

## COMPLAINTS POLICY

### A. PURPOSE

- 1) This Complaints Policy explains the types of complaints that the Programme Manager and Oversight Committee can handle under the complaints facility that is established under The Aotearoa New Zealand Code of Practice for Online Safety and Harm (The Code).
- 2) The complaints facility was established to resolve complaints about possible breaches by Signatories of their commitments under The Code.
- 3) The Complaints Policy includes information about:
  - (a) The aim and scope of the complaints facility
  - (b) How complaints about breaches of the Code are handled
  - (c) The role and powers of the Oversight Committee in relation to eligible complaints

### B. AIM AND SCOPE OF COMPLAINTS FACILITY

- 1) The complaints facility will provide a mechanism for the efficient, economical, and effective handling of eligible complaints by the public of breaches of Signatories' commitments to implement measures in relation to nominated outcomes and objectives under The Code.
- 2) The aim of the complaint's facility is to ensure Signatories comply with The Code.
- 3) Eligible complaints will be handled by the Administrator and the Oversight Committee in accordance with the complaints handling policies set out in Sections C to P below.
- 4) Only complaints that meet the defined threshold for eligible complaints are within the scope of the complaints facility.

### C. GENERAL

- 1) Complaints will be handled by the Administrator and the Oversight-Committee in accordance with this Complaints Policy. This policy applies to the members of the Oversight Committee, and all The Code staff receiving or managing complaints from the public made to or about commitments made by Signatories under The Code.
- 2) The effectiveness and model of the complaint's facility will be reviewed annually by the Oversight Committee.
- 3) When developing procedures and policies for the complaints facility, and when handling complaints, the Administrator and the Oversight Committee will consider:

- (a) relevant laws
- (b) good practice; and
- (c) what is fair and reasonable

#### D. TYPES OF COMPLAINTS HANDLED UNDER THE COMPLAINT'S FACILITY

1) Only New Zealand citizens or permanent residents aged 18 years and older can make a complaint against a Signatory under the complaints facility.

2) Parents or guardians that meet this requirement can also make a complaint on behalf of a minor aged 14 or older for whom they have legal responsibility.

3) The Administrator and the Oversight Committee only handle complaints that are eligible complaints, and do not handle in-eligible complaints.

4) Eligible complaints comprise complaints made by the public about either:

- (a) a material breach of the Code; and
- (b) other types of eligible complaints.

5) A material breach of The Code comprises:

(a) A failure by a Signatory to comply with its commitments in relation to Section 4 of The Code.

**For example:** a failure to implement and publish policies, procedures and appropriate guidelines that will enable users to report the types of behaviours and content that violates their policies under section 4.3 of the Code.

(b) A failure to file a transparency report within three months of the due date set by the Oversight Committee.

(c) A Signatory has, without reasonable excuse, provided materially false information in its transparency report about the measures that it has or will implement to comply with their Code commitments.

**For example:** a false statement in a transparency report (express or implied) that a policy or product has been implemented in Aotearoa New Zealand or had particular characteristics would likely be within scope.

**For example:** a future change in a policy or product offering as stated in a transparency report would not be eligible, provided another policy or product offering is provided to meet the relevant commitment.

6) Other types of eligible complaints are complaints about a possible breach of The Code that is not a material breach, usually in relation to a Signatory's opt-in commitments under The Code.

**For example:** a complaint that a Signatory has breached section 4.4 of The Code by not implementing measures to support and encourage good faith independent efforts to research 1) Child sexual exploitation and abuse or 2) Cyberbullying or harassment or 3) Hate speech or 4) Incitement of violence or 5) Violent or graphic content or 6) Misinformation or 7) Disinformation both online and offline.

7) In-eligible complaints are complaints that do not meet the criteria for eligible complaints including:

(a) Complaints by individuals about specific content or accounts on Signatories' products and services.

