

Terms of Reference for ICNZ Standing Committees and Working Groups

Background

1. The ICNZ Board has established standing committees to assist ICNZ's work. The Board also establishes working groups from time to time for the same purpose.

Purpose

2. Standing committees provide a forum for ICNZ members to discuss issues of importance to the industry within each committee's area of reference and to seek outcomes and solutions that are of value for the sector.

Guiding principles

3. In carrying out their functions, standing committees will act in good faith and will:
 - a. Work as a team and support each other in finding the most efficient ways to achieve the Purpose set out above.
 - b. Be open, frank, honest, and constructive in all dealings with each other.
 - c. Use these Terms of Reference as a benchmark against which the Parties can set their approach to potential issues of conflict between them as work progresses.
 - d. Maintain appropriate ethical and legal practices and in particular always ensure they comply with the provisions of the Commerce Act 1986 and its amendments. A guideline on complying with the Commerce Act is appended (as "Appendix 1").
 - e. Ensure committee members consult appropriately across their own organisations to ensure that views expressed are fully representative of their company view.

Governance

4. ICNZ will call for nominations for standing committees each year. Members can nominate one person to each standing committee.
5. ICNZ's Board will ratify the nominations made at the Board meeting held at the ICNZ AGM.
6. Standing committees will meet quarterly, or more regularly if required.
7. A quorum of 50 percent plus one person is required at all meetings.
8. A record of apologies and attendances is to be kept by each committee and be reported at the ICNZ AGM.
9. Standing committees report to the Chief Executive of ICNZ through their Secretary.

10. Final authority for all committee initiatives resides with the ICNZ Board.
11. Standing committees must elect a Chairperson and Deputy Chairperson annually, following the AGM. Nominations and elections can happen either at the first Committee meeting of the year, or by email circular in advance of that meeting. Nominations must be seconded by a different member of the Committee. If there are two or more nominees, the highest polling nominee shall be elected. Where two or more candidates are tied, then those candidates shall be the subject of one further election. In the event of a tie on such further election the successful candidate shall be determined by lot.
12. ICNZ will provide a Secretary for each standing committee and will keep accurate minutes of the discussions and decisions made by the committees.
13. The Chief Executive of ICNZ or the Secretary of each committee can provide a report on relevant issues for inclusion in the Chief Executive's report to the Board and make formal presentations to the Board as required.
14. Standing committees will produce a Business Plan at the first meeting of each year outlining the key results and objectives for the year, the tasks required to achieve those objectives, the relevant timing and the persons responsible. The Business Plan must align with the ICNZ Strategic Plan.
15. With the approval of the Chair and Secretary, Standing Committees can co-opt internal or external specialists to the committee if needed, for tasks where particular expertise is required, e.g. claims or assessing specialists.
16. When a vacancy occurs on a Standing Committee the Secretary will ask the controlling officer of the departed member to nominate a replacement. The ICNZ Board does not need to approve a replacement nomination.

Responsibilities of controlling officers

17. Members' Controlling Officers must nominate suitably experienced senior staff to serve on ICNZ's Standing Committees, and ensure that nominated Standing Committee members carry out their role (as described below) effectively.

Role of standing committee members

18. Members are appointed to committees by their controlling officer to assist the work of ICNZ.
19. Members must:
 - a. Contribute to the development of a Business Plan for the Committee that is aligned with the ICNZ Strategy.
 - b. Actively participate in the work of the committee

- c. Make best endeavours to attend every committee meeting or, if they are unable to attend, to appoint a proxy.
- d. Bring to their committee's attention, issues that require industry outcomes and solutions and to actively contribute to outcomes and solutions.
- e. Identify shortcomings in their expertise and the committee's expertise on particular issues, and recommend internal or external people who could contribute effectively to the committee on those issues.
- f. Represent the views of their company, not personal views. This means that members must consult widely across their company and are expected to report back to their company on matters brought to their committee.
- g. Read the agendas and attached documents for each meeting and be in a position to contribute fully to the discussions on agenda issues.
- h. Be fully aware of these Terms of Reference and appendices.
- i. If leaving the committee, arrange an appropriate handover for their successor.

Role of chairpersons

20. Chairpersons must:

- a. Lead the development of a Business Plan at the outset of each year which as far as possible aligns with ICNZ's strategy as set by the ICNZ AGM.
- b. Ensure the committee delivers on that Business Plan.
- c. Encourage full participation of all members to achieve outcomes and solutions to issues that are valuable to the industry.
- d. Work with members to identify issues that need to be brought to the attention of other committees.
- e. Liaise closely with the Secretary in setting the agenda for each meeting and approving the draft minutes for circulation to committee members.
- f. Ensure that all Committee discussions comply with the provisions of the Commerce Act.

Role of secretaries

21. Secretaries must:

- a. Arrange Committee meetings.
- b. Send a draft agenda to committee members two weeks prior to the committee meeting, with a request for suggestions for any further agenda items.
- c. Send the final agenda and meeting documents a week prior to the committee meeting.
- d. Write minutes and ensure action points are completed.
- e. Report on relevant issues for inclusion in the ICNZ Chief Executive's report to the Board and make formal presentations to the Board as required.
- f. Prepare a list of the main points and key messages arising from each committee meeting for circulation to all committees and publication on the ICNZ members' website.

