



OECD Guidelines for Multinational Enterprises  
**National Contact Point Peer Reviews**  
**NEW ZEALAND**



**Please cite as:**

OECD (2023), *OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: New Zealand*, <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-new-zealand.pdf>

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# Foreword

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (the Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

Adhering governments to the Guidelines are required to set up a National Contact Point for Responsible Business Conduct (NCP) that operates in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the Guidelines. During the 2011 update of the Guidelines, NCPs agreed to reinforce their joint peer learning activities, in particular with respect to conducting voluntary peer reviews. The 2023 update of the Guidelines reinforced peer reviews of NCPs by making them mandatory and periodic, subject to modalities to be approved by the Working Party on Responsible Business Conduct (WPRBC). The commitment to undergo this peer review was made by New Zealand while the 2011 version of the Procedures was in effect. The basis for this peer review is the 2011 version of the Guidelines (including the Implementation Procedures).

The peer reviews are led by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement. More information can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

This document is the peer review report of the New Zealand NCP.

This report was prepared by a peer review team made up of reviewers from the NCPs of Australia, and the United Kingdom, and with the support of the OECD Secretariat. The NCP of Australia was represented by Kate Wilson. The NCP of the United Kingdom was represented by Yashasvi Chandra. The OECD Centre for Responsible Business Conduct was represented by Nicolas Hachez and Emily Halstead. The report was informed by dialogue between the peer review team, the NCP of New Zealand and relevant stakeholders during an in-person fact-finding mission on 13-15 December 2022. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review, especially considering the recent return to in-person visits and the necessity to respect sanitary measures. The NCP of New Zealand was represented by Adam Dubas, Shahin Najak, and Varshini Suresh. This report also benefited from comments by delegates to the WPRBC and institutional stakeholders (BIAC, OECD Watch, TUAC). It was discussed by the WPRBC at its 19-20 June 2023 meeting and declassified by the Investment Committee on 1st August 2023.

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# Key findings and recommendations

## Institutional Arrangements

The New Zealand NCP (the NCP or the NZNCP) has a single agency structure supported by an advisory body, referred to as the 'Liaison Group'. The NCP has a Secretariat located in the Labour, Science and Employment Group within the Ministry of Business, Innovation and Employment (MBIE). At the time of the onsite visit, the Secretariat included one MBIE staff member dedicating 10-15% of working time to the NCP function. Two additional more junior members of MBIE were available to support the NCP function on an ad hoc basis. At the time of the onsite visit, the advisory group contained representation from thirteen different organisations, including representatives from government, business, trade unions, and the Human Rights Commission. There is no formal decree establishing the NCP and there is no official document establishing the NCP function and rules, such as on decision making.

The NCP institutional arrangements received mixed stakeholder feedback during the review. The housing of the Secretariat in MBIE was seen by some as positive given the Ministry's influence and mandate which includes other responsible business practice efforts. Other feedback indicated concerns for the NCP location in a Ministry that also held a mandate on trade and investment promotion and visa decision-making, and how the location could impact the real or perceived impartiality and independence of the NCP. General feedback raised concerns that the NCP was under resourced, both financially and concerning staff resources. Stakeholders noted that the composition of the Liaison Group could better represent the range of institutions that have an interest in the work of the NCP. For example, there is currently no civil society representative in the group, and inside each category of stakeholders represented, there would be opportunities to include more members to increase the diversity of perspectives.

To address stakeholder concerns about the NCP's impartiality and independence, the NCP should better communicate its practices to avoid conflicts of interest and increase transparency around the structure and function of the NCP, possibly through the publication of a foundational document. To support the NCP in its ability to achieve its mandate, the New Zealand government should increase resources available to the NCP, also as a response to a growing global importance and interest in RBC. The NCP should improve the representativeness of its Liaison Group by updating the membership to include representation from civil society.

**Table 1.1 Findings and recommendations on institutional arrangements**

	Findings	Recommendations
1.1	Stakeholders recognise MBIE as an influential ministry that can lend authority to the NCP. However, given MBIE's broad mandate that includes trade and investment promotion and visa decision-making, stakeholders have raised concerns of a real or perceived lack of impartiality of the NCP.	The NCP should better communicate the measures taken to foster its impartiality, such as practices taken to avoid conflicts of interest and increased transparency around the structure and function of the NCP. The NCP could take additional measures in this regard such as referencing any relevant ministry-level policies relating to conflicts of interest in the Rules of Procedure and publishing a foundational document that clearly establishes the NCP, including reporting lines and operating procedures.

1.2	The NCP is well-respected and has efficiently used limited resources. However, as suggested by stakeholders and reported by the NCP itself, resource constraints have kept visibility of the NCP low and limited its ability to achieve its mandate. Further concerns from stakeholders noted a perception that an under-resourced NCP indicated a lack of support in the mechanism from the government.	The New Zealand government should increase resources to the NCP as a response to the growing demand for guidance on RBC, and in order to support New Zealand businesses in aligning with changing global RBC frameworks.
1.3	While the Liaison Group covers a wide range of stakeholders, the representativeness of the group could be improved, particularly as it does not include civil society representatives and as diversity of perspectives inside stakeholder groups is limited. Stakeholder feedback additionally indicated a low activity level of the group, particularly as it relates to supporting the NCP's promotional efforts.	The membership of the group could be updated to include representation from civil society stakeholders and other business and trade union members. The group could additionally broaden its mandate to be more active beyond its current role which largely relates to the handling of specific instances to include supporting promotion of the OECD Guidelines.

Source: Onsite visit of the peer review of the New Zealand NCP

## Promotional activities

The NCP has made efforts to improve visibility of the NCP and conduct promotional activities. This is evidenced by a previously developed promotional plan that was shared with the review team during the onsite visit. The plan was not able to be executed due to the onset of the Covid pandemic, but still demonstrates a detailed understanding of promotional needs by the NCP. This previously developed promotional plan could be updated and used to inform a new promotional strategy for the NCP, with a particular focus on how the NCP can leverage its Liaison Group for promotional activity.

Overall visibility and awareness of the Guidelines and NCP mechanism remain low across stakeholder groups. General stakeholder feedback shows an interest in RBC and stakeholders are eager to engage with the NCP regarding this common interest. Despite an overlap in priorities with many stakeholders, there is still not a clear community around the NCP. The NCP could prioritise stakeholder mapping and community building around the NCP in order to facilitate more strategic promotion.

Other RBC initiatives are handled by the New Zealand government, such as the proposed modern slavery legislation and the forthcoming NAP on Business and Human Rights (BHR). While the NCP has had some involvement in such activities, stakeholder feedback would suggest limited visibility of the NCP within government and a limited role for the NCP to-date on RBC policy coherence. The NCP should seek to be more engaged with other government departments that share RBC and related policy initiatives. The NCP could work with the objective of increasing references and awareness of the Guidelines, related guidance, and the NCP in existing and future government initiatives.

**Table 1.2. Findings and recommendations on promotional activities**

	Findings	Recommendations
2.1	There is low visibility and awareness of the NCP and the Guidelines across stakeholder groups in New Zealand. The NZNCP had previously developed a promotional strategy to address the NCP's promotional responsibility, which was unable to be carried out due to shifting priorities during the Covid pandemic.	The NCP should use its previously developed promotional plan to inform a new promotional strategy. The NCP could further consider leveraging events organised by other organisations to enhance and create opportunities for promotion. The NCP could further leverage the Liaison Group to increase the NCP's visibility, for example through promotional activities by the Liaison Group members to their own stakeholder networks.
2.2	General stakeholder feedback shows a clear interest in RBC and an eagerness to engage with the NCP. Despite a willingness to engage by many stakeholders, there is not a well-defined community around the NCP.	The NCP could prioritise stakeholder mapping as a step towards a strategic promotional plan so that it may establish and identify a community around the NCP.

2.3	There is a lot of interest in RBC across government, particularly considering the development of proposed modern slavery legislation and NAP on BHR. Despite this, the NCP has limited visibility in other government areas and does not always work proactively towards policy coherence.	The NCP could be more engaged with other government departments that have RBC related policy initiatives with the objective of including references to the OECD Guidelines, related guidances, and the NCP in existing and future initiatives.
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Source: Onsite visit of the peer review of the New Zealand NCP

## Specific instances

Since its establishment in 2002 and as of the time of the onsite visit, the NCP had received six specific instances, four of which were received after the 2011 update of the Guidelines. All six specific instances have been closed, three were concluded and three were not accepted. Of the concluded cases, one led to agreement within the NCP process, and another led to agreement outside of the NCP process.

