
- 1.2. Resolving disputes through the NCP about breaches of the Guidelines is not a traditional legal path, it is non-judicial and a form of alternative dispute resolution. As such, the process does not have the power to compel either the provision of information, or participation, by the Parties. However, the service is free, and Parties are not expected to have legal representation. It is based on and relies on good faith.
- 1.3. This note explains the process the NCP intends to follow to consider Complaints about breaches of the Guidelines. However, this document is only a guide, not a strict procedure, as every case is different and can be treated differently to best suit the particular elements and circumstances. The NCP therefore reserves the right to depart from these procedures whenever it considers it appropriate to do so in its absolute discretion.
- 1.4. Businesses operating in NZ and NZ businesses operating overseas are expected by the government to act in accordance with the principles set out in the OECD Guidelines and to perform to the standards endorsed by the Guidelines.
- 1.5. The objective of the Complaint procedures set out in this document is to find a solution to alleged breaches of the Guidelines by an Enterprise through conciliation or mediation. To support effective implementation of these procedures, the NCP will have regard to the OECD Procedural Guidance, including the principles of visibility, accessibility, transparency, accountability, impartiality, predictability, equitability and compatibility with the Guidelines.
- 1.6. The following key terms are defined for the purpose of understanding this procedural guidance:

Throughout this note “NCP” refers to the NZ National Contact Point for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The NCP will provide secretariat and other support services to the Mediator, including enabling procurement of professional services as required (e.g. formal mediation, conciliation and/or translation services and legal advice). Contact details for the NCP can be found on <https://www.mbie.govt.nz/business-and-employment/business/trade-and-tariffs/oecd-guidelines-for-multi-national-enterprises/>.

References to the Procedure refer to the procedures set out in this document.

“Complaint/Case/Specific Instance” refers to a Complaint concerning an Enterprise’s conduct in relation to the OECD Guidelines and are used interchangeably.

“Enterprise” refers to the Multinational Enterprise against which the Complaint is made.

“Good Offices” refers to mediation, conciliation and/or facilitated discussion services offered by the Mediator and supported by the NCP, intended to help resolve a Complaint once it has been accepted by the Mediator. Mediation, whether formal or informal, may form part of the Good Offices stage.

“Guidelines” refers to the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#).

“Liaison Group” refers a group selected by invitation of the NCP, which includes representatives of government agencies and non-governmental organisations with expertise and interest in the range of topics covered by the Guidelines. The responsibilities of the group are as outlined in the Terms of Reference for the NCP Liaison Group.

“Mediator” refers to the person chosen by the NCP Secretariat to mediate the Complaint. There may be more than one Mediator.

“Notifier” refers to the individual or entity who submits a Complaint to the NCP. The Notifier may be any interested party. However, generally they require a close interest in the issue in order to be able to supply the NCP with adequate information.

“OECD” refers to the [Organisation for Economic Cooperation and Development](#).

“Parties” refers to the Notifier/s (or Notifier’s/Notifiers’ representative/s) and the Enterprise being complained against.

“Procedural Guidance” refers to Procedural Guidance and Commentary within the OECD Guidelines.

“NCP Secretariat” refers to the MBIE staff carrying out the duties of the NCP.

“Working Days” refers to the term as defined by [s29 Interpretation Act 1999](#).

2. NCP Process for Considering Complaints

2.1 The stages involved in handling Complaints

There are three key stages to the NCP’s process for handling Complaints:

Stage 1 – from receipt of Complaint to Initial Assessment.

Stage 2 – from acceptance of a case to conclusion of mediation or, if mediation is refused or fails, examination or fact finding.

Stage 3 – drafting and publication of Final Statement.

Stage 4 (optional) – report on follow up action.

2.2 Timetable

- 2.2.1. The NCP intends to complete consideration of each Complaint within a year of receiving the Complaint. It will aim to complete Stage 1 within 3 months of a Complaint, Stage 2 within a further 6 months and Stage 3 within a further 3 months. Refer to Appendix A for further breakdown of timeframes.
- 2.2.2. If for any reason the NCP does not consider that it will be able to meet this deadline, (e.g. due to circumstances outside the NCP's control or requests by Parties for additional time), the NCP will notify the Parties, explain the reason and set out a revised timetable.
- 2.2.3. The NCP urges Parties to provide information promptly so that it is able to meet the timetable. A Party's failure to provide information could result in the NCP making its decision in the absence of that information.

2.3 Support for Notifiers

- 2.3.1. The NCP aims to support the participation of disadvantaged or vulnerable groups in NCP processes.
- 2.3.2. The NCP and the Mediator will sensitively manage barriers including those related to: the Treaty relationship of the Crown with Māori; treatment of Māori and other Indigenous Peoples' taonga; language and literacy; cultural constraints; and difficulty accessing equal representation.
- 2.3.3. The NCP will seek to address potential safety risks for Notifiers and related Parties across the NCP process.
- 2.3.4. A simplified flowchart of the process is provided at Appendix B.
- 2.3.5. These procedures will be interpreted with sensitivity to the circumstances of each case to give full effect to the principles outlined in paragraph 1.5. The NCP's overarching objective is to ensure that Complaints are managed as efficiently, comprehensively and effectively as possible.

2.4 Who can make a Complaint?

- 2.4.1. According to the Guidelines, any "interested party" can file a Complaint. The Notifier may be, for instance, an iwi or hapu, a community affected by an Enterprise's activities, employees or their trades union, or an NGO.
- 2.4.2. The NCP will consider all Complaints it receives. However, the NCP will need to receive detailed information from the Notifier in order to deal with the Complaint. Therefore, Notifiers should have a close interest in the case and be in a position to supply information about it. They should also, in accordance with

the principles of the Guidelines, have a clear view of the outcome they wish to achieve. Sources of either additional information or organisations that may assist in filing a Complaint are given at the end of this note.

