

Whitehead Report: Implementation of Recommendations

A taskforce was established to implement all of the recommendations in the Whitehead Report. There was a comprehensive review of all related policies, processes and procedures, and a number of improvements and new initiatives have been put in place. The following matrix provides a high-level response to each recommendation individually.

Serial	Whitehead Report Recommendation	MFAT implementation action
A	<p>The Ministry of Foreign Affairs and Trade, in consultation with other agencies as appropriate, review the existing policy on waiver of immunity and specifically examine issues relating to:</p> <ul style="list-style-type: none"> - threshold - coverage - grounds and process for departure from the policy - additional instruments that might be used to support the policy - other matters that may be relevant to policy. 	<p>MFAT consulted with Police, Justice and Crown Law on this recommendation. The changes resulting from those consultations have been formally incorporated into MFAT policy. In particular, it is now explicit policy that a waiver of diplomatic immunity will be sought for all serious crimes where Police, exercising their independent function, determine that a prosecution is warranted.</p>
B	<p>Advice arising from this review be provided to the Minister of Foreign Affairs and other Ministers as appropriate with a view to making decisions on a formal statement of policy with regard to waiver of immunity.</p>	<p>MFAT provided formal advice to the Minister on changes proposed in response to the recommendations of the report. As a result, and now that the Whitehead report has been published, a formal statement of policy relating to waiver of immunity from criminal jurisdiction will be advised to relevant Ministry staff, relevant domestic agencies, and diplomatic missions accredited to New Zealand.</p>
C	<p>Protocol Division work with relevant parties to develop a clear and shared understanding about when responsibility for different tasks will be transferred and to ensure clear communication on such matters.</p>	<p>Formal procedures and process maps have been developed to make it clear when responsibility for tasks should formally be transferred between MFAT officials. Those procedures also formally demarcate decision-making responsibilities between Police and MFAT, recognising police independence in determining whether a prosecution</p>

		is warranted.
D	Protocol Division work with relevant parties to clarify expectations about who is responsible for informing whom, and in what general circumstances when incidents involving immunity and waivers of immunity are being managed.	MFAT now formally defines all roles and responsibilities relating to the prosecution of waiver cases. This includes establishing clear accountabilities and processes for keeping the offices of the CEO and the Minister informed, putting in place specific protocols for ensuring that formal updates and advice (ie going beyond informal emails) are provided to the CEO and Minister on a regular basis, and a requirement to ensure that messages intended for the CEO or Minister have been sent and received.
E	Clarity on reporting lines, issue management and escalation requirements be established for when managers at different levels are away from the office, and an acting manager is in place.	A taskforce approach to managing immunity cases has been implemented. The roles and responsibilities of all taskforce members are formally defined and confirmed with those staff, and notified to relevant internal and external partners. Leadership roles and accountabilities have been clarified and are now formally set when the taskforce is established. There are now formal transfers of responsibility and accountability when functions are passed from managers to acting managers.
F	Consideration be given to a degree of process mapping for management of immunity and waiver issues.	All processes for managing immunity cases have been process-mapped in a detailed way. These processes are kept in a single manual, which is available to all relevant staff. The manual is updated on a regular basis.
G	Additional internal Ministry guidance be developed on processes, protocols and systems. Guidance should include: interagency and internal coordination; stakeholder identification; roles and responsibilities; meeting arrangements;	All of the issues identified in this recommendation have been included within the process-maps or otherwise addressed. In addition, emphasis has been given to the importance of note-taking, record keeping, oversight, and