The NCP has some publicly available information about the handling of specific instances on its website, including downloadable flowcharts on the process, but the NCP has never adopted a formal Rules of Procedure (RoP). The NCP noted its recent efforts to develop such a document for publication on the website, informally sharing a draft copy with the peer review team. There are some inconsistencies between the information available on the NCP website and the OECD's Procedural Guidance. Stakeholder feedback indicated a desire for more transparency in the NCP process, such as through a public RoP. Feedback also raised concerns over the timeliness of the NCP in handling specific instances.

Limited visibility and transparency around the specific instance process can hinder the efficacy of the NCP mechanism. The NCP should seek to publish clear guidance and a RoP on its website, ensuring the RoP is aligned with the Procedural Guidance. The NCP can further consider best practices established and identified by other NCPs and stakeholder groups when finalising its RoP, particularly concerning a provision for making recommendations. The NCP should strive to handle specific instances in a timely matter, potentially increasing the mechanism's attractiveness and usefulness as compared to other mechanisms in country. Timely handling of specific instances can further decrease the risk of dropout from parties, an issue which has previously occurred at the NCP.

**Table 1.3. Findings and recommendations on specific instances**

	Findings	Recommendations
3.1	There is limited visibility and transparency around the specific instance process. The NCP website contains some resources and information, but there is no official document clearly detailing the process. The NCP does not currently have a public rules of procedure, though there is an effort to draft the document. The current process followed by the NCP and information available on the NCP website deviates from the Procedural Guidance regarding specific instance timelines and identified best practices relating to the practice of making recommendations.	The NCP should communicate more transparently about the specific instance process, also in an effort to increase the accessibility of the NCP. A prominent complaint submission form on the NCP's website could help achieve this. The NCP should align the draft rules of procedure with the Procedural Guidance prior to publishing. The NCP could also consider best practices identified by stakeholders and the NCP Network, such as including provisions for the NCP to make recommendations to parties in the specific instance process, where appropriate.
3.2	Stakeholder feedback indicated timeliness in handling specific instances as a concern. While the NCP noted some reasons for delays, such as upon request by the parties during parallel proceedings,	The NCP could work to improve its timeliness when handling specific instances, specifically by increasing proactive communication to avoid dropout from parties. Where delays are not avoidable, the NCP should seek to communicate the reasons for delays to foster transparency in the process.

Source: Onsite visit of the peer review of the New Zealand NCP



# 1 Introduction

## The New Zealand NCP at a glance

**Established:** 2002

**Structure:** Single agency with advisory body

**Location:** Ministry of Business, Innovation & Employment

**Staffing:** One part-time staff members spending 10-15% of their time on NCP functions. Two additional staff providing support on an ad hoc basis

**Webpage:** <https://www.mbie.govt.nz/business-and-employment/business/trade-and-tariffs/oecd-guidelines-for-multi-national-enterprises>

**Specific instances received** as of the dates of the onsite visit: 6 closed and 0 ongoing

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the New Zealand NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

New Zealand adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1976. The OECD Guidelines for Multinational Enterprises (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Investment Declaration are required to establish National Contact Points (NCPs). NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.<sup>1</sup>

NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”<sup>2</sup>

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011, the Procedural Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment

<sup>1</sup> Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4).

<sup>2</sup> OECD Guidelines for Multinational Enterprises (2011), Foreword.

Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objectives of peer reviews as set out in the “Revised core template for voluntary peer reviews of NCPs”<sup>3</sup> are to assess that the NCP is functioning and operating in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement; and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the revised core template<sup>4</sup> as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which was completed by six organisations representing government agencies, enterprises, civil society and other NCPs (see Annex A. List of organisations that submitted a response to the NCP peer review questionnaire) and information provided during the country visit.

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Australia and the United Kingdom, along with representatives of the OECD Secretariat. A fact-finding mission took place on 13-15 December 2022. This visit included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the virtual visit is set out in Annex B. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review, the extensive supportive information provided, and successful efforts to ensure broad participation in the visit.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2003. The methodology for the peer review is that set out in the core template.<sup>5</sup>

## Economic context<sup>6</sup>

New Zealand’s economy is dominated by the service sector, representing 72% of GDP. Regarding foreign direct investment (FDI), the inward stock of FDI, which represents the accumulated value of FDI in New Zealand’s economy over time, was USD 93 billion in 2021, equivalent to 37 percent of New Zealand’s GDP. The outward stock of FDI was USD 19 billion in 2021, representing 8 percent of New Zealand’s GDP. In 2021, New Zealand’s exports of goods were USD 45 billion and exports of services were USD 10 billion while imports of goods were USD 49 billion and imports of services were USD 14 billion.

The main investors in New Zealand are Australia, Hong Kong, the People’s Republic of China (hereafter ‘China’), the United States, Singapore and Japan, and the main inward investment sectors are finance and insurance activities, followed by manufacturing and wholesale and retail trade activities. The main destinations for outward investment from New Zealand are Australia, the United States, Hong Kong, China, Bermuda and the United Kingdom. The most important partner countries for exports of goods are China, Australia, the United States, Japan and Korea while the most important source countries for imports of goods are China, Australia, the United States, Japan and Germany. The most important destinations for exports of services are United States, Australia, China, India and the United Kingdom and the most

<sup>3</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2019), <http://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

<sup>4</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2019), <http://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

<sup>5</sup> OECD, Core Template For Voluntary Peer Reviews Of National Contact Points (2019), <http://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

<sup>6</sup> Data retrieved from OECD databases: <http://dotstat.oecd.org/>

important sources for imports of services are Australia, Singapore, the United States, Switzerland and Denmark.

Inward and outward FDI, trade in goods and services, employment at foreign owned firms and at overseas affiliates broken down by partner economies can be subject to confidential restrictions. Main partner economies highlighted in this note were identified from available, non-confidential information.

# 2 Institutional arrangements

*Under the Procedural Guidance of the Guidelines, Section I (A): “Since governments are according flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent and accountable manner.”*

## Legal basis

New Zealand adhered to the OECD Investment Declaration in 1976. The New Zealand NCP was formally established in 2002.

The NCP has not been established through a legislative, regulatory or administrative instrument.

## NCP Structure

The NCP is a ‘single agency NCP’ meaning that the NCP is composed of representatives of a single ministry. The NCP is supported by one advisory body, or ‘Liaison Group.’ The NCP may communicate with other stakeholders as appropriate.

The NZ NCP is composed of one part-time staff member, who dedicates 10-15% of their time to the NCP function. One or two additional staff may be brought in to provide support to the Secretariat on an ad hoc basis. Support is typically provided for discrete events with finite timelines, such as specific instances, promotional events, or this peer review. Additional support staff would be expected to dedicate 10-15% of their time to the NCP function for the duration of the project. The NCP Secretariat is a non-discrete unit located within the Trade and International team in the Labour, Science and Enterprise Group, within the Ministry of Business, Innovation and Employment.

The NZ NCP is supported by an advisory body, the ‘Liaison Group,’ comprised of representatives from other government agencies, unions and business representative groups.

Business stakeholder feedback showed support for the NCP’s location within MBIE given its resources as a large government department. The Ministry also has high visibility as a core government department with a reputation for sound ethical conduct.

## Composition

The NZ NCP Secretariat includes three staff members working in the Labour, Science and Enterprise Group within the Ministry of Business, Innovation and Employment. The Ministry has a broad mandate which includes trade and investment promotion. Specifically, the Ministry also handles work relating to labour markets, international trade, science policy, competition, economic development for New Zealand, immigration policy and enforcement, and responsible business conduct. The NCP noted the difficulty to create discrete teams within government given the smaller scale of the NZ system. The NCP further indicated a difficulty to prioritise the NCP function when other urgent government priorities were being handled at MBIE.

The NZ NCP has support from an interagency stakeholder advisory group. At the time of writing, the advisory group has representation from the following groups:

- Ministry of Justice
- Ministry for the Environment
- Ministry of Foreign Affairs and Trade
- The Treasury
- Reserve Bank
- Inland Revenue Department
- Human Rights Commission
- New Zealand Council of Trade Unions
- Business New Zealand
- Engineering, Printing, and Manufacturing Union, E tū<sup>7</sup>
- New Zealand Business Council for Sustainable Development
- Directors' Institute
- New Zealand Trade and Enterprise

The NCP publishes the list of member organisations of the Liaison Group<sup>8</sup>. The names of individual representatives are provided upon reasonable request.

### ***Functions and operations***

The NCP website contains a brief description of the role and responsibility of the NCP. The website specifies that the Government's responsibilities under the Guidelines are carried out by the dedicated NCP, noting that 'MBIE are the NCP for New Zealand.' The section specifies the following responsibilities for the NCP:

- Promote the Guidelines on a national level, through NCP channels and stakeholder channels;
- Handle inquiries and discuss matters related to the Guidelines;
- Assess and investigate specific instances;
- And report annually to the OECD Investment Committee on NCP activities.