- 2.4.3. The NCP will not fund legal representation for the Parties. The Complaint process is based on mediation and good faith, so it is intended that legal representation will not be required.

2.5 What are the grounds for making a Complaint?

- 2.5.1. Notifiers will identify the section/s of the Guidelines they consider are being breached by the Enterprise in the Complaint. Complaints will not be frivolous and vexatious. The NCP's determination of a Complaint will be evidence based.

2.6 How does someone submit a Complaint?

- 2.6.1. Notifiers can submit their Complaint by emailing NCP at oced-ncp@mbie.govt.nz a completed Complaint form. If this is not accessible to the Notifier, the NCP will seek to provide reasonable alternate arrangements to ensure the process is accessible (e.g. translation services or connecting the Notifier to a relevant third party for assistance in forming their case, consistent with Paragraph 2.3). Reasonable arrangements to ensure accessibility will be made for the duration of the case.
- 2.6.2. The Notifier must provide the relevant details of the Complaint, as specified in the Complaint form at Appendix C.

2.7 What Enterprises can be subject to Complaints?

- 2.7.1. Complaints can be made to the NCP about:
- 2.7.1.1. a foreign or NZ Multinational Enterprise operating in NZ; or
 - 2.7.1.2. a NZ Multinational Enterprise operating overseas, including in a country that is not an adherent to the Guidelines.
- 2.7.2. The NCP and Mediator allow for a broad approach in identifying which entities may be considered a Multinational Enterprise for the purposes of receiving Complaints. Factors like the international nature of an enterprise's structure or activities and its commercial form, purpose, or activities will be considered.
- 2.7.3. Complaints should clearly demonstrate the link between the issue raised and the Enterprise's actions or responsibilities.

2.8 What happens to information provided during the course of an examination?

- 2.8.1. The NCP's baseline presumption and objective is procedural transparency. The NCP shares all information provided to it about a Complaint with all Parties in the Complaint, unless a good case is made to the NCP that specific information should not be shared (e.g. because of legal restrictions or considerations of personal safety). Where information is sensitive, the preferred course is to agree appropriate conditions of confidentiality.
- 2.8.2. The NCP will not base its decision on information a Party withholds from the other for reasons outside the scope of paragraph 2.8.1.
- 2.8.3. Information is shared with Parties with the understanding that it is not to be more widely shared or made public. Information on the confidentiality that applies at each stage of the Complaints process is in the relevant sections below.
- 2.8.4. At any time, Parties can request access to or corrections to information they have provided by contacting the NCP. They may also request that information be deleted.
- 2.8.5. In certain circumstances (e.g., where there are risks to the personal safety of the Notifier and/or the threat or risk of reprisals), the NCP will enable anonymous filing of Complaints via a third party. Notifiers should alert the NCP of any risks to personal safety or reprisal that they are aware of. Notifiers acting on behalf of others should be able to demonstrate their authority to do so and to show evidence of the need for anonymity of the affected party.
- 2.8.6. Information obtained during the investigation will be securely stored by MBIE and accessible by staff directly working on the NCP issue. Stored information will be deleted following publication of the Final Statement.
- 2.8.7. Information obtained during the investigation may be shared with the Mediator. The Mediator will securely store information.
- 2.8.8. Information obtained during the investigation will be managed in accordance with MBIE's privacy statement at Appendix D.

2.9 Legislation applying to information submitted in a Complaint

- 2.9.1. Where personal information is shared by a party with the NCP, the [Information Privacy Principles](#) and other elements of the [Privacy Act 2020](#) will apply.
- 2.9.2. Consistent with the presumption of transparency between the Parties, information shared by Parties with the NCP may be subject to disclosure under the [Official Information Act 1982](#).

2.10 Agreement to be bound by process

- 2.10.1. By submitting a Complaint to the NCP a Notifier agrees that their Complaint will be dealt with in accordance with the processes set by the NCP, including as modified by the NCP from time to time.
- 2.10.2. By responding to the NCP regarding a Complaint the Enterprise is deemed to agree that the Complaint will be dealt with in accordance with the processes set by the NCP, including as modified by the NCP from time to time.

3. Stage 1: from receipt of Complaint to Initial Assessment

3.1 What are the key steps the NCP takes when it receives a Complaint?

- 3.1.1. The objective of the Initial Assessment stage is to determine whether a Complaint should be accepted, transferred to another NCP, or rejected.
- 3.1.2. Within 10 working days of receiving the Complaint, the NCP will write to: the Notifier to confirm how the Complaint will be handled, and the Enterprise to share the information received about the Complaint and invite the Enterprise to provide a response. The NCP will give the Enterprise 20 working days to provide any response.
- 3.1.3. Any member of the NCP Secretariat with a conflict of interest will not participate in the Complaint process.
- 3.1.4. The NCP may ask the Notifier for further information or clarification it considers is necessary to take the Complaint forward, and in this case may extend its deadline for the Enterprise's response. Incomplete Complaints will be considered invalid if Notifiers are unable to provide the further information requested by the NCP.
- 3.1.5. Complaints concerning a matter that the NCP or another NCP is currently handling, or has already handled to completion, will undergo a process of evaluation in the Initial Assessment stage. This process will determine whether an offer of further Good Offices by the NCP is likely to contribute positively to resolving the issues raised. Such Complaints may not be considered valid if the substance of the Complaint is not markedly different.
- 3.1.6. The NCP will not determine that issues do not merit further consideration solely because the matter is, has been or could be considered in another forum, whether judicial or non-judicial.
- 3.1.7. In line with the Procedural Guidance, if the NCP is not the correct NCP to handle the Complaint, the NCP may seek to transfer the case to another NCP during the Initial Assessment stage.
- 3.1.8. It may sometimes be appropriate for the NCP to work with another NCP throughout the handling of a case. In such cases, the lead NCP and cooperating

NCP status will be agreed between the relevant NCPs and the procedures of the lead NCP would apply, with such modifications as necessary to reflect the involvement of a second NCP.

