

# Regulatory review of the Domain Name Commission by David Pickens.

The Domain Name Commission's response.

domain name  
commission nz



## 1. Introduction

In 2018, the Domain Name Commission had its first independent regulatory review of its operations. The main aims of the review were to benchmark the Commission in relation to good industry regulatory best practices.

The draft independent review was open for public consultation between 4 April and 6 June 2019. The independent reviewer Mr David Pickens incorporated the feedback from the public consultation process into his final report, which has now been published in August 2019.

The Domain Name Commission welcomes the recommendations from its inaugural independent review of its operations as an industry self-regulator.

The Commission has already commenced the implementation of some of the recommendations and will continue to incorporate the report's findings and recommendations in its priorities over the coming year.

## 2. The Independent Review Process

Here are the key milestones in the independent review process:

- DNCL initiated the review, and a draft overview of the reviewer's understanding of the project requirements was prepared, including proposed steps for completing the review, and submitted to DNCL for review.
- Internal documents were reviewed as deemed appropriate by DNCL
- Key DNCL staff and stakeholders selected by the DNCL were interviewed.
- A desktop study of regulatory excellence was undertaken, including seeking to identify performance measures used by similar organisations overseas.
- An early draft of the report was reviewed by John Burton of Iazard Weston.
- The draft report was made available for DNCL to review. Prior to finalising the report, errors, failures of logic and other changes as necessary to best achieve the purpose of the review were made.
- The draft report was published and available for public comment
- The reviewer considered the feedback from the public consultation and prepared a final report.
- The final report was considered by the DNCL Board and this response was prepared. The final report and DNCL's response were then published.

## 3. Key findings

The review acknowledges the Domain Name Commission's role and importance in maintaining a competitive .nz domain name market and necessary contribution it needs to make for better consumer outcomes in the .nz domain name space.

The review notes there is a high level of support for the Domain Name Commission from the various government, international, law enforcement, Registrar and broader local internet communities interviewed.

The review recommends the Domain Name Commission take a stronger stance with its information collection practices so that the nature and magnitude of any issues relating to the .nz domain name space might be better known over time. The recommendations also reflect the differing views held about the role of the Commission in addressing broader Internet-related issues such as domain name related harm. There is a specific recommendation encouraging the Commission to develop a strategy and implementation plan to incorporate Māori values in our operations.

#### 4. How we are Responding to the Review

In carrying out his review, Mr Pickens has brought leading regulatory techniques, including a robust framework for planning and assessing the Commission's operations. We aim to refine our approach over the coming year to address the independent review's findings and recommendations.

The Commission has already commenced the implementation of some of the recommendations and will continue to incorporate the report's findings and recommendations in its priorities.

We have identified several improvement areas including, process improvement, delivery capability, emerging policy considerations, stakeholder relationship management and enforcement and compliance.

Below is a table summary of each of the key recommendations with a response that falls into one of either two categories supported or supported in principle. The supported in principle is where we agree with the spirit of the recommendation but not necessarily the recommended approach and need to perform some further work to understand how to reach the desired outcome.

#### 5. Next Steps

We have published the final report and how we immediately intend to respond to the findings of the independent review.

We have appointed new personnel to key implementation roles to assist with progressing the findings and recommendations contained in the report. These staff have either started at the Commission or are due to start in September 2019. As part of our implementation work, we will engage with stakeholders on our proposed approaches over the medium-term.

We also plan to provide a further progress update on our response to the final independent review report as part of our reporting requirements.

## Detail on our Response to the Independent Review

**REC1:** The DNCL should view itself more as a competitor against other TLDN administrators and regulators. A useful objective would be to better meet the needs and preferences of registrants than other TLDNs

Supported	The Domain Name Commission in 2018 opened its contact centre to better take enquiries from registrants. The Commission has also included a five-star rating system which seeks real time feedback following enquirers. The Commission will also consider surveying registrants in 2019/20 about their needs.
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**REC2:** To the extent commercial and public interest objectives are believed to conflict with respect to management of the .nz space, these conflicts need to be identified and assessed with a view to their effective management.

Supported	The Commission will raise this as an issue for: Inclusion on the DNCL corporate risk register Consideration for the rewrite of the operating agreement between InternetNZ and DNCL after the conclusion of US litigation
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**REC3:** The DNCL commence a process to explore the utility of a comprehensive information disclosure regime to drive better performance across registrars in the .nz space.

Supported	Building on its collection, visualization and dissemination of market statistics <a href="https://dnc.org.nz/the-commission/statistics">https://dnc.org.nz/the-commission/statistics</a> the Commission will commence a broad review of its information disclosure requirements to drive better performance across registrars in the .nz space. The Commission will work with InternetNZ and other stakeholders in regards to this recommendation.
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**REC4:** The DNCL commence a process to identify, collect and publicly disseminate information on its performance over time.

Supported	The Domain Name Commission will consult with other self regulators through its participation in the Dispute Investigators Group.  We will, where practicable, look to benchmarks for industry based customer dispute resolution schemes.. For example, the Australian Government’s benchmarks for industry-based Customer Dispute Resolution and any New Zealand equivalent benchmarks. <a href="https://static.treasury.gov.au/uploads/sites/1/2017/06/benchmarks_ind_cust_dispute_reso.pdf">https://static.treasury.gov.au/uploads/sites/1/2017/06/benchmarks_ind_cust_dispute_reso.pdf</a>  Through our active engagement in a number of international forums we will also gather information on what similar organisations are reporting in terms of performance.
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**REC5:** The DNCL invite the ICAAN to explore putting in place a process to develop a robust information disclosure regime to provide information on the relative performance of TLDNs as a tool to lift overall performance in the domain name market