The role of the NCP with respect to specific instances is included in the Terms of Reference document create for the Liaison Group. The role of the NCP is not specified in a separate dedicated document. The section of the ToR indicates that the NCP's responsibility is to handle specific instances, including communicating with the parties and making decisions on the substantive issues raised. The section notes responsibilities for the NCP according to the Guidelines such as,

- Confidentiality of the proceedings will be maintained once the NCP is involved and an instance has been assessed as meriting further examination;
- Annual reporting to the OECD on all handled specific instances;
- Potential issuing of statements;
- Making the results of the procedures publicly available, where appropriate.

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<sup>7</sup> The trade union member of the NZ NCP underwent a name change, to E tū, following a merger. At the time of writing, the updated name was not included on the NZ NCP website.

<sup>8</sup> Available on the NCP website: <https://www.mbie.govt.nz/business-and-employment/business/trade-and-tariffs/oecd-guidelines-for-multi-national-enterprises>

The NCP's location within a Government agency subjects it to standard government accountability obligations. This includes maintaining ministerial oversight over major work streams, seeking ministerial approval for major policy and engagement decisions, reporting to various levels of management on activities, seeking managerial approval for major resourcing decisions, and ensuring the Liaison Group remains updated. The NCP notes that while it advises and updates on its activities, it acts independently in its undertaking of investigations, conclusions, and recommendations.

While the NCP is located within MBIE, a Ministry with a broad mandate including on trade, investment promotion, and economic development, the trade, investment promotion, and economic development activities do not take place within the same team as the NCP. This therefore largely protects the NCP from facing related conflicts of interest. However, due to the broad responsibilities for each ministry, it is difficult for public servants to avoid conflicts entirely. The NCP indicated that there was a practice in government, if not to avoid conflicts altogether, at least to identify and address them. The NCP further noted the high transparency of government work in New Zealand and an historical low-level of corruption. A specific document outlining the NCP's practice for handling conflicts of interest was not identified. Public confidence in how the NCP operates with impartiality could be increased if the NCP implemented a practice of having all persons working on handling specific instances to make declarations under the relevant conflict of interest declaration policy for MBIE staff prior to considering each matter. The NCP could communicate this practice to the public by explaining it in its RoP and any future foundational document.

The NCP noted that its structure allows it to engage with a broad range of stakeholders by drawing on the well-developed relationships held directly by the NCP, held by the NCP's host Ministry, and held by members of the Liaison Group and the NCP's wider government network. Given their range, these relationships help the NCP to engage effectively as there is a deep knowledge of each stakeholder's needs and positions. This displayed understanding of stakeholder needs further creates trust and confidence in the NCP.

The NCP structure maintains its accessibility by ensuring contact details are publicly available on the NCP website, regularly monitoring the NCP mailbox, and by remaining available to the Liaison Group members.

The NCP noted that it facilitates transparency on its mandate, functions, activities, and decisions through regular updates to the website. The NCP further noted that members of the public can request such information through New Zealand's Official Information Act 1982.<sup>9</sup>

The Liaison Group is governed according to the 'Terms of Reference for the NZNCP Liaison Group,' adopted in October 2019. The document is not publicly available.<sup>10</sup> The Liaison Group meets twice a year and is periodically convened by the NCP to discuss relevant issues, such as the progress of specific instances, outcomes of OECD meetings and promotion of the Guidelines. The Liaison Group is available to support the NCP with specific instances, particularly if an area of expertise is needed that is outside the scope of the NCP's ministry's portfolio. The NCP has indicated that it could further contact external government agencies or specialists where expertise may be needed in the handling of a specific instance. The functions of the Liaison Group are recorded in the 'Terms of Reference for the NZNCP Liaison Group,' an official but not public document. Feedback from the Liaison Group suggested that a standard meeting twice a year was sufficient but that there was a need for a stronger identity for the group, which could be fostered by increased communication within the group and from MBIE on the group's existence and functions. Feedback also suggested the Group could be leveraged more to achieve the NCP's promotional responsibilities by working within their own networks.

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<sup>9</sup> Available: <https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

<sup>10</sup> The document was made publicly available shortly after the onsite visit. See: <https://www.mbie.govt.nz/assets/terms-of-reference-zncp-liaison-group-october-2019.pdf>

As per the related Terms of Reference (ToR), the Liaison Group takes on the following functions:

- Contribute to furthering the effectiveness of the Guidelines as a forum for dialogue;
- Assist and advise the NZNCP in relation to promotion and awareness raising of the Guidelines;
- Monitor the effectiveness of the operation of the NZNCP, including recommending correct and fair procedures to be followed in line with the NZNCP's published Rules of Procedure (RoP);
- Recommend any changes to or further develop NZNCP procedures as needs shift;
- Consider and discuss issues of general and specific application of the Guidelines when they arise;
- Identify where clarifications or improvements to the Guidelines could be brought to the attention of the OECD Investment Committee and communicate such recommendations to the NCP;
- And continually review its Terms of Reference.

The Terms of Reference indicate the following responsibilities for the NCP with respect to the Liaison Group:

- Invite members, aiming for broad representation;
- Inform the Group of current events in relation to the NCP and the Guidelines, particularly regarding promotional activities, specific instances, annual reporting, and OECD meetings;
- Convene and chair Group meetings and act as Secretariat (note taking, draft minutes to be confirmed with the Group, post minutes on NCP website).<sup>11</sup>

The members of the Liaison Group are invited by the NCP. As per the ToR, the group is led by a chair, a member of the NZNCP, who may also invite outside experts for consultation when necessary. The Terms of Reference make note of the NCP's obligation to act with transparency regarding the Liaison Group and the handling of specific instances. The ToR notes that sensitive information received by the parties of a specific instance will not be shared with the Liaison Group. The Liaison Group respects the confidentiality agreements of the specific instance procedure. The Group is free to comment on any aspects of the specific instance already in the public domain. The NCP or any member of the Liaison Group may request that particular issues be treated in a confidential manner and, with consensus that the nature of the issues requires confidentiality, all members will respect such confidentiality. This might be the case when a specific instance involves private information about one of the organisations represented in the Liaison Group. This practice could raise concerns of a lack of transparency for the NCP if they do not clearly communicate how they address a potential conflict of interest in these circumstances. The ToR does not include language on avoiding conflicts of interest within the Liaison Group and their responsibilities.

Per the ToR, the Liaison Group may make recommendations on procedural aspects of the NCP process when handling specific instances. The Group does not make decisions on the substance of specific instances.

## **Resources**

The NCP experienced staff turnover in 2021 as two ad hoc support staff left the NCP function, and two new ad hoc support NCP staff joined. The NCP Secretariat staff member was unchanged. When necessary, the NCP indicated that existing staff from MBIE are drawn on to assist the NCP function, including coordination of the Liaison Group, provision of legal advice, and preparations for peer reviews.

To preserve institutional knowledge, information relating to the NCP function is stored in the MBIE document management system. The system contains key establishment, policy and procedural documents, records of past specific instance, other stakeholder engagement and promotional activities,

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<sup>11</sup> The minutes are not available on the NCP website, contrary to the ToR. The minutes are rather circulated by email to members of the Liaison Group and stored within the NCP's section of the MBIE's document management system.

and records of advice provided. All correspondence through the NCP mailbox is available to all NCP staff. The NCP has also indicated a transition period when on-boarding new staff where the old staff remains available for support.

The NCP does not have a dedicated budget but has indicated that resources are allocated on an ad hoc basis when necessary. The NZNCP indicated in its 2021 annual report that resources were sufficient to allow it to attend OECD NCP meetings and events organised by other NCPs. The NCP notes that its resourcing levels largely allows for virtual attendance to such events. The NCP indicated that it seeks to attend one of the two yearly OECD NCP meetings in person per year.

However, the NCP still labelled resourcing as a primary challenge facing the NCP, particularly concerning human resources. The NCP suggested that the funding for the NCP largely reflected the size of the New Zealand economy and the existence of parallel judicial and non-judicial mechanism to resolve claims relating to the operations of MNEs. New Zealanders can access a variety of other grievance mechanisms, such as the Waitangi Tribunal,<sup>12</sup> a standing commission of inquiry that makes recommendations on claims brought by Māori that are alleged to breach the promises made in the Treaty of Waitangi<sup>13</sup>, the Employment Relations Authority,<sup>14</sup> which makes binding decisions on labour and employment issues, and the Human Rights Review Tribunal,<sup>15</sup> which largely deals with claims relating to breaches of human rights and privacy in the workplace. While a variety of other mechanisms exist, the NCP and stakeholders indicated that there was still a gap for the NCP mechanism to fill, specifically regarding its ability to act transparently and to address issues not taking place in country. The NCP noted that limited funding may still negatively impact the overall visibility and accessibility of the NCP. It was further noted during the onsite visit that there had been previous recommendations provided by stakeholders and interested parties to increase resourcing for the NCP. At the time of writing, these recommendations had not led to actions.