**For example:** a determination by a Signatory that specific items of content or categories of content is / or is not disinformation or misinformation or a decision to remove an individual's account are not in scope. Those complaints will be handled by the Signatories under the policies and procedures for reporting issues they are committed to implement under in sections 4.1 or 4.2 of the Code.

(b) Complaints about whether the Signatory's measures are adequate to achieve the outcomes of The Code.

**For example:** whether measures taken by Signatories have sufficiently reduced the exposure of platform users to the harms posed by 1) Child sexual exploitation and abuse or 2) Cyberbullying or harassment or 3) Hate speech or 4) Incitement of violence or 5) Violent or graphic content or 6) Misinformation or 7) Disinformation.

(c) Complaints that are already under consideration by a court, tribunal or regulatory body or Ombudsman or otherwise the subject of existing legal proceedings; and

(d) Complaints about the administration of The Code including complaints about the operation of the complaints facility.

## E. WHEN COMPLAINTS CAN BE MADE

1) The Administrator and Oversight Committee only handles complaints about a Signatory if they are reasonably timely.

2) When they receive a complaint, they will look at the date that the complainant discovered the issue about which they are complaining.

(a) If it has been less than six months since that date, the Administrator can handle the complaint.

(b) If the complaint is outside that time frame the Administrator will not handle the complaint.

3) The Administrator will refer all eligible complaints to the Signatory to provide them with a reasonable chance to consider and respond to the complaint.

(a) What is reasonable will depend on the circumstances of the complaint including (i) whether the complaint has been previously reported to the Signatory, (ii) the complexity of the issues raised in the complaint, (iii) when the complainant identified the issue they are complaining about and (iv) the amount of evidence provided in support of the complaint.

(b) However, what is a reasonable chance to consider and respond to the complaint will not exceed six weeks.

4) The Administrator may in their discretion refer in-eligible complaints to Signatories for their consideration to the extent practical, depending on the volume of in-eligible complaints, but will not otherwise be involved in the resolution of those complaints.

## **F. ADMINISTRATOR INITIAL PROCESS FOR HANDLING COMPLAINTS**

1) The public may make eligible complaints via The Code website using the appropriate complaints form provided for that purpose.

2) The complainant can also ask someone else, such as their legal representative to complain to the Administrator for them. The Administrator may ask for proof that the complainant has given their permission to deal with the other person.

3) All complaints will receive a response from the Administrator that provides a brief explanation of complaint eligibility and time frames within which the complainant can expect an initial response from the Programme Manager.

4) When the Programme Manager receives an eligible complaint, they will assess whether it is an eligible complaint or an in-eligible complaint. If it is an eligible complaint, they will also assess whether it is about a material breach of The Code or if it is another type of eligible complaint.

5) The Programme Manager will only intervene in an eligible complaint after they have notified the Signatory of the complaint and the Signatory has been given a reasonable opportunity to consider and respond to the complaint as set out in section E(3) of this policy.

6) After the Signatory has been given a reasonable opportunity to consider and respond to the complaint, the Signatory must advise the Programme Manager and the complainant whether it has resolved the complaint.

7) If within thirty days of that advice the complainant advises the Administrator that the complainant remains unsatisfied with the Signatory's response, the steps the Programme Manager takes to handle the complaint will depend on whether it is about a material breach of The Code, or it is another type of eligible complaint.

8) If the complaint is about a material breach of The Code, the Programme Manager will deal with it as outlined in Section G(1)–(4) below.

9) If the complaint is about another type of complaint, the Programme Manager will not further respond to the complainant directly but will record the complaint as set out in Section H(1).

## **G. ADMINISTRATOR HANDLING OF COMPLAINTS OF MATERIAL BEACHES OF THE CODE**

1) On determining a complaint is about a material breach of The Code, the Programme Manager will promptly advise the relevant Signatory in writing of the details the complainant has provided regarding the complaint.

(a) The Programme Manager will also give the Signatory written reasons for their assessment of the complaint.