- 3.1.9. The NCP will offer separate meetings to the Notifier and the Enterprise to explain the NCP process and answer any questions. An agenda will be agreed prior to any meeting, and a minute produced after the meeting. It will be a condition of participation in any such meeting that the minutes will be shared with both Parties to uphold transparency.
- 3.1.10. The NCP will then make a draft Initial Assessment, determining whether or not to accept a Complaint, based on the information received in the Complaint and any response, and will issue this to the Parties for comment before finalising it for publication.
- 3.1.11. In exceptional circumstances, the NCP may make a draft Initial Assessment without inviting a response from the Enterprise (e.g. where it appears to the NCP that a Complaint has been considered previously, does not relate to the named Enterprise's responsibilities under the OECD Guidelines or is for another NCP to consider).

3.2 What additional steps may the NCP take before making an Initial Assessment?

- 3.2.1. The NCP may ask either party for further information at any point before making an Initial Assessment.
- 3.2.2. The NCP may seek informed opinion from members of its Liaison Group or other known persons or organisations to clarify factual or background information referred to in the Complaint (but not to give a view on the Complaint's merits).

3.3 Can Parties make additional representations before the NCP makes its Initial Assessment?

- 3.3.1. The NCP will only accept additional evidence about the issues raised in the original Complaint. Notifiers should set out in the Complaint all the issues they want the NCP to consider. The NCP may, at its discretion, allow Notifiers to make limited representations with regard to any counter-allegations made in the Enterprise's response, and may allow the Enterprise to reply if these further representations refer to new supporting evidence.
- 3.3.2. Parties also have an opportunity to comment on the draft Initial Assessment before it is finalised for publication.

3.4 On what grounds does the NCP decide whether or not to accept a Complaint?

- 3.4.1. The Initial Assessment decides whether issues raised in the Complaint are made in good faith and merit further examination under the Guidelines. It does not include any decision on whether the Enterprise breached the Guidelines. The NCP will consider the stated grounds of the Complaint and the information it has received about the Complaint, including:
 - 3.4.1.1. the identity of the party concerned and its interest in the matter;
 - 3.4.1.2. whether the issue(s) is(are) material and substantiated;
 - 3.4.1.3. whether the Enterprise is covered by the Guidelines;
 - 3.4.1.4. whether there seems to be a link between the Enterprise's activities and the issue raised;
 - 3.4.1.5. the relevance of applicable law and procedures, including court rulings;
 - 3.4.1.6. how similar issues have been, or are being, treated in other domestic or international proceedings; and
 - 3.4.1.7. whether consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.
- 3.4.2. The NCP will interpret "material and substantiated" to mean that the issues are plausible and related to the application of the Guidelines, and that there is a plausible link between the Enterprise's activities and the issues raised.
- 3.4.3. The NCP will consult the Liaison Group before conveying the outcome of the Initial Assessment (to accept, transfer or reject the Complaint) to the Notifier and the Enterprise. The NCP may also consult the Notifier when determining whether to transfer a case where the Notifier may have exceptional reasons for the NCP to handle a case instead of another NCP. The NCP will not transfer a case before advising the Liaison Group, the Notifier and the Enterprise.

3.5 What does acceptance of a Complaint at Initial Assessment mean?

- 3.5.1. Where the NCP accepts a Complaint, this means that the NCP considers that there is sufficient information to warrant further examination of the issues raised with regard to the Enterprise's conduct relevant to the Guidelines. Acceptance of a Complaint at the Initial Assessment stage does not constitute a decision on whether the Guidelines have been breached.

3.6 What does rejection of a Complaint at Initial Assessment mean?

- 3.6.1. Where the NCP rejects a Complaint, this means that the NCP considers there is not enough information to warrant further examination of the issues raised with regard to the Enterprise's conduct relevant to the Guidelines.
- 3.6.2. Rejection of a Complaint at Initial Assessment concludes the NCP process. A Final Statement will be prepared and published in line with the procedures below.
- 3.6.3. A Notifier may submit a new Complaint in respect of issues rejected by the NCP if new information means the reasons for rejection no longer apply.

3.7 What if the Parties reach a settlement before the NCP issues an Initial Assessment?

- 3.7.1. If the Parties reach a settlement and the Complaint is withdrawn before the NCP has issued an Initial Assessment, the NCP will close its file, and the identities of the Parties will not be disclosed by the NCP except as agreed by the Parties, or in accordance with legal requirements or obligations.