Considering resourcing, the NCP considers its small economy with a limited number of MNEs a challenge, particularly for promotional activity. The NCP indicated that it has few organic opportunities to present promotional materials at events organised or co-organised by others, which creates more strain on the NCP to develop events independently, a difficult task given existing resource constraints.

The NCP labelled the ongoing response to the Covid19 pandemic as a hindrance to adequately resource the NCP.

Stakeholder feedback indicated a need for the NCP to be better resourced to carry out its role effectively. Civil society stakeholder feedback further noted a concern that an underfunded NCP gave the perception that the mechanism was not being taken seriously by the New Zealand government.

## **Reporting**

The NCP reports to the OECD and makes its reports publicly available. The New Zealand NCP has submitted its annual report to the Investment Committee regularly during the past few years. These reports are published on the NCP's webpage since 2016.

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<sup>12</sup> See: <https://waitangitribunal.govt.nz/>

<sup>13</sup> Available: <https://waitangitribunal.govt.nz/treaty-of-waitangi/>

<sup>14</sup> See: <https://www.employment.govt.nz/resolving-problems/escalation-unresolved-problems/employment-relations-authority/>

<sup>15</sup> See: <https://www.employment.govt.nz/resolving-problems/escalation-unresolved-problems/human-rights-review-tribunal/>



The NCP reports to the executive only as necessary. The NCP does not report to a legislative body. The NCP additionally reports to the relevant Minister as required, on the basis of new or concluded specific instances.

The NCP reports annually to the Investment Committee on its structure, promotion and implementation activities.

Regarding other relevant transparency requirements applicable to the NCP, the NCP is subject to the Official Information Act 1982.<sup>16</sup> This is an Act of the New Zealand Parliament, which creates a public right to access information held by government bodies, including the NZNCP.

	Findings	Recommendations
1.1	Stakeholders recognise MBIE as an influential ministry that can lend authority to the NCP. However, given MBIE's broad mandate that includes trade and investment promotion and visa decision-making, stakeholders have raised concerns of a real or perceived lack of impartiality of the NCP.	The NCP should better communicate the measures taken to foster its impartiality, such as practices taken to avoid conflicts of interest and increased transparency around the structure and function of the NCP. The NCP could take additional measures in this regard such as referencing any relevant ministry-level policies relating to conflicts of interest in the Rules of Procedure and publishing a foundational document that clearly establishes the NCP, including reporting lines and operating procedures.
1.2	The NCP is well-respected and has efficiently used limited resources. However, as suggested by stakeholders and reported by the NCP itself, resource constraints have kept visibility of the NCP low and limited its ability to achieve its mandate. Further concerns from stakeholders noted a perception that an under-resourced NCP indicated a lack of support in the mechanism from the government.	The New Zealand government should increase resources to the NCP as a response to the growing demand for guidance on RBC, and in order to support New Zealand businesses in aligning with changing global RBC frameworks.
1.3	While the Liaison Group covers a wide range of stakeholders, the representativeness of the group could be improved, particularly as it does not include civil society representatives and as diversity of perspectives inside stakeholder groups is limited. Stakeholder feedback additionally indicated a low activity level of the group, particularly as it relates to supporting the NCP's promotional efforts.	The membership of the group could be updated to include representation from civil society stakeholders and other business and trade union members. The group could additionally broaden its mandate to be more active beyond its current role which largely relates to the handling of specific instances to include supporting promotion of the OECD Guidelines.

Source: Onsite visit of the peer review of the New Zealand NCP

<sup>16</sup> Available at: <https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

# 3 Promotion of the Guidelines

## Promotional plan

The NCP indicated that it had a draft engagement plan, which is subject to resourcing capacity. The plan is not publicly available. The NCP indicated that the plan was developed pre-pandemic and resourcing to carry out the actions listed in the plan is no longer available. The draft plan was created with an intention to involve the Liaison Group in promotional work and the Group was also invited to comment on the draft.

The draft promotional plan was to cover a three-year period from 2020-2022. The plan was broken down into activities with an in-depth description and intended outcome. Each activity was then associated with a timeline on how the activity would be achieved and built upon during the three years under the promotional plan. The activities were broken down into four thematic categories: create, participate and governance, inform, and explore. Though it was not implemented due to the onset of the Covid19 pandemic, the peer review team considered the draft plan to be comprehensive and forward looking, a great tool to support the NCP in achieving its promotional responsibility.

The NZNCP indicated that the Covid19 pandemic was a barrier to engaging in more promotion in 2021. New Zealand implemented strict border closures in March of 2020 and the borders did not fully reopen until May of 2022. Stakeholders acknowledged understanding that the pandemic had limited the NCP's promotional capacity.

Stakeholder feedback generally suggested a need for increased promotional efforts by the NCP and increased stakeholder engagement. Feedback also noted the importance of leveraging the Liaison Group for promotion (see above Functions and operations).

The NCP noted that it monitors ongoing actual awareness of the Guidelines and related due diligence guidance at a high level by seeking anecdotal updates from the Liaison Group members during regular meetings. The continued engagement with the Liaison Group also allows the NCP to remain abreast of emerging challenges and opportunities for enterprises. The NCP does not currently possess resources to undertake formal awareness monitoring activities.

## Information and promotional materials

The NCP has published various print materials to promote and raise awareness of the Guidelines and NCP. Specifically, the NCP developed 'short versions' of the Guidelines targeted to enterprises and governments. The Short Version for Governments<sup>17</sup> contains a two-page summary of governments'

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<sup>17</sup> Available at: <https://www.mbie.govt.nz/assets/28ba693ea2/oeecd-guidelines-for-multinational-enterprises-short-version-for-governments.pdf>

responsibilities per the Guidelines. The Short Version for Enterprises<sup>18</sup> contains a five-page summary of enterprises' responsibilities per the Guidelines.

The NCP published its own flyer on the NZNCP specific instance procedure with indicative timelines.<sup>19</sup> The document is clear and comprehensive. The indicatives timelines include three months for initial assessment, nine months for good offices, and three months for conclusion. The fifteen-month indicative timeline is longer than the standard under the Commentary on the Procedural Guidance for NCPs, which indicates a timeline of twelve months.

The NCP further published a flow chart<sup>20</sup> illustrating the specific instance process (See Figure 4.1).

The NCP does not appear to have published a general flyer, or other promotional material, on the NCP or Guidelines for promotion.

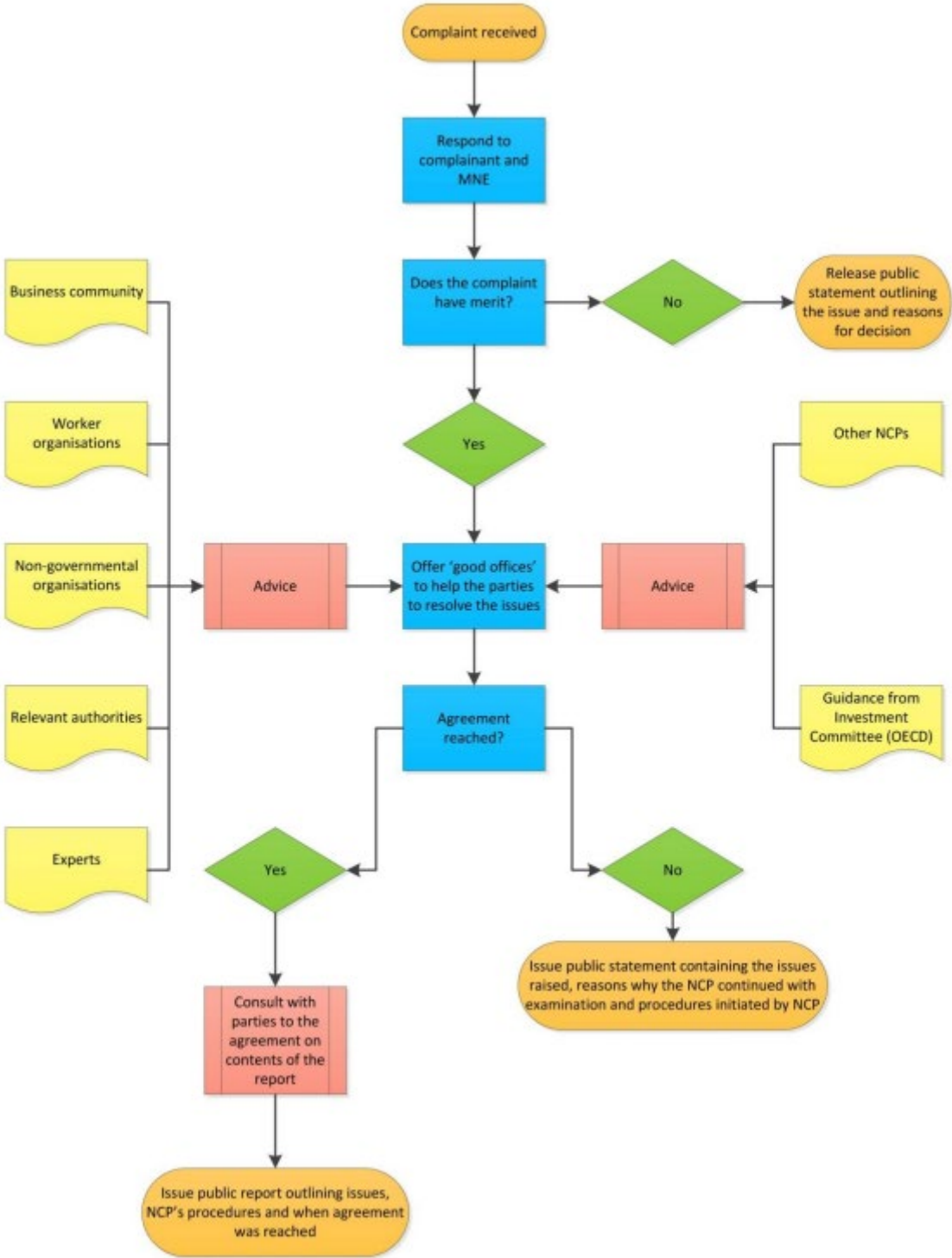
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<sup>18</sup> Available at: <https://www.mbie.govt.nz/assets/ced3ea8cb8/oced-guidelines-for-multinational-enterprises-short-version-for-enterprises.pdf>