2) The Programme Manager will promptly escalate complaints about material breaches of The Code to the Oversight Committee for determination.

3) The Administrator will promptly advise the complainant and the Signatory of the date when the meeting of the Oversight Committee to hear the complaint will take place (generally the next available meeting, depending on the volume of complaints before the Committee).

4) The Oversight Committee will investigate and resolve complaints about material beaches as further outlined in Sections I and J.

## **H. ADMINISTRATOR HANDLING OF SYSTEMIC ISSUES**

1) The Administrator will maintain a database that will record details of all eligible complaints.

2) The Administrator will aggregate and compile periodic reports of this data every six months.

3) These reports will be provided to the Oversight Committee so that they can assess if there are systemic issues with The Code compliance.

## **I. ROLE OF THE OVERSIGHT COMMITTEE IN COMPLAINTS**

1) The role of the Oversight Committee concerning public complaints is to:

- (a) Investigate and resolve complaints about material breaches of The Code.
- (b) Provide reports and recommendations to the Administrator, and impacted Signatories concerning the resolution of potential systemic issues.
- (c) Review and make recommendations to the Signatories regarding the Administrator's handling of complaints.

## J. POWERS OF OVERSIGHT COMMITTEE

### Oversight Committee's approach to decision-making

- 1) The objective of the members of Oversight Committee is to achieve agreement concerning the matters before them through a consensus decision which, if achieved, will be recorded as such.
- 2) The Oversight Committee may seek the advice of one or more independent experts to advise it in relation to eligible complaints that are under its consideration, where the members require specialist knowledge about the operation of a Signatory's technology, or where the complaint raises concerns that relate to the protection of citizens' health, or the protection of marginalised or vulnerable groups.
- 3) The Oversight Committee will follow a fair, consistent, and transparent process for dealing with complaints about material breaches of The Code that gives both sides to a complaint an adequate opportunity to be heard.
- 4) In general, the Oversight Committee will only accept written arguments and evidence from the parties to a complaint but may in its discretion request meetings with the Signatory and the complainant.
- 5) The Oversight Committee can, at any time, tell the relevant Signatory or a complainant to send them any information or documents they have that are relevant to the complaint.
- 6) If the Oversight Committee requests the Signatory or the complainant to provide information or documents, they will explain how long the Signatory, or the complainant has to provide the information and documents. The Oversight Committee will be reasonable in setting this deadline, but it will not be more than thirty (30) days.
- 7) If a Signatory or complainant has information or documents that are relevant to the complaint, but which contain confidential information, the Oversight Committee will still want to see the information and documents but will not disclose that information to anyone else.

- 8) A Signatory may decline to provide confidential information or agree to provide it subject to the Oversight Committee agreeing to enter into a confidentiality agreement.
- 9) If a Signatory fails to provide information or documentation requested by the Oversight Committee within thirty (30) days, it may make a decision about the complaint in the absence of that information.
- 10) The Oversight Committee will make their assessment of systemic issues based on the aggregated data about eligible complaints provided by the Administrator in section H. Where, based on such assessment, the Oversight Committee determines there may be a systemic issue concerning a Signatory, they may also access additional information about other eligible complaints that is held by the Administrator which is relevant to their assessment.
- 11) If the Oversight Committee determines there is a potential systemic issue concerning a Signatory, they will notify the Signatory who will have an opportunity to review the relevant data and provide a written response to the Oversight Committee's assessment.
- 12) The Oversight Committee will also discuss with Signatories who may have systemic issues its recommendations for remedial action before these are finalised.
- 13) The Oversight Committee may access data and information from the Administrator concerning handling of complaints, to assess whether the Administrator's approach is consistent, fair and meets the terms of this Complaints Policy.
- 14) If the Oversight Committee assesses that the Administrator's approach to complaints handling is unsatisfactory, it will notify the Chief Executive of NZTech who will have an opportunity to review the relevant data and provide a written response to that assessment. The Oversight Committee will also discuss any proposed recommendations for remedial action regarding the Administrator's complaints handling with NZTech before these are finalised.

