



Quality Commission Terms of Reference

1. Definitions and interpretation

In these Terms of Reference unless the context otherwise requires the following expressions have the following meanings:

"Participant" means each person or organisation who becomes a participant in the Scheme in accordance with Rule 6 of the Quality Commission Scheme.

"Participant" named in the complaint means any Participant against which a complaint is made.

"Participating Education Provider" means any NZQA registered private education provider who is a member of Independent Tertiary Education New Zealand (ITENZ).

"Commission" means the Quality Commission established in accordance with the Rules of the Quality Commission.

"Member" means any member of Quality Commission established in accordance with the Rules of the Quality Commission

"Chairperson" means the chairperson of the Commission.

"Codes" means the code of practice established from time to time relating to the provision of all or any of the services relevant to a Participant and includes any code developed by Independent Tertiary Education New Zealand (ITENZ) and ratified at a general meeting of that Association.

"Complainant" means a person (not being a Participant) or group making a complaint to the Quality Commission.

Reference to the provision of education services include, where the context allows, references to their non-provision.

"Services" means and includes:

- The provision of tuition
- The provision of accommodation.
- The provision of accurate and complete administration

“Panel” means the Panel of Adjudicators appointed to judge nominations and applications for the ITENZ Excellence Awards and speaker proposals for the ITENZ Conference.

“Awards” means the ITENZ Awards for Excellence.

“Terms of Reference” means these Terms of Reference as amended from time to time in accordance with the Rules of the Quality Commission Scheme.

References to the singular number (including without limitation references to "individual", complainant and "participant") include the plural number and vice versa.

Reference to dollar amounts are in New Zealand dollars.

2. Principal Powers and Duties of the Commission

2.1 The Quality Commission’s principal powers and duties encompass the complaints resolution service for students and the management of the ITENZ awards for excellence. These are:

Complaints Resolution Service for Students

- (a) to consider, at no cost to the Complainant, complaints arising out of the provision in New Zealand of services by any Participant principally to individuals but also to groups of individuals, except that such complaints shall not be considered in the first instance by members of the Commission appointed in terms of Rule 5.1 of the Quality Commission Rules.
- (b) to facilitate the resolution of such complaints whether by agreement, by making recommendations or awards or by such other means as seem expedient.

2.2 The Commission may give advice on the procedure for referring a complaint to the Commission. It is not a function of the Commission to provide information about education providers or the services or the business of any Participant.

2.3 The Commission may, if considered appropriate in the circumstances, provide mediation between Participants in relation to the provision by one or both of them of education services.

Management of the ITENZ Awards for Excellence

- 2.4 The Commission manages the ITENZ Excellence Awards for a number of award categories that acknowledge quality and excellence in Participant organisations with diverse areas of provision in tertiary education.
- (a) to appoint a panel of independent adjudicators comprising representatives of the Commission, Ako Aotearoa and/or other independent qualified assessors
 - (b) to ensure that the assessment process is transparent, robust and fair; is current and fit for purpose; and to make available the relevant information to Participants and to the panel to facilitate the process and enhance applications.
- 2.5 The Commission may give advice on the procedure for nomination and application to the ITENZ Excellence Awards. It is not a function of the Commission to provide information about education providers or the services of the business of any Participant.
- 2.6 In addition, the Commission is involved in judging speaker proposals for the ITENZ Conference. Its objects are:
- (a) to oversee a panel of at least three independent adjudicators comprising representatives of the Commission, Ako Aotearoa and/or other independent qualified persons for the purpose of judging speaking proposals for the ITENZ Conference
 - (b) to ensure the judging process is transparent, robust and fair; fit for purpose; and that all relevant information is made available to the Panel
- 2.7 The Commission may, if required, give advice on the procedure for speaker proposals. It is not a function of the Commission to provide assistance with the content of submissions or information about education providers or the services of the business of any Participant.

3. Limitations on the powers of the Commission

Complaints Resolution Service for Students

- 3.1 Where a complaint is made or referred to the Commission the complaint may only be considered if the Commission is satisfied that:
- (a) it is not more appropriate that the complaint be dealt with by a court, or under another independent or statutory complaints or conciliation procedure;