<sup>19</sup> Available at: <https://www.mbie.govt.nz/assets/8f4d4b5159/nz-ncp-specific-instance-indicative-procedures-timeframes.pdf>

<sup>20</sup> Available at: <https://www.mbie.govt.nz/assets/9507c90197/process-for-raising-an-issue-of-a-specific-instance-under-the-oced-guidelines-for-multinational-enterprises.pdf>

Figure 4.1. Process for raising a specific instance available for download on the NZNCP website



Source: NZNCP website

## Promotional events

The NCP noted promotion as a particular challenge in 2021 given the impacts of the Covid19 pandemic. However, the NCP had not been particularly active in organising or co-organising promotional events prior to the onset of the pandemic. All of the NCP's reported promotional events were co-organised with universities in New Zealand and consisted of basic presentations of the Guidelines. The events mostly targeted stakeholders from academia. The NCP also communicated closely with other agencies on RBC issues in an informal promotional capacity. An overview of promotional activities undertaken from 2019-2021, as reported to the OECD in the related annual reports, can be found in Annex C. Promotional events 2019-2021.

Trade union and business stakeholder feedback expressed a willingness to work with the NCP in the future to address common goals and create space for dialogue, particularly concerning emerging RBC priority areas such as on due diligence and the Just Transition.

## Webpage

The NCP indicated that it is able to maintain visibility primarily through its website, which contains information on the Guidelines and the NCP mandate. Visibility is further enhanced via word of mouth awareness raising by the members of the NCP and Liaison Group, including at promotional events when resources allow.

The New Zealand NCP website is available in English and is available as a subpage within the website of the Ministry of Business, Innovation, and Employment. The NCP is not identified within its own section but rather included on the subpage about the OECD MNE Guidelines. The website remains easily identifiable online, however the term 'NCP' is used by various other groups in country, such as the New Zealand Chinese Partners (NCP Group) and the New Conservative Party (NCP), possibly leading to confusion when searching for the NCP.

The NCP website provides the following sections with information on:

- the OECD Guidelines for multinational enterprises;
- OECD due diligence guidance;
- other OECD publications relating to RBC;
- the role and representation of the NZNCP;
- details on how to submit a specific instance;
- information on the specific instance process;
- previously published statements;
- old annual reports from the NCP;
- and the NCP's contact information (email).

The website identifies the NCP location within the MBIE. The website also acknowledges the NCP Liaison Group, specifying the membership ministries and organisations. The website notes the two annual meetings of the Liaison Group and the role of the group to help the NCP promote and raise awareness of the Guidelines, as well as act as a source of advice and assistance to the NCP in the context of handling specific instances.

The NCP's complaints handling function is not immediately obvious on the website. The option to submit a specific instance could be more prominent, and a submission form would be one way to do this.

The website does not appear to contain information on a promotional plan for the NCP and there is no dedicated section to highlight relevant or upcoming promotional events.

The NCP noted that the website was reviewed and updated in 2021 and is regularly updated.

The NCP indicated that it also used social media for promotion in 2021, when it released a Twitter post to promote the stocktaking exercise for the OECD Guidelines on the MBIE Twitter account.<sup>21</sup> Considering possible limitations based on resources, there is potential for the NCP to make greater use of the MBIE social media accounts, as well as those of the organisations represented on the Liaison Group to increase visibility of the NCP, the OECD Guidelines and RBC in New Zealand.

Stakeholder feedback indicated that the website contained extensive information on the Guidelines and the NCP.

### **Available resources**

The NCP has the following resources available for download on their website:

- an OECD publication on why RBC matters;
- the OECD MNE Guidelines;
- the OECD Guidelines ‘short versions’ developed by the NCP for governments and enterprises;
- the OECD Due Diligence Guidance for RBC;
- other OECD guidance (risk awareness tool for MNEs, RBC and digitalisation, RBC and climate change, RBC and gender, RBC and public procurement);
- sector specific due diligence guidance;
- contact details for NCPs in other countries,
- promotional material on handling specific instances;
- published statements from past specific instances;
- and NZNCP annual reports from 2016-2020.

The NCP does not appear to have a dedicated document on the Rules of Procedure to handle specific instances. Rather, the process is detailed directly on the webpage with the two-forementioned documents on timelines and flow chart to supplement. The NCP has indicated that such a document was being developed and will be included on the NCP website when ready.

### **Promotion of policy coherence**

The NZNCP reported that New Zealand’s 2021 policy on Modern Day Slavery<sup>22</sup> was shaped by and contains a reference to the Guidelines, but not to the NCP. The Plan of Action against Forced Labour, People Trafficking and Slavery sets out the government approach to combat such crimes and includes 28 actions to be taken through to 2025 under three key pillars: prevention, protection, and enforcement. The plan considers themes such as awareness raising, training and the elimination of modern slavery from supply chains, and in 2022 the Government publicly consulted on proposed supply chain legislation which is broadly consistent with the concept of due diligence set out in the OECD Guidelines, and in the UN Guiding Principles, though a specific reference to the OECD Due Diligence Guidance for RBC is not

<sup>21</sup> Available: [https://twitter.com/MBIEgovtnz?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/MBIEgovtnz?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor)

<sup>22</sup> Available at: <https://www.mbie.govt.nz/dmsdocument/13568-combating-modern-forms-of-slavery-plan-of-action-against-forced-labour-people-trafficking-slavery>

included. Though the NCP was not referenced in the action plan, there is still potential for engagement in the future.

New Zealand did not adopt a National Action Plan on RBC or Business and Human Rights. The NCP noted that a new action plan was in development in 2021 relating to business and human rights. At the time of writing, the NAP remained in the pre-drafting stages. The NZNCP has participated in the development of the NAP and shared materials and information where relevant. Stakeholders also working in the team responsible for the NAP on RBC indicated a close relationship with the NCP, given that they are housed in the same ministry. The NCP is expected to have the opportunity to continue to provide comments on future drafts of the NAP.

The NCP shares its relevant reports and statements with officials responsible for trade missions, foreign trade and investment incentives, and public procurement. New Zealand has the Government Procurement Rules<sup>23</sup> to support sustainable and inclusive procurement and govern public procurement in country. The text does not mention the Guidelines or the NCP mechanism.

Beyond the representatives included in the Liaison Group, knowledge of the NCP among government stakeholders was low. Government stakeholder feedback indicated an eagerness to increase work and cooperation with the NCP in the future, also relating to enhancing promotional activity.

## Requests for information

The NCP has their contact details listed on the webpage (email). It invites users to contact for any enquiries. The NCP has not received requests for information.

Stakeholder feedback indicated that the NCP was responsive and communicated with stakeholders when relevant.

## Cooperation amongst NCPs

The NCP engages with other NCPs through annual meetings at the OECD level. These meetings have allowed the NCP to share experiences and best practices with other NCPs.

