



4 February 2014

Stephen T Patterson
stpatt@essex.ac.uk
On behalf of WECAN
Christchurch NGO

Dear Mr Patterson

Canterbury Earthquakes – Complaints made under OECD Guidelines for Multinational Enterprises

In November 2013 the Ministry of Business, Innovation and Employment (the Ministry) received 39 complaints (covering 45 specific claims) from you, as representative of WECAN, on behalf of 36 individuals, concerning the Canterbury earthquakes in 2010 and 2011.

The complaints were made under the specific instances procedure of the *OECD Guidelines for Multinational Enterprises* (the Guidelines). The Ministry is the National Contact Point for the Guidelines and acknowledged receipt of the complaints to you on 15 November. We also outlined the process and projected timeframe for the assessment and consideration of the complaints under the Guidelines and associated procedures.

As noted in our initial reply, we have been working through the initial assessment stage of the Ministry's process in order to determine whether the complaints merit further examination under the specific instances procedure. This is to inform you of our progress to date.

Some complaints are out of scope

Of the 39 complaints submitted via WECAN, 24 concern:

- the Earthquake Commission (24 claims);
- the Canterbury Earthquake Recovery Authority (1 claim); and
- Southern Response (6 claims).

We consider that these complaints are out of scope for consideration under the specific instances procedure, as these bodies are not multinational enterprises (see article 4 of the Guidelines).

EQC is a Crown Entity (s 7(1)(a) of the Crown Entities Act). It provides natural disaster insurance for residential property, administers the Natural Disaster Fund, and funds research and education on natural disasters and ways of reducing their impact. It is not a multinational enterprise because it is not an enterprise (i.e. a commercial or industrial undertaking including a firm, company, or business) or profit-making entity, and does not have the principal objective of operating as a successful business.

CERA is a government department (s 27A(1) of the State Sector Act) and is therefore part of the Public Service (s 27, State Sector Act). CERA has neither a commercial nor a transnational focus.

Southern Response is a Crown-owned company. Until 5 April 2012, it traded as AMI Insurance Limited. It was formed after the Crown purchased AMI's Canterbury earthquake liability. Southern Response is responsible for settling claims by AMI policyholders for Canterbury earthquake damage which occurred before 5 April 2012 (the purchase date). It does not compete in the insurance market, has a purely domestic focus, and does not have a commercial or transnational focus.

Because these bodies are not multinational enterprises, considering complaints about them would be contrary to the purpose of the Guidelines and its specific instances procedure, which was created to deal with issues arising in the context of international investment. The Ministry must determine whether processing a particular complaint (including one with no international element) would further the effectiveness of the Guidelines. We do not consider this would be the case and so will neither be proceeding with these specific complaints, nor any further complaints against EQC, CERA or Southern Response that may be lodged in future. We will be informing the specific complainants of this decision individually.

Alternative remedies to consider

However, whilst these complaints are outside the scope of the Guidelines, there are alternative and more targeted options available for those complainants:

- The Insurance and Savings Ombudsman which also provides specific information available to people regarding Canterbury earthquake-related claims.
 - o Telephone: +64 (04) 499 7612; Freephone: 0800 888 202
 - o Website: <http://www.iombudsman.org.nz/>; email: info@iombudsman.org.nz

- The Residential Advisory Service which provides free, independent help to residential property owners who are facing challenges in getting their home repaired or rebuilt after it has been damaged by the Canterbury earthquakes.
 - o Telephone: (03) 379 7027 or Freephone: 0800 777 299
 - o Website: <https://advisory.org.nz/>; email: info@advisory.org.nz

- The Human Rights Commission - Te Kāhui Tika Tangata (HRC) is the national human rights institution in New Zealand responsible for investigating complaints of breaches of human rights and enforcing action under the Human Rights Act 1993.
 - o Freephone: 0800 496 877; or email infoline@hrc.co.nz

- The Office of Human Rights Proceedings (OHRP) is an independent office within the HRC. The OHRP provides free legal representation to complainants to take selected discrimination cases to the Human Rights Review Tribunal.
 - o Website <http://www.hrc.co.nz/office-of-human-rights-proceedings>; email: ohrp@ohrp.org.nz
- The Ombudsman may investigate EQC and CERA see s 13 and sched 1 of the Ombudsman Act 1975).
 - o Freephone 0800 802 602; or email info@ombudsman.parliament.nz
 - o Visit the website www.ombudsman.parliament.nz/

Remaining complaints require further information

The other 15 submissions have made allegations about Tower Insurance Limited, IAG New Zealand Limited, Vero Insurance New Zealand Limited and the Fletcher Construction Company Limited. We consider that all of these companies are multinational enterprises under the Guidelines who may properly be subject to the specific instances procedure.

However we need further information from WECAN/these complainants in order to fully assess their submissions, many of which are of a general nature and do not contain detailed evidence to support the allegations made by them about the way in which the companies concerned have behaved towards them. This includes (but need not be restricted to) documentary information about:

- confirmation of the complainant's insurance and building company
- confirmation of the contractual relationship with the companies (email, letter or policy cover)
- correspondence regarding:
 - o absence or delays in repairs
 - o absence or delays in assessing damage
 - o exchanges with the insurer/the building company regarding/supporting the allegations
- photographic evidence
- any other evidence supporting the allegations made

We will also be writing to these complainants individually seeking this information.

The remaining batch of claims that you submitted in January 2014 will be processed separately, although a similar process will be employed to complete the initial assessment.

Should you have any questions, please contact Benoit Lamy at Benoit.lamy@mbie.govt.nz in the first instance.

Yours sincerely

A handwritten signature in blue ink, consisting of several vertical strokes followed by a horizontal line and a large, circular flourish.

Michael Hobby
Principal Advisor
Ministry of Business, Innovation and Employment

Appendix 1: List of the complaints that are in scope and those that out of scope but need further information

Complaints in scope – need further information	Complaints out of scope
Karen Atkinson (Fletchers)	Julie Olive Gorman & Stanley Richard Gorman (EQC)
Melanie Doogue (Fletchers)	Sarah O'Brien (EQC)
Martyn Giles (Tower & Fletchers)	Sharmaine Kennard Dale (EQC)
Julie Olive Gorman & Stanley Richard Gorman (IAG)	Pamela Lilly (EQC)
Sarah O'Brien (IAG)	Ruth McLean (Southern Response)
Donna Somervail (Fletchers)	Ross & Ellie Williamson (Southern Response)
Peter Watkinson (Fletchers)	Heather McMurdo (EQC & Southern Response)
Lisa Clarke (Vero)	Kerilea Quinn (EQC)
Conrad Walton (Fletchers)	Louise Newmarch (EQC)
Katherine Hickey (Tower)	Andrea Champion (EQC)
Lynley Jenness & Neil Hawkins (Vero)	Mandy Fraser (EQC)
Ngaire Borlase (Fletchers)	Lynley Jenness & Neil Hawkins (EQC)
Clive Fletcher (IAG)	Michelle Lang (EQC & CERA)
Stephen Patterson (IAG)	Paul and Denise McCall (EQC)
Sally McRae (Fletchers)	Brian Donahue (EQC)
	Joanne Byrne (EQC)
	Pip Coory (EQC)
	Damian Elstone (Southern Response)
	Samantha Gilmour (EQC)
	Roelant Hofmans (EQC)
	Andrea McGregor (EQC)
	Winn Renison (EQC)
	Lis Stevenson (Southern Response)
	Katharin Adel Walker (Southern Response)