3.8 What form does an Initial Assessment take?

- 3.8.1. The Initial Assessment, when issued, will include:
 - 3.8.1.1. the names of the Parties if the Complaint is accepted (if it is rejected, the assessment will not name Parties without their agreement);
 - 3.8.1.2. the substance of the Complaint – including reference to those Guidelines alleged to have been breached;
 - 3.8.1.3. a summary of the process the NCP has followed to date;
 - 3.8.1.4. the reasons for accepting or rejecting issues for further examination;
 - 3.8.1.5. a statement that acceptance of issues for further consideration does not mean that the NCP has determined at this stage that the Guidelines have been breached; and
 - 3.8.1.6. an outline of the next stages in the NCP's determination.
- 3.8.2. Before issuing the Initial Assessment, the NCP will send a draft assessment to the Parties, and invite the Parties to give their written comments within no more than 10 working days. It will be the NCP's discretion whether to accept any comments received.
- 3.8.3. When issued, the Initial Assessment will be sent to the Parties and published on the MBIE website. Where the Initial Assessment rejects the Complaint, publication will not occur until 10 working days after the Parties have been notified, to allow a review request to be made. If a review is requested, the Initial Assessment will not be published until the review procedure is completed.

3.9 Confidentiality in the Initial Assessment Stage

- 3.9.1. The NCP does not name Parties in a Complaint unless and until it has accepted issues at Initial Assessment, or unless Parties agree to be named. This means that, unless there is a legal or Parliamentary requirement to do so, the NCP will not usually confirm or deny publicly that a Complaint has been received until the Initial Assessment is published.
- 3.9.2. Information provided by another Party or by the NCP during the Initial Assessment stage may not be shared with third Parties or made public, as this is likely to affect the purpose and effectiveness of the NCP process. It will be a condition of participation in the NCP process that the Parties agree that this information will not be shared without the agreement of all other relevant Parties.

4. Stage 2: from acceptance of a case by the NCP to conclusion of mediation or examination

4.1 Mediation Process: the role of mediation in resolving Complaints

- 3.9.3. The preferred outcome of any Complaint is an agreement between the Parties. When the NCP accepts a Complaint, it will discuss with the Parties involved and offer its Good Offices with the objective of bringing both Parties together to discuss the issues and come to mutually agreed resolution without undue delay.
- 3.9.4. Mediation is voluntary. Mediation can be viewed as an “assisted negotiation” between the Parties with the aim of reaching a settlement agreeable to both; the NCP will facilitate discussions and may make suggestions. The NCP will not pressure the Parties into mediation or any particular outcome.
- 3.9.5. The published Final Statement will note where the Parties refused to undertake mediation and summarise the reasons why mediation was not undertaken.
- 3.9.6. If the Parties are unable to agree on mediation or mediation fails, the NCP will conduct an examination of the case as set out in paragraph 4.7 below. Whilst mediation is continuing the Complaint will not simultaneously be subject to examination.
- 3.9.7. All Parties to an NCP mediation need to be clear about what the mediation will entail, what the desired outcomes are, and what the expectations on them are. The Parties mediating should be genuinely committed to mediation in good faith and should not see the mediation process as a means of gathering further information or as an opportunity to avoid addressing issues and accounting for conduct.

- 3.9.8. The Good Offices process will begin with a preparation stage to enable the Mediator to provide information to the Parties on the Complaint process and prepare a framework for handling any conciliation, mediation or facilitated discussions. This will be followed by entry into an Agreement to Mediate setting out, among other things, their agreement to participate in the mediation process.
- 3.9.8.1. In practice, it is expected that the Good Offices process will differ from case to case, and the Mediator will retain a flexible approach to delineation between the preparation and proceedings stages.
- 3.9.9. To begin the preparation stage of Good Offices, the Mediator will seek to engage each party separately to explain the overall Complaint process and options for discussion of the issues.
- 3.9.9.1. The Mediator and the NCP will take reasonable steps to ensure the Good Offices stage is accessible to Notifiers, which may include utilising technology, translation services and engagement by the NZ Government's overseas missions, consistent with Paragraph 2.3.1.
- 3.9.10. The NCP and the Parties will agree the most suitable approach to mediation:
- 3.9.10.1. a mediation within the NCP process, or
- 3.9.10.2. mediation by a third party agreed by the Parties in the Complaint.
- 3.9.11. When a Notifier is unable to participate in discussions (e.g. if personal security would be compromised), the Mediator will seek to agree alternative arrangements that would allow for the Notifier to participate indirectly, consistent with Paragraph 2.8.5.

4.2 Mediation within the NCP process

- 3.2.1. If mediation is undertaken within the NCP process the mediation will be conducted by a professional mediator contracted by the NCP. The NCP will prepare terms of reference to be agreed by both Parties and the Mediator. The Mediator will be agreed by the NCP and both the Parties and an additional Mediator may be appointed if Parties and the NCP agree on this. The Mediator will be responsible for agreeing with the Parties the methods and processes for mediation. The NCP will request an update of progress from the Mediator every two months.
- 3.2.2. In mediation conducted within the NCP process, the NCP Mediator will at all times be neutral. The role of the Mediator contracted by the NCP is to provide a platform and opportunity for each party to discuss the issues raised by the Complaint. The mediation is confidential. The Mediation Outcome Document will be the only published record of what happened during the mediation. This will be written and agreed by both Parties. This document, or a summary statement also agreed by both Parties, will be published as part of the final assessment that the

NCP publishes. The NCP encourages Parties to include in published details any follow-up arrangements they have agreed.

3.2.3. The NCP contracted Mediator will:

3.2.3.1. Agree the agenda with both Parties before commencing the joint mediation session(s).

3.2.3.2. Chair and facilitate meetings with the Parties either separately or together, and encourage both Parties to exchange information, build up trust and confidence, and ultimately find a process to resolve the issues.

3.2.4. There are three main stages to the mediation process:

3.2.4.1. The NCP contracted Mediator will meet both Parties separately to prepare for the mediation. These meetings will explore the issues, explain the mediation process, and answer questions on the how the process will work.