In 2021, the NZNCP participated as member of the peer review team for the AusNCP peer review. This provided the NCP the opportunity to engage deeply with the NCP under review and develop valuable relationships with others in the NCP community. The experience also provided insight into how the NZNCP function could develop in future years. Feedback from other NCPs participating on the same team, and from the NCP under review, indicated that the NZNCP provided constructive comments and remarks during the peer review team meetings and during the interviews with stakeholders during the onsite visit. Feedback noted the great value of the NZNCP's broad experience and thorough knowledge concerning NCP matters and handling specific instances.

Further NCP feedback noted that the NZNCP had shared promotional materials, such as an explanatory note used to explain the Guidelines to businesses and other stakeholders.

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<sup>23</sup> Government Procurement Rules, 4<sup>th</sup> edition (2021): <https://www.procurement.govt.nz/assets/procurement-property/documents/government-procurement-rules.pdf>

	Findings	Recommendations
2.1	There is low visibility and awareness of the NCP and the Guidelines across stakeholder groups in New Zealand. The NZNCP had previously developed a promotional strategy to address the NCP's promotional responsibility, which was unable to be carried out due to shifting priorities during the Covid pandemic.	The NCP could use its previously developed promotional plan to inform a new promotional strategy. The NCP could further consider leveraging events organised by other organisations to enhance and create opportunities for promotion. The NCP could further leverage the Liaison Group to increase the NCP's visibility, for example through promotional activities by the Liaison Group members to their own stakeholder networks.
2.2	General stakeholder feedback shows a clear interest in RBC and an eagerness to engage with the NCP. Despite a willingness to engage by many stakeholders, there is not a well-defined community around the NCP.	The NCP could prioritise stakeholder mapping as a step towards a strategic promotional plan so that it may establish and identify a community around the NCP.
2.3	There is a lot of interest in RBC across government, particularly considering the development of proposed modern slavery legislation and NAP on BHR. Despite this, the NCP has limited visibility in other government areas and does not always work proactively towards policy coherence.	The NCP could be more engaged with other government departments that have RBC related policy initiatives with the objective of including references to the OECD Guidelines, related guidances, and the NCP in existing and future initiatives.

Source: Onsite visit of the peer review of the New Zealand NCP



# 4 Specific instances

## Overview

As of the date of the on-site visit, the NCP had received six specific instances in total (four since 2011). In total, three specific instances have been concluded by the NCP, three were not accepted, and zero are ongoing.

Among the three concluded cases:

- One was concluded with agreement within the NCP process;
- One was concluded without agreement; due to the unresponsiveness of the submitter;
- One was concluded with agreement outside the NCP process.

The main sectors concerned by specific instances handled by the NCP are Financial and insurance activities (two cases), Agriculture, forestry and fishing, Construction, Other service activities, and Professional, scientific and technical activities were all referenced in one case each. In terms of submitters, NGOs were involved in four submissions, including one also involving a Trust, Trade unions submitted one specific instance, and one specific instance was submitted by a political party.

The most frequently raised chapters of the Guidelines in cases handled by the NCP are the chapters on Human Rights (IV) (four cases), General Policies (II) (two cases), and Employment and industrial relations (V), Environment (VI), Consumer interests (VIII), and Taxation (XI) referenced in one case each.

An overview of all cases handled by the NCP is available in Annex D. Overview of specific instances handled by the New Zealand NCP as the lead NCP.

The NCP has indicated a general challenge in handling specific instances relating to a lack of knowledge and understanding of the process by stakeholders. The NCP acknowledged that this could be partially explained by low levels of promotion. The NCP additionally noted that stakeholders sometimes have chosen to turn to other judicial and non-judicial mechanisms in the country. The NCP noted that these reasons, and due to the fact that New Zealand is a small economy, may be contributing to the low numbers of specific instances received by the NCP.

Stakeholders also suggested low numbers of specific instances may be partially explained by the existence of other avenues for grievances, sometimes stronger enforcement mechanisms, such as internal complaint processes, tribunals, or courts. Stakeholders indicated that there were dispute mechanisms available through the Human Rights Commission and the Employment Relations Authority, which can make binding decisions. Business stakeholder feedback additionally pointed to high standards of business conduct in New Zealand.

Feedback from stakeholders that had previously participated in the specific instance process indicated a need to demystify the NCP process and make the mechanism more accessible. The feedback indicated an interest in an accessible NCP mechanism but noted that some other available grievance mechanisms in New Zealand were better positioned to secure some of the desired outcomes.

## Rules of Procedure

### **Overview**

The NZNCP follows the general rules of procedure contained in the Implementation Procedures of the Guidelines. The NZNCP has developed additional supporting material, such as infographics on the flow of the specific instance process and supporting material with indicative timelines. The NCP has not published official rules of procedure but has indicated that they are in the final stages of developing specific rules of procedure of the NZNCP.

The overview of the procedure below is based on actual practice of the NCP, supplementary information available on the NCP website, and information provided by the NCP also based on their proposed draft RoP.

### **Filing a complaint**

The process for submitting a specific instance is available on the NCP website. The website does not include an online submission form or downloadable submission form. The website includes the following information to be provided in an email submission to the NCP for issues arising in New Zealand:

- Name;
- Organisation/position;
- Contact details-phone, email, postal address;
- Whether the submission is on behalf of another party and, if yes, who?;
- Details of the MNE, including name and contact details, whether the submitting party has previously had contact with the MNE;
- Submission details, including where/when the situation occurred, relevant sections of the Guidelines, sections of the Guidelines not observed, and how the action impacted the submitting party;
- Desired outcomes, i.e. what the submitter hopes to achieve in the process;
- Parallel proceedings, if the submitter has previously attempted to solve the issues and any other forum that has been used;
- Supporting documents, if any. The website provides examples, such as witness testimonies, scientific tests, etc.

For issues arising in other countries, the NCP asks the reader to contact the host country NCP. A link to the OECD NCP website page with contacts for other NCPs is provided. The NZNCP website continues to state that if the issues occur in a non-adherent country, the submitter should contact the NCP of the country where the MNE is headquartered. This could lead to the perception of decreased accessibility of the NCP as it discourages submitters from submitting cases involving New Zealand companies abroad.

### **Initial assessment**

Within ten working days of receiving a complaint, the NCP aims to write to the submitter and enterprise with information on the submission and on how the case will be handled and invites the enterprise to provide a response. At this stage, the NCP will also ask the submitter for any further information or clarification where necessary. The NCP specified that it would only accept additional information if it is related to the issues raised in the original submission. The submitter may be allowed to reply further if the enterprise makes any counter allegations in its response. The submitter could then provide new evidence if related to the counter allegations.

The NCP has indicated that it has access to, and may call upon, expert advice in the case of a complex specific instance.

As indicated by the NCP but not included in a public document, an Initial Assessment issued by the NCP will include:

- The names of the Parties if the specific instance is accepted (the names are withheld in the case of non-acceptance);
- The substance of the specific instance, including references to the parts of the Guidelines that were allegedly breached;
- A summary of the process the NCP followed to date;
- The reasons for accepting or rejecting issues for further examination;
- 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
- An outline of the next stages in the NCP's determination.

The NCP shares draft initial assessments with the parties for comment prior to finalisation. The NCP indicated that its current practice does not include the publication initial assessments on the NCP website. The NCP specified that, in exceptional circumstances, an enterprise would not be contacted for comment on an initial assessment. This would be in the case that it appeared an identical specific instance had been previously considered, the specific instance did not relate to the enterprise's responsibilities under the Guidelines, or the specific instance in question ought to be considered by a different NCP.

The NCP website specifies that the NCP aims to complete the initial assessment within three months of receiving a complaint.

### ***Good offices***

The NCP indicated that its staff had undergone training in dispute resolution or problem solving. MBIE Secretariat staff completed an internal MBIE training, "Working with Others."

In the event that mediation is conducted, the NCP uses an external professional mediator contracted by MBIE. The process for selecting a mediator is as follows:

- The NCP identifies a list of potential mediators with the appropriate experience and skills;
- With approval from the appropriate MBIE manager and senior management where necessary, the NCP makes a request for proposals;
- With the appropriate manager, the NCP evaluates the received requests for proposals and identifies and contracts a mediator.

Once a mediator has been contracted, the NCP prepares terms of reference to be agreed by both Parties and the mediator. The mediator will also be agreed upon by the NCP and both parties. A second mediator may be appointed if the parties agree. The NCP requests an update on progress from the mediator every two months.