- (b) the complaint is made by or on behalf of the person to whom or for whom the Participant's services were provided;
- (c) (i) The complaint has been referred to and considered by the Participant's internal complaints procedures set up in accordance with the Rules of the Scheme, and the complainant is not satisfied by the outcome, or deadlock has not been reached within 2 months of the complaint being formally made, or
(ii) the Participant does not have available an internal complaints procedure which is operated in a bone fide manner in accordance with the Rules.
- (d) The complaint has been made to the Commission not later than two months after the date on which the Participant informed the Complainant that deadlock has been reached, and informed the Complainant of the existence of the Commission and of the two month limit to make a complaint.
- (e) the act or omission giving rise to the complaint first occurred not earlier than six months before that date but the Complainant did not become aware of it, and could not with reasonable care have become aware of it until after that date.
- (f) except where relevant new information is available, the subject matter of the complaint has not been
 - (i) compromised in a complaint by the same Complainant to the Commission; or
 - (ii) the subject of any proceedings brought by the same Complainant in or before any court, tribunal, arbitrator, or any other independent or statutory complaints or conciliation body or by a Statutory Ombudsman.
- (g) The Complainant has produced to the Commission a waiver in writing of the duty of confidence the Participant may owe the Complainant in respect of any information the Commission may request of the Participant in order to consider the Complaint.
- (h) The complaint is being pursued reasonably by the Complainant and is not trivial, frivolous or vexatious.

3.2 Management of the ITENZ Awards for Excellence

Where a nomination and application to the ITENZ Awards the nomination and application may only be considered if the Commission is satisfied that:

- (a) rules and procedures governing the nomination and application have been met

- (b) it is not more appropriate that the nomination and application be adjudicated by independent assessors in the event of a conflict of interest by all panel members
- (c) the application is made by or on behalf of the person who is nominated
- (d) the nomination/application is within the specified closing date unless the ITENZ Executive Board publicly extends an original closing date.

Speaker Proposals for the ITENZ Conference

- (e) rules and procedures governing the call for papers and submission of a proposal have been met
- (f) it is not more appropriate that the speaker proposal be adjudicated by independent assessors in the event of a conflict of interest by all panel members
- (g) the submission of the speaker proposal is within the specified closing date unless the ITENZ Executive Board publicly extends an original closing date.

4. Procedure

Complaints Resolution Service for students

4.1 Subject to the other provisions of these Terms of Reference, the Commission has discretion to decide the procedure to be adopted in considering complaints. The Commission shall also decide whether or not a complaint falls within the Terms of Reference and in reaching this decision shall consider representations from the Complainant and from the Participant concerned. When requested, the Commission shall within a reasonable time give the reasons in writing for the decision whether or not the complaint falls within the Terms of Reference.

- 4.2 Upon receipt of a complaint which falls within the Terms of Reference, the Commission shall:
- (a) forward to the Participant concerned a complete copy of the complaint if the complaint is made in writing, or if the complaint is not made in writing full details of the complaint, and shall forward to the Participant concerned any waivers of the Participant's duty of confidentiality received in accordance with Paragraph 3.1.(g) of these Terms of Reference.
 - (b) The Commission may require the Participant named in the complaint to provide any information which in the view of the Commission relates to that complaint, which is, or is alleged to be,

in its possession. If the Participant is in possession of that information, it shall as soon as reasonably practicable disclose it to the Commission (unless the Participant certifies to the Commission that disclosure of the information would place the Participant in breach of its duty of confidentiality to a third party whose consent has been refused after the Participant had used its best endeavours to obtain such consent).

- (c) Where any party to the complaint requests access to any information on the Commission's file, the Commission shall make the information available, provided that where any party to the complaint supplies information on the basis that it should be treated as confidential, the information shall not be disclosed to any other party to the complaint or any other person except with the consent of the party who supplied the information.
- (d) Within two months of the end of the process of consideration of the complaint, the Commission shall return, if requested, to each party all documents, evidence or information supplied by that party.
- (e) Notwithstanding Paragraph 5(a) of these Terms of Reference the Commission shall not be bound by any legal rule of evidence.

4.3 (a) At any time that a complaint is under consideration, the Commission may seek to promote a settlement or withdrawal of the complaint by agreement of the Complainant and the Participant.

(b) If there is no such agreement, the Commission may at the request of either the Complainant or the Participant concerned, make a written recommendation for resolution of the complaint. Prior to making such a recommendation the Commission shall give the Complainant and the Participant one month's written notice of the intention to make such recommendation, together with a summary of the reasons for making the recommendation. During the period of the notice the Complainant and the Participant may make further representations to the Commission in respect of the Complaint.

(c) If the Commission is minded to:

(i) propose that a complaint be settled or withdrawn on terms which appear to the Commission to be acceptable to both the Complainant and the Participant; or

(ii) make a recommendation for the settlement or withdrawal of a complaint; and

that resolution would involve the provision by the Participant of valuable consideration (whether in the form of a money payment or otherwise) then the Commission shall, unless the Participant has otherwise requested or agreed, state that it is open for acceptance by the Complainant only if he or she accepts it in full and final settlement of the subject matter of the complaint and agrees to waive and surrender all rights and causes of action (statutory or otherwise) he or she may have against the Participant in respect of the subject matter of the complaint.