3.2.4.2. The NCP contracted Mediator will bring both Parties together in a meeting or meetings which will always commence with providing each party with an equal opportunity to explain their views and will provide ample opportunity to clarify outstanding issues. The initial meeting may result in a settlement or will end by mapping out a process of on-going dialogue.

3.2.4.3. At the end of a successful mediation process the Parties will draft a Mediation Agreement. The Parties will also draft a summary if the full agreement is not to be published. The NCP contracted Mediator may help draft these statements.

4.3 If the mediation process fails

3.3.1. If the mediation process fails, then the NCP will examine the Complaint (see 4.7 below). If mediation was successful on some aspects of a Complaint, the Mediation Agreement or summary will be annexed to the Final Statement and the NCP will only examine those aspects where mediation failed.

4.4 Responsibilities of both Parties in the NCP mediation process

3.4.1. Both Parties enter into the mediation in the spirit of seeking to reach a resolution on the issues at hand. Parties are expected to adhere to the agenda and not raise new issues not previously known to the NCP, the NCP contracted Mediator, or the other party.

- 3.4.2. It must be clear that the persons taking part in mediation have the authority to implement a proposed agreement. If the persons taking part are subject to higher authority within that Party, this must be made clear from the outset.

4.5 Confidentiality in the mediation stage

- 3.5.1. Mediation procedures will be informal and confidential, in order to encourage open discussion. Consequently, mediation sessions will not be minuted by the NCP contracted Mediator, and a summary of the final conclusions from a meeting may be provided by the Mediator to note progress made and solely for the purpose of informing the following meeting. Parties will agree to observe confidentiality within the mediation except to the extent that it is necessary to seek professional advice or guidance from within their organisation. In these circumstances those consulted will be expected to observe confidentiality.
- 3.5.2. The NCP appointed Mediator will provide the NCP with updates on the mediation process. These updates will be prepared taking into account the confidentiality applying to the mediation discussions, and will be held in the NCP's records.

4.6 Mediation outside the NCP process

- 3.6.1. At any stage, the Parties may realise that they are able to settle their differences without further intervention by the NCP. If the NCP receives written notification from both Parties that they wish to mediate outside the NCP process, the NCP will suspend the case. The NCP will request an update on progress every two months to determine whether the Complaint procedure needs to be reopened. If mediation outside the system is successful, the NCP will close the case. If this is achieved before the Initial Assessment is completed, a note closing the Complaint without identifying the Parties will be published. If this is achieved after the Initial Assessment stage, a reduced Final Statement will be published explaining that the Parties have achieved a mediated settlement outside the NCP process.

4.7 The Examination process

- 3.7.1. If mediation is refused or fails to achieve agreement, the Complaint will return to the NCP for examination. The NCP may also decide that mediation cannot continue under the NCP process, in which case it will offer the Parties the option of continuing outside the process. Where mediation is taking place outside the NCP process, the NCP will usually expect to receive a notification of failure to reach agreement from the Parties (or from one Party with the knowledge of the other Party).
- 3.7.2. The objective of the examination is for the NCP to investigate the Complaint in order to assess whether the Complaint is substantiated.

- 3.7.3. At the outset of the investigation the NCP will identify steps to proceed and will notify both Parties in writing. The NCP will inform both Parties in writing of any amendments it considers necessary to these steps. If, as a result of the investigation, the NCP decides that additional steps are required in order to complete the investigation, it will notify both Parties of the additional steps it intends to take.
- 3.7.4. The examination is likely to involve the NCP collecting further information or statements from the Notifier or the Enterprise, and perhaps other relevant government departments, NZ diplomatic missions or overseas offices, business associations, NGOs or other agencies. If appropriate it will seek informed independent advice.
- 3.7.5. The examination may also involve further meetings between the NCP and the Parties. In each case the meeting will have an agenda and be minuted.
- 3.7.6. In exceptional cases, the NCP may consider it necessary to undertake a field visit. The NCP will seek to agree terms of reference for the field visit with both Parties in advance of the visit. The NCP will share a report of the visit with both Parties for their comment.
- 3.7.7. Unless a good case is made for information to be withheld, information and evidence received by the NCP will be shared with the Parties. Where information is sensitive, the preferred course is to agree appropriate conditions of confidentiality.
- 3.7.8. The NCP will then review all the information it has gathered and make a decision as to whether the Guidelines have been breached. This decision will be reflected in the Final Statement.

5. Stage 3: drafting and publication of the Final Statement

5.1 Content in the NCP's Final Statement

- 3.7.9. The NCP's Final Statement will include the following
 - 3.7.9.1. details of the allegations and those chapters/paragraphs of the Guidelines that it is alleged have been breached;
 - 3.7.9.2. details of the Parties involved i.e. Notifier and the Enterprise;
 - 3.7.9.3. a summary of the process the NCP has followed;
 - 3.7.9.4. the outcomes of any mediation, or a summary, in a statement agreed between the Parties and including any follow up arrangements agreed by Parties;

- 3.7.9.5. the results of examination (if any), which will include an argued rationale behind each conclusion including a clear statement as to whether or not the NCP considers the Enterprise is in breach of the Guidelines;
- 3.7.9.6. a date by which both Parties will be asked to submit to the NCP an update on measurable progress towards meeting the outcomes agreed on (if any); and
- 3.7.9.7. where the NCP has found examples of Responsible Business Conduct consistent with the Guidelines this information will also be included.

5.2 Where the Complaint was rejected

- 7.2.1. Where the Complaint was rejected, the Final Statement will also include an explanation of how the Complaint was assessed in the Initial Assessment process, in line with paragraph 3.