### ***Conclusion of the specific instance***

According to the NCP, the preparation of the final statement is done so with the NCP and the Mediator reviewing the materials provided by the Parties, and any additional materials or information gathered during the Good Offices and examination process. The NCP did not specify the exact role of the mediator in the preparation of the final statement, i.e. whether the mediator contributed to the drafting. The NCP may also seek the advice as needed from another NCP, the OECD Secretariat, or other subject matter experts.

According to information provided directly by the NCP, a Final Statement issued by the NCP will include:

- Details of the allegations and chapters and/or paragraphs of the Guidelines that were allegedly breached;
- Details of the parties involved;
- A summary of the process the NCP followed;
- The outcomes of any mediation, or a summary, in a statement agreed between the Parties and including any follow-up arrangements agreed by the Parties;
- The results of the 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,
- A date by which both Parties will be asked to submit an update to the NCP on measurable progress towards meeting the agreed outcomes (if any); and
- If found by the NCP, any relevant examples of responsible business conduct consistent with the Guidelines.

The NCP shares draft final statement with the parties, and the Liaison Group, for factual corrections before publication, with a deadline of 20 days to comment. A finalised statement is provided to Parties prior to publication. When the specific instance was not accepted, the final statement also includes an explanation of how it was assessed in the initial assessment process. When the specific instance is accepted but good offices do not result in an agreed outcome, or the enterprise failed to engage in the NCP process, the NCP and mediator include their analysis of the issues and possibly a determination about the consistency of the enterprise's actions with the Guidelines.

The NCP has not previously issued a determination regarding the observance of the Guidelines by an enterprise in a specific instance. The NCP website does not mention determinations in the section on handling specific instances. The NCP has indicated that provisions for making determinations will be included in the new rules of procedure.

The NCP has not made recommendations to parties on the implementation of the Guidelines. Making recommendations is not currently listed as part of the specific instance process as per the NCP website. The NCP further noted that recommendations were not provided for in the rules of procedure they follow. At the time of writing, the draft rules of procedures did not foresee the inclusion of provisions to make recommendations to parties in the context of the specific instance process, a practice which is supported by general stakeholder feedback. In addition, the practice of including recommendations is expressly mentioned in the Procedural Guidance,<sup>24</sup> noting that recommendations are to be made 'as appropriate,' allowing the NCP to decide when it deems necessary or useful to provide recommendations. The NCP indicated that the barrier to include recommendations in their RoP is in part due to legal barriers and difficulties to obtain the necessary approval on the practice from the government.

### ***Case follow-up***

The NCP website section on handling specific instances mentions that the NCP may follow up on the outcome of a case one year after it has been closed. The NCP has indicated that there are two instances in which the NCP would make a follow up statement. Firstly, the NCP may follow up when the final statement included an agreement between the parties, in which case there would also be a deadline for the implementation of such an agreement. The parties are expected to provide the NCP with an update on the implementation of the agreement, which will feed into the NCP's follow up report. The second instance in which the NCP may conduct a follow up is if the parties have agreed to have a follow up, and would then

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<sup>24</sup> See p. 71: <https://www.oecd.org/daf/inv/mne/48004323.pdf>

send the NCP developments in the specific instance since the final statement. The NCP would therefore not conduct a follow up in a situation in which no agreement is reached and the parties have not agreed to a follow up.

The NCP sends the draft follow up statements to the Liaison Group and the Parties for any factual comments. The NCP will send the group and parties a finalised version before publication. The NCP may recommend an additional follow up period if deemed useful. Each follow up statement is published on the NCP website, shared with the Parties, members of the Liaison Group, and relevant NZ government agencies. At the conclusion of each follow-up process, the NCP may draw instances of inappropriate conduct to the attention of other government agencies.

In its 2021 annual report, the NZNCP noted that it requests feedback from the specific instance parties following the conclusion of a specific instance. The NCP noted that it requests feedback via email but has not received responses from parties to date.

## Analysis of NCP statements

### ***Non-accepted cases***

Since 2011, one out of four specific instances received have not been accepted by the NCP. In the one specific instance, the reasons for not accepting cases were that the NCP determined the issues did not fall within the scope of the Guidelines as the companies concerned were not MNEs. The NCP provided detailed information about the companies are why they did not qualify as MNEs under the Guidelines.

The NCP received two specific instances prior to 2011, both of which were not accepted. At the time, the NCP did not publish statements for not accepted cases so limited information is publicly available. The reasons for not accepting these cases were:

- The NCP concluded that the issues raised did not merit further consideration under the Guidelines;
- The NCP concluded that there was not sufficient evidence to link New Zealand to the request and the specific instance did not merit further information.

### Box 5.1. Example specific instance not accepted by the NZNCP

#### **Southern Response Earthquake Services Limited (Southern Response), New Zealand Permanent Trustees Limited (NZPT) and individuals represented by the NGO Wider Earthquake Communities Action Network (WeCAN)**

On 15 June 2015, two individuals represented by the NGO WeCAN submitted a specific instance to the NZNCP alleging that Southern Response and NZPT had not observed the Human Rights (Chapter IV) provisions of the Guidelines. Specifically, issues related to delays, disputes over assessments and unnecessary complications in managing claims made after the 2010/11 Canterbury earthquake sequence, resulting in the breach of rights to health, property, adequate housing and the rights of children and persons with disabilities.

Following consideration of the claims, on 9 March 2016 the NZNCP decided not to accept the specific instance for further consideration as the issues were deemed to be outside of the scope of the Guidelines. This was because neither of the included entities were MNEs as Southern Response is fully Government owned and NZPT operates entirely domestically and is wholly owned by a government entity.

The specific instance ultimately suffered some delays despite victims suffering ongoing human rights issues. Timeliness and resource issues were perceived in the handling of the specific instance.

Source: <http://mneguidelines.oecd.org/database/instances/nz0005.htm>

### **Accepted cases**

Since 2011, out of four cases received, three have been concluded.

Outcomes in cases in which the NCP offered good offices include the following:

- One case was concluded with agreement in the NCP process, though the submitter requested the procedure remain open following the agreement due to ongoing concerns. The procedure was closed around a year later without further action from the NCP;
- One case was concluded with agreement outside the NCP process, as the government announced that an agreement was reached and a memorandum of understanding was signed by the parties;
- One case was concluded without agreement.

### **Follow-up**

Despite allowing for follow up within their rules of procedure, the NCP has not to date conducted a follow up on a specific instance.

### **Timeliness**

Of the four cases concluded since 2011, none have been completed within the indicative on year time frame. Two concluded specific instances exceeded three years. In both cases, the NCP had received a request from the submitting parties to pause the handling of the case, or delay the formal conclusion. The one case received since 2011 that was not accepted took 535 days start to finish.

According to information published on the NCP website, the NCP aims to complete the specific instance procedure within fifteen months. This is longer than the indicative timeframe in the Procedural Guidance, which is twelve months. The indicative timeline provided by the NCP has three additional months during the good offices phase as compared to the Procedural Guidance. The NCP has a document available for download on its website that contains the steps and phases of their indicative timeline. The timeline can be summarised as follows:

- Month 1: start initial assessment
- Month 2: draft initial assessment
- Month 3: complete initial assessment
- Months 4-12: Good Offices phase
- Months 12-15: closeout phase

The NCP acknowledged that it often exceeds the indicative timeline, particularly in time taken to complete an initial assessment. The NCP has indicated that this is often due to competing resource demands on the NCP.

Stakeholder feedback pointed to timeliness of the NCP process as a concern, particularly given the impact delays in the NCP process can have on victims represented in the process. Further concerns related to timeliness were expressed due to previous delays resulting in non-responsiveness or dropping out of the process by parties.

## Confidentiality and campaigning

The NCP recognises the importance of transparency in building trust and knowledge of the specific instance process. To promote transparency, the NCP publishes key findings related to specific instances proceedings. To protect confidentiality, all documents relating to key parties are reviewed by those parties prior to publication and potentially confidential information would only be shared with consent of the parties. The NCP has further indicated that the soon-to-be-published Rules of Procedure are vetted against privacy standards. The NCP indicated that it had not previously had issues with breaches in confidentiality arrangements between parties.

The NCP further respects the importance of transparency as it is subject to the Official Information Act, as previously referenced. The Act allows New Zealanders to have access to information, which both enables their participation in government and holds governments and government agencies accountable. Individuals in New Zealand may request official government information, and it must be made available, unless there is a good reason to withhold it.

The NCP website mentions confidentiality twice when explaining the specific instance process. Relating to the submission of information, the NCP asks the submitter to identify any information that should be treated as confidential and explain why this is the case. Relating to the initial assessment, the NCP website states that all information received from each party is typically shared with the other, unless there is a good reason not to share it. The paragraph further states that confidentiality between both parties is also expected.

The NCP noted that one specific instance took place in parallel to a public campaign, where the submitter of the specific instance was publicly campaigning against the enterprise also named in the submission. The submitter requested that the NCP pause the procedure, during which time the matter was resolved independently.