#### Oversight Committee's actions in relation to material breaches of The Code

- 15) The Oversight Committee can decide the resolution of a complaint about a potential material breach of The Code based on the severity of the breach as outlined below:

**(a) If not serious → direct discussion**

For a non-serious breach, such as a failure to publish a policy for a short period of time due to a technical issue, the Oversight Committee will discuss the issue with the Signatory, with the aim of managing the risks of a repeat breach.

**(b) If more serious → a public statement explaining the issue and steps agreed:**

If the Oversight Committee determines a Signatory may have violated one or more mandatory commitments under The Code and the matter is serious enough to require corrective action and informing the public, the Oversight Committee will discuss the issue with the Signatory and the Chair may issue a statement to be published on The Code website explaining its stance and steps agreed to resolve the issue. This would also be noted in the Oversight Committee's annual report on code administration. The relevant Signatory may also issue a public response on the matter, either on The Code website or via any other means it chooses.

**(c) If it appears more serious and would take time to resolve → an allowance period for that resolution to occur.**

If the Oversight Committee determines a Signatory may have seriously breached The Code and is willing to take corrective action but needs more time to do so, the Chair of the Oversight Committee may allow the Signatory reasonable time for this to take place.

The time allowed will be limited to a maximum of three (3) months, unless further time is agreed between the Oversight Committee and the impacted Signatory.

**(d) If it appears more serious but needs investigation → an allowance period for that investigation to occur.**

If the Oversight Committee determines that the Signatory may have seriously breached The Code but cannot agree a response with the Signatory, they may allow a period of time to conduct that investigation before deciding on action.

The time allowed for investigation and resolution will be limited to a maximum of six (6) months.

**(b) If the Oversight Committee determines the issue is serious, and the Signatory refuses to take remedial action or cooperate in an investigation or correction not possible → withdrawal of Signatory status.**

If the Oversight Committee determines a Signatory has made a very serious breach of The Code, and the Committee and Signatory cannot agree on how to resolve the matter within a reasonable time frame, the Oversight Committee Chair may withdraw signatory status.

The Oversight Committee will only withdraw signatory status where the Signatory has failed to file a transparency report within six months of the due date set by the committee, or the issue is so serious that it substantially compromises the ability of the Signatory to meet its commitments in relation to Sections 4 and 5.4 of The Code.



**For example:** if the Signatory has, without reasonable excuse, failed to provide a mechanism to the public to make reports of breaches of its policies for an extended period.

**For example:** if the Signatory has repeatedly sought to deliberately conceal or misrepresent material information about the measures it is taking under The Code in its annual transparency report and refuses to make a correction.

## K. NEXT STEPS AFTER RESOLUTION OF A MATERIAL BREACH OF THE CODE

- 1) The Programme Manager must advise the complainant promptly of the Oversight Committee's decision.
- 2) The complainant must tell the Programme Manager if they accept the decision within thirty days of receiving notice of the outcome from the Programme Manager.
- 3) If the complainant does not respond within thirty days, the Programme Manager will consider the matter resolved, unless there are reasonably extenuating circumstances.
- 4) If the complainant does not accept the Oversight Committee's decision, the Signatory does not need to comply with the decision and the Programme Manager will consider the matter resolved.

## L. OVERSIGHT COMMITTEE'S ACTIONS IN RELATION TO SYSTEMIC ISSUES

- 1) The Oversight Committee will meet every six months to review the aggregated data provided by the Administrator concerning eligible complaints under section H(1) above.
- 2) The Oversight Committee will assess the data for possible systemic issues and advise relevant Signatories of their assessment which must be included in the Administrator's annual report on The Code management.
- 3) The Oversight Committee may make recommendations to Signatories about how they should respond to systemic issues.
- 4) Signatories will reasonably consider and provide a written response to the Oversight Committee's assessment and/or recommendations concerning systemic issues.
- 5) Signatories, who may have a systemic issue will, in their reasonable discretion, decide whether they accept or act upon the Oversight Committee recommendations.
- 6) With the permission of those Signatories, the Oversight Committee may communicate any recommendations for remedial action and Signatories' responses to impacted complainants.