5.3 Where the Complaint was accepted but no agreement or the Enterprise/s did not engage

- 5.3.1. 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 NCP and the Mediator 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.

5.4 Procedure to prepare the Final Statement

- 7.4.1. To prepare a statement, the NCP and the Mediator will review the materials provided by the Parties and may also review publicly available information and other information gathered through the Good Offices and examination processes. Advice may also be sought as needed from another NCP, the OECD Secretariat or other subject matter experts.

5.5 Process once Final Statement has been drafted

- 7.5.1. Once the NCP and Mediator have drafted their Final Statement it will be sent to the Liaison Group and Parties for factual checking, with a deadline of 20 working days for comments. The NCP and Mediator will, at their discretion, then incorporate any necessary factual changes before sending the finalised statement to the Parties. If it is considered useful and is agreed by the Parties, the Mediator may initiate or resume the Good Offices process at any point during the drafting of a Final Statement.

5.6 Confidentiality in the Final Statement stage

- 7.6.1. Once the NCP has issued its Final Statement, Parties can communicate publicly about the Complaint. Information and views provided during the proceedings by another party involved remains confidential unless that party consents to its release.

6. Follow up to Final Statements

- 8.1. Where the Final Statement includes outcomes agreed between the Parties, it will also specify a date by which both Parties are asked to provide the NCP with a substantiated update on the Enterprise's progress towards implementing these outcomes. The NCP will then prepare a Follow Up Statement reflecting the Parties' response and, where appropriate, the NCP's conclusions thereon. The NCP will send a draft Follow Up Statement to Liaison Group and Parties and invite any factual comments within 10 working days. The NCP will, in its discretion, then incorporate any necessary factual changes before sending the finalised Follow Up Statement to the Parties and publishing the finalised Follow Up Statement on the NCP's website. They may also recommend an additional follow-up period, where they consider this useful.
- 8.2. Consistent with Paragraph 6.1.4, at the conclusion of each follow-up process, the NCP may draw instances of inappropriate conduct to the attention of other government agencies through the NCP Secretariat.
- 8.3. The NCP may also make a Follow-Up Statement when an agreement between the Parties provides for this and sets an agreed follow-up date. In these cases, the NCP will request an update from both Parties on developments since the completion of the Final Statement.
- 8.4. Each Follow-Up Statement will be published on the NCP website and shared with the Parties, members of the Liaison Group and relevant NZ government agencies.

Appendix A

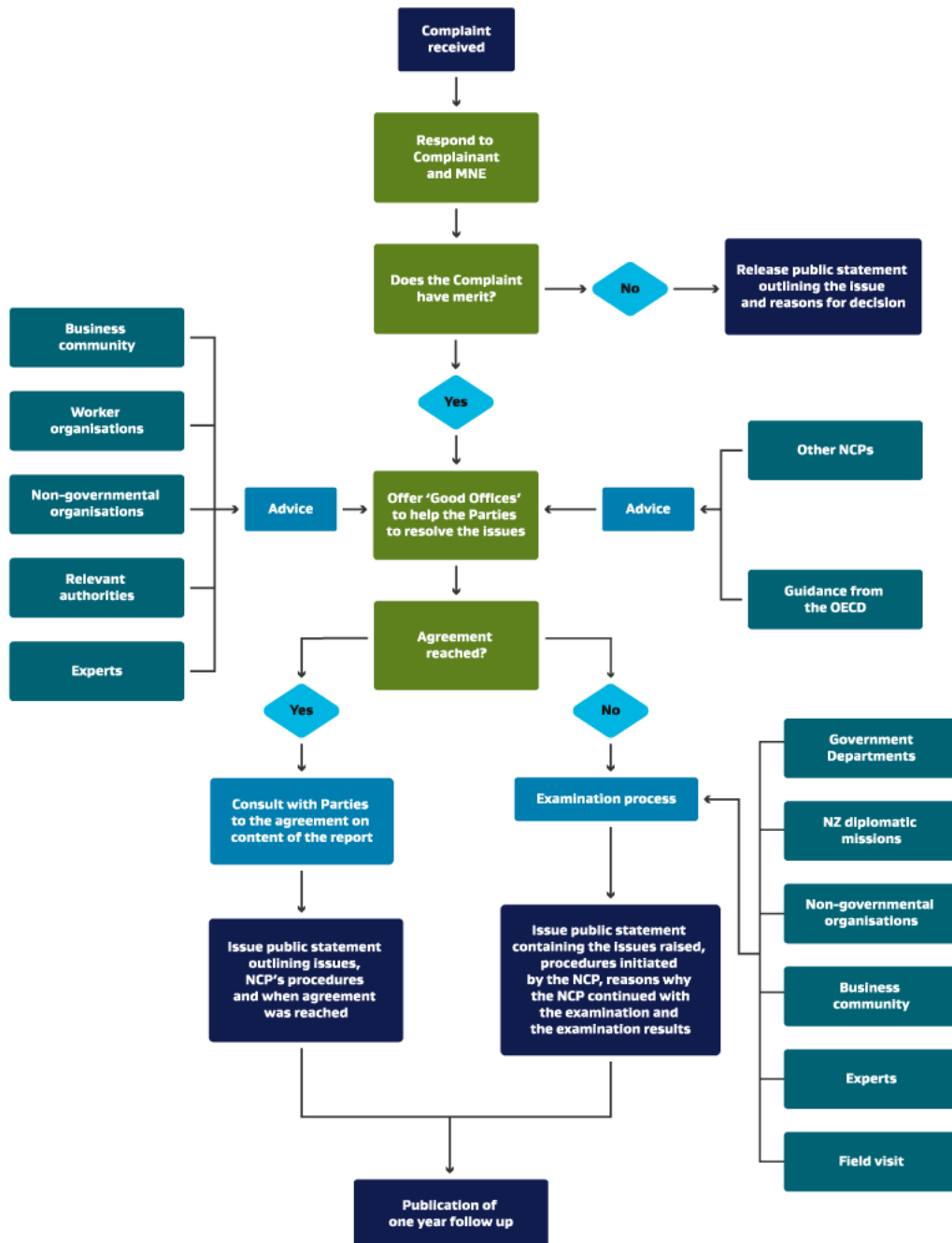
NZ NCP ‘specific instance’ indicative timeframe with mediation