The NCP has not dealt with a specific instance involving a confidentiality agreement.

## Impartiality and avoidance of conflict of interests in the handling of specific instances

The NCP has indicated that NCP members assigned to a specific instance are required to complete a conflict of interest check prior to the initial assessment. Any members that have a conflict of interest will not participate in the specific instance process. This check for a conflict of interest is also applied to a mediator when relevant. A specific document or process for checking for a conflict of interest was not specified.

The process to check for and handle potential conflicts of interest is not available on the NCP website and, as the NCP has not released a formal RoP, it is not available in an official document either.

Stakeholder feedback from civil society has indicated a possible real or perceived lack of impartiality or conflict of interest based on the NCP location within a ministry with a business focus. Feedback suggested a need to increase transparency on the role and structure of the NCP, including the competencies of NCP staff, given the broad scope of MBIE and potential for conflicts of interest to arise.

## Parallel proceedings

The website asks submitters to answer questions about any other process, forum, or method used for resolving the issues in the past. No other mention of parallel proceedings is made on the website or in the downloadable documents.

The NCP indicated that parallel proceedings had never occurred during the period of handling a specific instance. However, the NCP noted that the NGO, Wider Earthquake Communities Action Network (WeCAN), had originally submitted ten specific instances with the NCP, while only two were ultimately handled by the NCP. This was due to a combination of parallel proceedings and public campaigning with many submitters dropping the NCP process in favour of other mechanisms before an assessment could be started. The related cases are therefore not considered in Annex D. Overview of specific instances handled by the New Zealand NCP as the lead NCP.

## Cooperation among NCPs

The NCP has indicated that it alerts other NCPs when a specific instance submitted in New Zealand relates to activities, issues or proceedings occurring in other adherent countries. The NCP may make the decision to transfer the specific instance during the initial assessment phase or involve a supporting NCP in the handling process.

As part of the specific instance submission process, the NZNCP asks the submitter if the submission has been brought to the attention of other forums of NCPs. The submitter is asked to provide details on steps taken and the outcome in such a situation. If the issues raised have been considered previously or currently by another NCP, the NZNCP will evaluate the case to determine if an offer of good offices would be likely to contribute positively to resolving the issues raised.

Two NCPs provided feedback on their cooperation with the New Zealand NCP. The NCPs had cooperated with the NCP in the context of specific instances as lead or supporting NCPs and in the context of NCP peer reviews. Feedback noted also periodic contact with the New Zealand NCP on issues of common interest, noting the responsiveness and professionalism of the NZNCP.

The NCP participates regularly in the meetings of the NCP network.



**Table 5.1. Specific instances where the New Zealand NCP has coordinated with other NCPs**

Specific instance	Lead NCP	Supporting NCPs
Unidentified national trade union & Unidentified Australian MNE. Part owned by German company	New Zealand	Australia
Two individuals supported by an NGO & Unidentified MNE and its subsidiary	New Zealand	Australia

Source: OECD NCP Database (2022)

## Request for clarification

To date, the NCP has not submitted requests clarification from the Investment Committee or the Working Party on Responsible Business Conduct.

	Findings	Recommendations
3.1	There is limited visibility and transparency around the specific instance process. The NCP website contains some resources and information, but there is no official document clearly detailing the process. The NCP does not currently have a public rules of procedure, though there is an effort to draft the document. The current process followed by the NCP and information available on the NCP website deviates from the Procedural Guidance regarding specific instance timelines and identified best practices relating to the practice of making recommendations.	The NCP should communicate more transparently about the specific instance process, also in an effort to increase the accessibility of the NCP. A prominent complaint submission form on the NCP's website could help achieve this. The NCP should align the draft rules of procedure with the Procedural Guidance prior to publishing. The NCP could also consider best practices identified by stakeholders and the NCP Network, such as including provisions for the NCP to make recommendations to parties in the specific instance process, where appropriate.
3.2	Stakeholder feedback indicated timeliness in handling specific instances as a concern. While the NCP noted some reasons for delays, such as upon request by the parties during parallel proceedings,	The NCP could work to improve its timeliness when handling specific instances, specifically by increasing proactive communication to avoid dropout from parties. Where delays are not avoidable, the NCP should seek to communicate the reasons for delays to foster transparency in the process.

Source: Onsite visit of the peer review of the New Zealand NCP

## Annex Documents

- A. List of organisations submitting responses to the NCP peer review questionnaire
- B. List of organisations that participated in the NCP peer review on-site visit
- C. Promotional events
- D. Overview of specific instances handled by the NCP as the leading NCP

## Annex A. List of organisations that submitted a response to the NCP peer review questionnaire

<b>Government</b>	Ministry of Justice
<b>Business</b>	Business NZ Institute of Directors New Zealand
<b>Civil Society</b>	OECD Watch
<b>NCPs</b>	Australia Sweden

## Annex B. List of organisations that participated in the NCP peer review on-site visit

<b>Government</b>	
	Ministry of Business, Innovation and Employment
	Ministry of Foreign Affairs and Trade
	Ministry of Environment
	Ministry for Primary Industries
	Ministry of Justice
	New Zealand Trade and Enterprise
	Treasury
<b>Business</b>	
	Business NZ
	Deloitte
	Institute of Directors in New Zealand
<b>Trade Unions</b>	
	E tū
	New Zealand Council of Trade Unions
<b>Civil Society</b>	
	Human Rights Commission
	<b>World Vision</b>

## Annex C. Promotional events 2019-2021

### Promotional activities in 2020 co-organised by the NCP

Title	Date	Location	Size of Audience	Organiser	Target Audience
Public presentation on the Guidelines	12/02/2020	Victoria University of Wellington	10-50	NZNCP and Victoria University of Wellington	Business representatives, NGOs, trade unions, academia, general public, government representatives

Source: OECD (2021), [Annual Report on the OECD Guidelines for Multinational Enterprises 2020](#)

### Promotional activities in 2019 co-organised by the NCP

Title	Date	Location	Size of Audience	Organiser	Target Audience
Public presentation on the Guidelines	02/09/2019	University of Auckland	10-50	Co-organised	Students, academia
Public presentation on the Guidelines	02/09/2019	University of Auckland	<10	Co-organised	Academia, business, general public

Source: OECD (2019), [Annual Report on the OECD Guidelines for Multinational Enterprises 2019](#)

## Annex D. Overview of specific instances handled by the New Zealand NCP as the lead NCP

Enterprise/ Specific instance number	Submitter	Host Country	Chapter (s) of the Guidelines	Date of Submission	Date of Acceptance	Date of Conclusion	Outcome	Description	Follow- up
Unidentified Australian MNE	Unidentified political party	Papua New Guinea	General Policies (II), Environment (VI)	02/10/2007	N/A	2008	Not accepted	The NZ NCP did not accept the case given an insufficient link to New Zealand in the specific instance.	N/A
Unidentified Australian MNE. Part owned by German company	Unidentified national trade union	New Zealand	General Policies (II), Employment and Industrial Relations (V), Consumer Interests (VIII), Taxation (VI)	09/2009	N/A	2010	Not accepted	The NZ NCP consulted the Australian and German NCPs and determined the case did not merit further consideration.	N/A
Unidentified MNE and its subsidiary	Two individuals supported by an NGO	New Zealand	Human Rights (IV)	21/11/2013	01/072014	01/12/2016	Concluded with agreement in the NCP process	The NZ NCP facilitated mediation between the parties and both	No

								agreed that the issues had been resolved.	
Unidentified MNE	Two individuals and an Unidentified NGO	New Zealand	Human Rights (IV)	17/06/2014	Not reported	01/08/2021	Concluded, without agreement between the parties	The NZ NCP made an offer of good offices to the parties but, ultimately, concluded the case given the submitter was unresponsive.	No
Southern Response Earthquake Services Limited (Southern Response) and New Zealand Permanent Trustees Limited (NZPT)	Two individuals, through their representative NGO Wider Earthquake Communities Action Network (WeCAN)	New Zealand	Human Rights (IV)	15/06/2015	N/A	01/12/2016	Not accepted	The NZ NCP decided not to accept the case as neither of the companies involved could be considered MNEs under the Guidelines.	N/A
Fletchers Building Limited	SOUL (Save Our Unique Landscape) and Ngā Kaitiaki o Ihumātao Trust	New Zealand	Human Rights (IV)	18/04/2018	N/A	28/09/2021	Concluded with agreement outside of the NCP process.	The NZ NCP concluded the case with agreement after a memorandum of understanding was signed to determine the future of the land involved in the specific instance. .	No

## National Contact Point Peer Reviews: New Zealand

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the New Zealand NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