	note taking and record keeping; oversight; consultation; reporting and handover arrangements; and other matters as considered appropriate.	the hand-over of formal accountabilities.
H	The Ministry of Foreign Affairs and Trade review its approach to communications when dealing with immunity and waiver of immunity issues, with the review to encompass the appropriate formality of different communications; who needs to be informed in what circumstances; record keeping; media issues; public transparency of process and incidents; and such other matters as are considered relevant.	There are now clear and explicit processes and procedures for MFAT and other relevant agencies which stipulate who needs to be informed in what circumstances and with what frequency, how and what records are kept, and the required level of formality for different communications. MFAT is looking at how it can better provide information to the media and public on immunity issues, including by preparing this matrix which contributes to transparency of process.
I	When Third Person Notes are being sent in Protocol cases, the phrasing of any covering letter or email should be restricted to the transmission requirements only.	Specific guidance has been issued to Protocol staff on transmission of Third Person Notes to foreign missions in cases involving the waiver of diplomatic immunity. The phrasing of any covering letter or email will now be restricted to the transmission requirements only. In order to remove any risk of ambiguity or misinterpretation the only substantive language used will be the text of the Third Person Note.
J	As a matter of course, all Protocol communications to foreign missions should be copied within the Ministry beyond the author, her or himself.	MFAT has provided staff with specific guidance to ensure that all protocol communications with foreign missions has management oversight, is formally recorded, and that such communications are copied to all relevant members of the taskforce.
K	It should be standard practice in all Protocol cases of this type for the relevant Head of Mission to be called in, for the formal copies of the Third Person Note to be handed over in person at that meeting and for the Government's	It is now clearly and explicitly stipulated that the relevant Head of Mission will be called in and that formal copies of the Third Person Note will be handed over in person. Detailed guidelines and language is

	intentions, as expressed in the Note, to be carefully explained in the clearest possible terms.	now provided by a senior MFAT officer to ensure that key messages are delivered in the clearest possible terms.
L	At such formal meetings, Protocol should ensure a note taker is present in addition to the senior officer presiding over the handover of the Third Person Note. A file note on the meeting should be prepared subsequently.	A note taker will now be present at any meeting with a foreign mission regarding an immunity case. A detailed file note of all such meetings will be prepared and circulated to taskforce members in a timely fashion.
M	The Ministry give consideration to adopting, consistent with the distributed responsibility ethos, a more structured cross-divisional team approach when serious cases involving diplomatic immunity are being handled.	MFAT now takes a taskforce approach to all immunity cases. This includes engaging relevant legal, protocol, regional and communications experts.
N	Risk identification and management techniques be built into the handling of serious cases involving diplomatic immunity considerations.	Responsibility for risk identification and management is now formally allocated to a specified member of any taskforce managing diplomatic immunity cases.
O	In addition to informal updates, practices be established in regard to formal progress reports to the Minister via submission in serious cases involving diplomatic immunity matters.	Key milestones have been identified and stipulated to ensure that the Minister (and CEO) are formally informed and consulted with respect to immunity cases as they develop.
P	Protocol Division pay careful attention to the distribution of responsibilities in the office of the Minister of Foreign Affairs, and address their communications accordingly.	All MFAT Divisions are now provided with regular updates on the division of responsibilities within the Minister's office.
Q	With respect to Ministry secondees to Parliamentary Services and the Department of the Prime Minister and Cabinet, the Information Management Division investigate the possibility of relaying to their Parliamentary email addresses any emails sent to their Ministry email addresses.	MFAT has investigated options for this recommendation. All MFAT secondees' MFAT email addresses now include an out of office message advising that only their parliamentary email addresses should be used. The taskforce approach to the management of immunity cases, and the associated processes which are now stipulated, will also ensure that all

		substantive emails are seen by multiple addressees.
R	While avoiding being overly prescriptive, senior managers seek to promote further discussion with staff of the sorts of serious factors which would warrant escalation of issues to more senior levels, including the Secretary as appropriate, such as situations involving the rights of New Zealanders when serious crimes are alleged.	Tightened processes and procedures stipulate the key milestones at which the CEO is to be consulted. A culture of risk identification and management and escalation has been established throughout MFAT, with new management meetings established specifically for this purpose.
S	The Ministry, in consultation with Crown Law, Police and Ministry of Justice consider the value of establishing protocols to govern interagency responsibilities relating to the handling of diplomatic immunity and waiver issues.	MFAT has consulted with Crown Law, Police and Justice on tightened protocols to govern interagency responsibilities relating to handling of diplomatic immunity cases.
T	Protocol Division establish a formal handover process to make it clear when prime responsibility for an immunity issue passes from Protocol to another division.	There is now a formal process which governs when and how Protocol Division should hand over responsibility to another Division, and ensures that senior-level leadership responsibilities and accountabilities are re-stated.
U	The Ministry review its policies and processes governing follow up by New Zealand's Posts overseas for serious situations in which an offending diplomat leaves New Zealand either before or after a foreign state exercises its right to decline to waive diplomatic immunity.	Tightened processes and procedures stipulate the role for New Zealand's posts during an immunity case.