| | | |
|---------------------|------------------------------------|---|
| Month 1 | Start initial assessment | 1. Notify the enterprise seeking information and a response by the beginning of the second month |
| | | 2. Notify the NCP about the Complaint |
| | | 3. Begin to assess the complaint against the Guidelines: <ul style="list-style-type: none"> • Is it material and substantiated? • Is there a link between the Enterprise and the Complaint? • What is the relevance of applicable law and court rulings? • How have similar issues been dealt with elsewhere? |
| | | 4. Consider whether pursuing the specific instance: <ul style="list-style-type: none"> • Would make a positive contribution • Would create a serious prejudice against a party or cause contempt of court • Would contribute to the purposes and effectiveness of the Guidelines |
| | | 5. Brief the responsible Minister on the implications of the Complaint |
| | | 6. Inform the Liaison Group that a complaint has been received |
| | | 7. Contact the NCPs of countries represented in the Complaint |
| Month 2 | Draft initial assessment | 8. Pass on information received from the Enterprise to the Complainant (2 weeks to respond) |
| | | 9. Begin drafting the assessment. Finish by the end of month 2 |
| | | 10. Incorporate Complainant’s response into assessment |
| | | 11. Submit draft assessment for internal review |
| Month 3 | Complete initial assessment | 12. Inform Minister and NCP of the initial results of the assessment |
| | | 13. Draft assessment released to the parties for comment (weeks to reply) |
| | | 14. Complete initial assessment |
| | | 15. Draft statement if ‘good offices’ are not required |
| Month 4-9 | ‘Good offices’ phase | 16. Initiate ‘good offices’ <ul style="list-style-type: none"> • Establish a timeframe with the Parties • Seek advice from relevant authorities, experts and organisations • Consult NCPs in countries concerned • Seek guidance from the OECD if required |
| | | 17. Mediation |
| | | 18. Consult with Parties on the content of the final statement |
| Months 10-12 | Closeout phase | 19. Draft final statement |
| | | 20. Issue statement to Parties for comment |
| | | 21. Release final statement |
| | | 22. Draft report to OECD |
| | | 23. Specific instance closed |

Unsuccessful mediation may result in amendment of indicative timeframes.

Appendix B

Process for raising an issue or ‘specific instance’ under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct



The Ministry of Business Innovation and Employment is the New Zealand National Contact Point (NCP) for the Guidelines and is responsible for assessing any issues raised.

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Appendix C

Form for submitting a complaint to the New Zealand National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (MNEs) on Responsible Business Conduct

The submission form is intended to provide relevant information to assist the New Zealand NCP to consider the complaint and carry out the initial assessment in line with its rules of procedure. Additional information can also be provided to support the complaint. The New Zealand NCP will consider complaints relating to a multinational enterprise registered in New Zealand, or a New Zealand multinational operating in another country.

The information collected will be used for the purposes of investigating the complaint and to determine if an OECD Guidelines breach has occurred. The information will be securely stored with MBIE. In order to process your complaint, we will share your information including personal information with the Multinational in question as long as it is relevant to the investigation or to the resolution of your complaint. We will consult with the relevant complainant before we share information. For further information, please read the MBIE [Privacy Statement](#). Information provided to us may be subject to requests under the Official Information Act.

If there is information that is confidential in the complaint, and you wish to not have this shared please make this clear which information should be withheld and the reasons for withholding the information

If you have any questions about the process to submit a complaint or wish to submit a complaint using this submission form, you can email the New Zealand NCP at oeecd-ncp@mbie.govt.nz

| Complainant information (please provide details for at least two contact persons) | |
|---|--|
| Contact Person I | |
| Name | |
| Title | |
| Email address | |
| Telephone number | |
| Street address | |
| | |
| Contact Person II | |
| Name | |
| Title | |
| Email address | |

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| | |
|---|--|
| Telephone number | |
| Street address | |
| Organisation and mandate | |
| <i>If you are submitting this complaint on behalf of an organisation, please outline the organisation's purpose, goals and mission:</i> | |
| | |
| Organisation website | |
| Organisation address | |
| <i>Please outline your interest in lodging this complaint. If you are bringing a complaint on behalf of others, please outline your mandate to do so:</i> | |
| | |

| | |
|--|--|
| Respondent enterprise information | |
| Company name | |
| Location and address of company headquarters | |
| Contact person (if known) | |
| Email address (if known) | |
| Telephone number (if known) | |
| <i>Please provide any available information about the corporate structure of the enterprise:</i> | |
| | |

| Complaint information |
|---|
| <i>In which country or territory did the breaches of the OECD Guidelines occur?</i> |
| <i>Is this complaint relevant to the National Contact Points of any other OECD member states?</i> |
| <i>Please state the underlying facts of the complaint, outlining the ways in which the enterprise breached the OECD Guidelines, including the names of relevant dates, parties and locations:</i> |

Please list the provisions of the OECD Guidelines which you believe the enterprise has breached, along with information outlining the nature of each violation:

Provide evidence or information to support the allegations, e.g. official documents, reports, studies, articles, witness statements can all be considered. Please note that the New Zealand NCP cannot consider anecdotal evidence or unsubstantiated claims:

Please list any annexes or supporting documents you wish the New Zealand NCP to consider:

Contacts with enterprise

Outline any contacts your organisation has had with the respondent enterprise to date, including any attempts to resolve the issues. Provide copies of correspondence if available:

Parallel proceedings

Please outline any parallel proceedings which have been undertaken to resolve this issue through other fora:

Objectives and outcomes

What outcomes does your organisation hope to achieve through this process?

