

# Quality Commission Terms of Reference

## 1. Definitions and interpretation

1.1 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 7 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 financial member of the Quality Commission Scheme

"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 codes 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 the New Zealand Association of Private Education Providers (NZAPEP) 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

"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 are:

- (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 6.1 (b) 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.

## **3. Limitations on the powers of the Commission**

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 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

(e) the act or omission giving rise to the complaint:

(i) first occurred on or after 1 January 2005: or

(ii) 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) comprised 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.

#### **4. Procedure**

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 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 \$2000 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 state that, if within one month after its issue the Complainant agrees to accept it in full and final settlement of the subject matter of the complaint, 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 copy of the award to the Complainant and the Participant and shall issue to the Complainant a form (addressed to the Commission and the Participant) to be completed by the Complainant whereby he or she may accept the award in full and final settlement of the subject matter of the complaint.

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.
- 7.1 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.
- 7.2 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.
- 7.3 Paragraph 7.2 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.

- 7.4 To inform the community of the activities of the Commission, the Commission shall publish an Annual Report.
- 7.5 The Commission may make recommendations to the Board of NZAPEP 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.