- g. Facilitate discussion of committee issues between committee meetings by way of email circular and bilateral phone calls to members or teleconferencing with members. Any issues requiring a decision by the committee that needs to be dealt with between meetings must be dealt with by email circular to all committee members.
- h. Provide an induction pack to new committee members, including these Terms of Reference, key ICNZ publications such as annual reports, copies of the minutes of the last two meetings of the committee, the ICNZ Regulation Radar, and details of how to access the ICNZ members' website portal.
- i. Ensure standard ICNZ items for noting are on each agenda, including quarterly aggregate statistics collected by the Finance Committee, the Regulation Radar, other standing committee's key messages, discussion of other relevant market news.
- j. Monitor the Committee's progress against the Business Plan.
- k. Manage the process for electing a Chairperson and Deputy Chairperson.

Costs

- 22. Committee meetings will be held at the most cost-effective location.
- 23. Companies based outside of the place where the meeting is held will be eligible to have reasonable travel costs reimbursed for standing committee meetings.

Attendance and proxies

- 24. Members must make every endeavour to attend all meetings and if absence is unavoidable, a proxy from within the company should be appointed to attend. Members should advise the committee secretary if a proxy is to attend a meeting in their place.
- 25. Only persons formally elected to a standing committee or a proxy appointed in writing shall be eligible to vote. Only one vote per company will be allowed.
- 26. Attendance and apologies will be recorded at each meeting and will be reported to the ICNZ AGM each year.

Liability insurance

- 27. ICNZ will arrange appropriate liability insurance covering all members' staff for their work on ICNZ standing committees and working groups.

Disputes

- 28. If a dispute arises, members will use their best endeavours to resolve the dispute at committee level through consensus. If the parties are unable to reach consensus, the dispute will be escalated to the Chief Executive of ICNZ who will either rule on the issue or refer the dispute to the ICNZ Board for a decision.

Appendix 1

Complying with the Commerce Act

Introduction

This document has been created to provide guidance to ICNZ's standing committees and working groups on compliance with the *Commerce Act 1986* ('the Act').

ICNZ takes compliance with the Act seriously and will enforce this guidance note strictly. There are two main reasons for this:

- Penalties for breach of the Act are significant: up to \$500,000 for individuals and, for a body corporate, the greater of either \$10 million or three times the commercial gain from the breach or 10 percent of turnover.
- An individual member of ICNZ can be held liable if ICNZ acts in an anti-competitive way, even if the individual member was not involved in or did not know about the anti-competitive conduct.

We recommend members familiarise themselves with this note and the Commerce Commission ('Comcom')'s guidance (see below), which should be read together with this document. ICNZ staff and the chairs of ICNZ's standing committees in particular will be responsible for enforcing strict compliance with this guidance.

Context and generic guidance

Comcom has issued general guidelines for compliance with the Act for trade associations like ICNZ. That guidance is available through the Comcom's website (<https://comcom.govt.nz>) or [by clicking here](#).

The Act prohibits any agreement that has the purpose, effect or likely effect of substantially lessening competition. Certain conduct is deemed to substantially lessen competition, including:

- price fixing
- restricting output
- market allocating.

Agreements (called 'contracts', 'arrangements' and 'understandings' under the Act) do not need to be formalised for the Act to be breached. They can be written or oral. All that is required to breach the Act is a consensus leading to an agreed course of action. Even a "nod and wink" between parties can be evidence of reaching an agreement.

Price fixing is where two or more businesses agree on what prices they will charge to avoid having to compete with each other. Price fixing is not limited to agreements between competitors setting a specific price for goods or service – it also includes competitors agreeing to fix any part of a price, or

to set according to an agreed formula. Members must avoid discussions of any matter relating to pricing, especially future pricing arrangements.

Bid rigging (or collusive tendering) and market sharing are agreements where competitors agree to divvy up a market. For example, if IAG and Vero agreed to only sell their products in the North and South Island respectively, or if IAG and Vero agreed that IAG would sell motor policies and Vero would sell marine policies, which would be an anti-competitive market sharing agreement.

Output restrictions are agreements to limit supply to increase the price of a service. For example, in a soft market if reinsurers and pension funds agree to limit the amount of capital available for retail insurers to drive prices up.

Discussions about how members are tailoring their particular products and services should also be discouraged. Even if the discussion is not about price it could have the potential to substantially lessen competition if, say, there was agreement between members about approaches to take to a product. For example, a discussion about the merits of moving from open-ended replacement house policies to sum insured policies could be anti-competitive if members expressed a view about what course their company intended to take. Any information shared by members must be generic rather than specific, and must be historical rather than forward-looking.

This document is intended to be a living document. If members have examples they would like to add over time to develop a knowledge base of what kind(s) of conduct to avoid, please refer those examples to ICNZ.

Compliance and what members should do if an issue arises

Chairs of ICNZ meetings must regularly remind members that they should avoid discussions relating to pricing particularly and anything that has the potential to substantially lessen competition generally.

If any such discussion ensues, the chair of the meeting must expressly state that there is no obligation for members to follow the outcome of that discussion.

If any member has concerns about a conversation that has the potential to breach the Act, whether before, during or after that conversation, the member must explicitly bring its concerns to the attention of ICNZ and any other members involved in the conversation.

If any member is uncomfortable continuing with the course of a conversation, the member should feel free to leave the meeting.

ICNZ must record any discussions about members' concerns of breaches of the Act in the minutes of that meeting.

If the member has concerns after the meeting has ended, the member must write to ICNZ's CEO and notify the CEO of the discussion and, if appropriate, disassociate itself from that discussion.