What action(s) do you think the enterprise should take to resolve the issue(s)?

Appendix D

Note: Accurate as of 2023.

Privacy

This privacy information applies to personal information collected through this website.

Purpose

The purpose of this privacy statement is to let users of this website know when we collect personal information and what we may do with it. We don't use, share or disclose personal information collected or received through this website except as set out in this statement.

Scope

This privacy statement applies to personal information collected through www.mbie.govt.nz.

Collection, storage and use

You can use www.mbie.govt.nz without disclosing any personal information.

Voluntary disclosure of personal information

You may choose to voluntarily provide personal information through this website (eg, in the feedback form or when subscribing to news and updates). This information may be viewable by site administrators, our staff (as appropriate) and third-party contractors who may administrate or work on the site.

Electronic alerts and newsletters

When you subscribe to one of our alerts or newsletters, the details you provide may be stored in a secure third-party database (eg, Campaign Monitor). You will be asked to provide your name and email address so we can send you future electronic newsletters. When you unsubscribe to our alert or newsletter, your details will be deleted from the database.

Collection of personal information

We may ask or require you to provide some personal information when you complete an online form (eg, the site feedback form or when subscribing to news or updates).

If you wish to apply for a job with us, you will be required to register your details with us to

- create an account
- maintain a profile so we can match your skills and preferences against upcoming positions
- apply for positions
- sign up for and receive alerts
- manage any applications.

Holding of information

When you provide personal information, unless otherwise indicated, it will be held by us. It may be stored or accessed on behalf of us by authorised third parties (such as third-party contractors) to the extent that is necessary, for example for them to administrate or work on the site. We will store and keep your personal information secure in accordance with the Privacy Act 2020 and any agents will be subject to our information security and privacy requirements.

Use of personal information

We will generally only use personal information provided to us through this website for the purpose you provided it (eg, to administer, evaluate and improve the site, to improve our services, or to action or respond to the information provided). We may also use personal information provided to us through this website for other reasons permitted under the Privacy Act (eg, with your consent, for a directly related purpose, or where the law permits or requires it).

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Disclosure of information

We will generally not share personal information that is provided or collected through this website, unless it is necessary to do so for the purpose for which you gave us the information (eg, to investigate a complaint) or where you consent. We will not otherwise disclose personal information provided or collected through this website unless required or otherwise permitted by law.

Records and retention of personal information

We will only retain personal information as long as it is required for the purposes for which the information may lawfully be used.

Public records

Where any information provided (which may include personal information) to, or through, this site constitutes public records, it will be retained to the extent required by the Public Records Act 2005.

We may also be required to disclose information under the Official Information Act 1982 or to a Parliamentary Select Committee of Parliament in response to a Parliamentary Question.

Security

Our websites have security measures in place to prevent the loss, misuse and alteration of information under our control. To maintain the cyber security of our systems and information, our systems are subject to ongoing monitoring (including activity logging), analysis and auditing.

We may use information about your use of our websites and other IT systems to prevent unauthorised access or attacks on these systems or to resolve such events. We may use this information even if you are not involved in such activity.

We may use services from one or more third party suppliers to monitor or maintain the cyber security of our systems and information. These third party suppliers will have access to monitoring and logging information as well as information processed on our websites and other IT systems.

Rights of access and correction

Your rights

You have the right to:

- find out from us whether we hold personal information about you
- access that information; and, if applicable
- request corrections of that information.

If we have a good reason for refusing a request for correction, you are entitled to request that a statement be attached to the information of the correction that was sought but not made.

If you want to check personal information that we hold, please write to:

Privacy Officer
Ministry of Business, Innovation and Employment
PO Box 5488
Wellington 6011.

For more information on the privacy laws in New Zealand and contact details for the Office of the Privacy Commissioner, visit the Privacy Commissioner's website.

Collecting statistical information using cookies via Google Analytics

We may use cookies to gather data about trends in website usage using a tool called Google Analytics. This data will be viewable by website administrators and certain other staff. It may also be shared with other government agencies. This information is aggregated and it does not identify you personally.

Cookies

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Cookies are used to:

- measure how you use the website so it can be updated and improved based on your needs
- remember the notifications you've seen so that we don't show them to you again

You can read Google's privacy statement at the Google Safety Center.

You can manually disable cookies at any time. Check your browser's 'Help' to find out how (disabling cookies will not affect your ability to use this website).

Data collected may include:

- your IP address
- the search terms you used on this site
- the pages you accessed on this site and the links you clicked on
- the date and time you visited this site
- the referring site (if any) from which you clicked to reach this site
- the device you used to access this site
- your operating system (eg, Windows 10, Mac OS X)
- the type of web browser you used to access this site (eg, Internet Explorer, Google Chrome)
- other things like your screen resolution, the release of your installed Flash version and the language setting of your browser

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