- (d) If the Commission has made a recommendation which, within one month after it is made, has been accepted by the Complainant but not by the Participant, the Commission may make an award against the Participant.

An award shall comprise a money sum not exceeding the full cost of the services for which the Complainant has paid; the amount shall not be greater than in the opinion of the Commission is appropriate to compensate the Complainant for direct loss or damage suffered by him or her by reason of the acts or omissions of the Participant. The Commission may in addition grant to the Complainant such additional amount as in the opinion of the Commission is appropriate to reimburse the Complainant for incidental expenses reasonably incurred by the Complainant in making and pursuing the complaint.

- (e) In addition to the provisions of Paragraph 4.3 (d) an award not exceeding \$3,000 may be made to compensate the Complainant for inconvenience suffered by him or her by reason of the acts or omissions of the Participant.

- (f) An award shall be in writing and shall state the amount awarded and a summary of the Commission's reasons for making the award. The award shall be binding on the Complainant and (in accordance with its undertaking to the Commission) the Participant against which the award is made.

The Commission shall issue a report of the investigation into the complaint and copies of the report shall be sent to the Complainant and the Participant. .

- 5. In making any recommendation or award under these Terms of Reference, the Commission shall do so by reference to what is, in its opinion, fair in all the circumstances, and:

- (a) shall observe any applicable rule of law or relevant judicial authority; and
- (b) shall have regard to the Code of Practice applicable to the subject matter of the complaint and to good practice within the industry. In determining what good practice is, the Commission shall consult within the industry.

6. The Commission shall not be bound by any previous decision made by it or by any predecessor.
 - 6.1 Personal information collected by the Commission in the exercise the powers described in these Terms of Reference shall be used solely for the purpose of carrying out duties under these Terms of Reference. Such information may be used in public reports and case notes only if they do not include any information from which it might be possible to identify the person to whom the information relates. Personal information will not be retained longer than is necessary for the purpose for which it was collected and will in any event be destroyed not later than seven years after the discontinuation of the investigation to which it relates.
 - 6.2 Except as provided in Paragraph 4.2.(c) or as required by law or as properly and reasonably required in connection with any legal proceedings instituted by or against the Commission or any of its officers the Commission shall not disclose to any person any information concerning a complaint from which it would or might be possible to identify the Complainant or any Participant named in the complaint or any information of a confidential nature which was obtained.
 - 6.3 Paragraph 6.2 shall not prohibit the disclosure of any information to the Complainant or the Participant named in the complaint or to the Chairperson or to any employee, consultant, independent contractor, or agent of the Commission to the extent that such information is reasonably required by that person for the purpose of performing his or her duties to the Commission.

Management of the ITENZ Awards for Excellence

- 7.1 Subject to the provisions of these Terms of Reference that relate to the management of the Awards, the Commission has discretion to decide the procedure to be adopted in judging the Awards. The Commission shall also decide whether or not nominations and applications fall within the Terms of Reference and in reaching this decision shall consider the rules governing the Awards and representations from the Panel.
- 7.2 The Commission shall appoint a Panel to independently address the nominations and applications.
- 7.3 The Commission shall consult with the ITENZ Executive Board on the number of award categories, the reduction or addition to awards, and any other matter that the Commission and/or ITENZ Board may introduce that directly relate to the Awards.

7.4 Information supplied in the nominations and applications shall be used solely for the purpose of carrying out duties under these Terms of Reference and shall not be made available to any other party outside the Commission and the Panel, except that information which applies to the winning nominations/applications after the adjudication process, for the purpose of announcing the winners and any related media release and media announcements.

7.5 The Commission shall not disclose to any person, outside the Panel, during the adjudicating process any information in the nominations and applications from which it would or might be possible to identify the applicant. This shall not prohibit the information in the nominations/applications to independent assessor/s in the event of a conflict of interest by the Panel to the extent that such information is reasonably required by that person/s for the purpose of performing their duties to the Commission.

In addition, the Commission shall use an equivalent procedure for adjudicating Speaker Proposals for the ITENZ Conference. Refer the Quality Commission Rules 2i, (a), (b), (c) and (d).

8.1 To inform the community of the activities of the Commission, the Commission shall present an Annual Report.

8.2 The Commission may make recommendations to the Board of ITENZ from time to time in relation to the Terms of Reference or any relevant Codes of Practice which may be introduced and which have a bearing on its responsibilities.