## **M. OVERSIGHT COMMITTEE'S ACTIONS IN RELATION TO THE ADMINISTRATORS HANDLING OF COMPLAINTS**

1) The Oversight Committee may review data and information about the Administrator's handling of complaints at any meeting concerning material breaches of the Code.

2) The Oversight Committee will assess whether the Administrator's handling of complaints is consistent, fair and meets the terms of this Complaints Policy.

3) The Oversight Committee may make recommendations to the Administrator and the Signatories about remedial actions the Administrator should take to improve its approach to complaints handling.

(a) The Administrator will reasonably consider and will respond to the Oversight Committee's assessment or recommendations.

(b) The Administrator, in its reasonable discretion, will decide whether to accept or act upon the Committee's recommendations.

4) The Administrator must include the Oversight Committee's assessment of its complaints handling, together with its recommendations and the Secretariat's response in its annual report on The Code management.

## **N. REASONS FOR DECISION AND RECOMMENDATIONS**

1) The Administrator's annual report on The Code management will be published on The Code website and will contain information about the:

(a) volume of eligible and ineligible complaints;

(b) volume of complaints about material breaches and other types of complaints;

(c) Oversight Committee decisions about complaints of material breaches;

(d) Oversight Committee assessments of, and any recommendations about potential systemic issues;

(e) Oversight Committee's assessment of the Administrator's approach to complaints handling during the previous twelve months; and

(f) responses of Signatories and the Administrator and to any of the items in a) to d) above.

2) The information that the Administrator may publish about complaints about material breaches may include details of the complaint, the name of the Signatory and the reasons why the Oversight Committee reached the decision or dismissed the complaint.

## O. TERMINATION OF COMPLAINTS

The Administrator or the Oversight Committee may stop handling a complaint at any time if it is fair and reasonable to do so, including:

(a) When the complainant engages in unreasonable conduct in their dealings with the Administrator, as such conduct can significantly affect our operations.

**Unreasonable complainant conduct** is any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource, or equity issues for the Administrator, Oversight Committee, Code Signatories, or the complainant.

Some examples include:

- An unwillingness or inability to accept reasonable and logical explanations including final decisions that have been comprehensively considered and dealt with.
- Demanding a review simply because it is available and without arguing or presenting a case for one.
- Pursuing and exhausting all available complaint options when it is not considered warranted and refusing to accept that further action cannot or will not be taken on their complaints.
- Bombarding the Administrator with multiple emails that are ineligible complaints, or do not constructively advance discussion in relation to eligible complaints (including cc'd correspondence).
- Issuing instructions and making demands about how the Administrator or Oversight Committee has/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- Demanding remedies that are of a nature or scale that the Administrator and the Oversight Committee cannot provide when this has been explained to them repeatedly.
- Displaying unhelpful behaviour – such as withholding information, acting dishonestly, or misquoting others.

(b) When the complainant has been asked to provide documents or evidence that we think may be relevant to their complaint by a stated time, and the complainant has not done so;

(c) Another person or body is able to handle the complaint more effectively or conveniently than we can. If this happens, we will write to the complainant and the Signatory to tell them who we recommend should handle the complaint;

(d) The complainant is not making the complaint in good faith; or

(e) We believe that the Signatory has made a fair offer to resolve the complaint and the complainant has not accepted the offer.

## **P. CHANGING COMPLAINTS POLICY**

- 1) Signatories and members of the Oversight Committee can suggest changes to the Complaints policy to the Administrator at any time subject to the requirements of The Code. The Programme Manager can also make its own suggestion for a change to this complaints policy at any time.
- 2) Signatories will decide whether to make the suggested change to the Complaints Policy.