Supported in Principle	The Domain Name Commission agrees in principle with the benefits of having a global information disclosure regime for lifting overall performance in the domain name market.  An example of where consistency in standards has improved overall performance is in the area of registry service level agreements.
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Detail on our Response to the Independent Review	
	<p>However, in a multi-stakeholder environment, the Domain Name Commission has limited ability to influence in ICAAN or other CCTLDs in regard to an information disclosure regime.</p> <p>The Commission can and will ask respective international coordination bodies such as CENTR and APTLD to survey its members in respect of what information disclosure practices they have to align .nz needs in this area.</p>
<b>REC6:</b> That the DNCL consider the merit of rescinding the current market concentration policies.	
Supported in principle	The Domain Name Commission will write to the Commerce Commission about this recommendation. As part of the broader independent .nz end to end policy review which started in mid 2019 the issue will also be raised.
<b>REC7:</b> In the event the DNCL does not consider competition risks to be adequately managed by the Commerce Commission alone, it is further recommended market concentration information continue to be collected, together with other information that might be useful to indicate whether there might be an evolving issue with respect to the abuse of market power by registrars. The information collected should be made publicly available.	
In the event evidence emerges of growing risks, the relevant information should be made available by the DNCL to the Commerce Commission for them to respond to as appropriate.	
Supported in principle	As above the DNCL will discuss this issue with the Commerce Commission and the broader local internet community.
<b>REC8:</b> Draw on international experience to date, in particular the effectiveness of measures so far deployed and new measures being developed.	
Supported	<p>The DNCL agrees it is important to draw on international experience in terms of effectiveness measures.</p> <p>As part of our continuous improvement efforts we will review the effectiveness measures developed for measures.</p>
<b>REC9:</b> Explore the importance of co-ordination and co-operation between countries and TLDN operators for new measures to be effective. This could involve engagement with ICANNs Public Safety Working Group	
Supported in principle	<p>The DNCL agrees in principle to coordination and co-operation in the international community.</p> <p>The current Memorandum of Understanding InternetNZ Group has with MBIE recognises the role of InternetNZ and the Domain Name Commission in international fora.  <a href="https://internetnz.nz/sites/default/files/2016-05-InternetNZ-MBIE-MoU-dotNZ-IntNZroles-2018.pdf">https://internetnz.nz/sites/default/files/2016-05-InternetNZ-MBIE-MoU-dotNZ-IntNZroles-2018.pdf</a></p> <p>The Domain Name Commission and InternetNZ will continue to coordinate engagement at an international level.</p>
<b>REC10:</b> Work with other agencies to develop an enforcement option that might better promote the public interest compared to the current strategy.	
Supported	<p>The Commission will include this as a priority in the development of Compliance Strategy and a 2019/20 compliance workplan.</p> <p>The Commission has engaged Deloitte to assist staff with the development of its compliance work agenda. As part of the development of our compliance approach there will be consultation with stakeholder as this work develops.</p>
<b>REC11:</b> Identifying measures to improve the integrity of the information contained on the register, allowing access to that information for law enforcement purposes, and the process for removing registrants from the Register to prevent harm	

## Detail on our Response to the Independent Review

Supported in principle	<p>The Domain Name Commission will continue to enhance its invalid details process for domain name cancellations.</p> <p>Integrity checks will also be raised as part of the compliance work program for 2019/2020.</p> <p>The Commission already has a MOU with CERTNZ in relation to access to withheld personal information and regularly liaises with various law enforcement agencies in relation to disclosures of personal information permissible under Principle 11 of the Privacy Act.</p> <p>As part of the end to end review of .nz policies the Commission will also raise this as issue for the independent panel to consider.</p>
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**REC12:** The expected effectiveness of any additional measures for both protecting the integrity of and confidence in the .nz space, and reducing internet related harm in New Zealand.

Supported in principle	<p>The Commission and InternetNZ started the conversation with various stakeholders in November 2018 about what role, if any, the Commission should play in addressing internet related harm.</p> <p>InternetNZ has commenced a broad review of the .nz policy framework. This review will run throughout 2019 and an independent panel will report back on its findings in early 2020.</p> <p>The Domain Name Commission will raise the issue of harm in the context of that review.</p>
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**REC13:** The expected cost of any enforcement measures, including but not limited to; privacy, reduced access to the internet for registrants (delays, higher costs), legal and financial risks of removing registrants from the Register when they should not be, and reduced choice of registrar

Supported in principle	<p>The Domain Name Commission currently has no power to remove domain names under .nz policy except where a registrant's details are invalid.</p> <p>Any changes to the Commissioner's functions or powers including appeal rights of registrant's where a decision to remove a registrant from the register is made incorrectly will need to be raised as part of the broader .nz policy review.</p>
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**REC14:** The process to be used by regulators when seeking the removal of a registrant from the Register

The burden of proof required before making that approach so that there is a high level of confidence that the decision is the right one

Whether compensation should be available for registrants in the event they are incorrectly suspended from the Register

Who should have responsibility and bear the legal risk for any additional enforcement functions, in particular taking responsibility for making the call to remove a registrant from the register. Who should be responsible for additional functions should be guided by considering which party would have the best incentives, capacity and capability to be effective in delivering on the enforcement objectives having regard to managing the related risks and cost

## Detail on our Response to the Independent Review

The pros and cons of an incremental versus comprehensive (big bang) approach to reform

Who should meet any additional financial enforcement costs and how, having regard to what parties are the beneficiaries and “risk exacerbators”, informed by the Treasury guidelines on recovering costs in the public sector.

In the event it is found the status quo is to be preferred, the reasons for this decision should be well publicised so that registrants and others might develop a good understanding of the reasons for that decision. Public comment should be invited on those reasons. Further, the opportunity should be taken to inform participants in the .nz space how they themselves might better manage internet related risks and harms.

In the event a new approach is favoured or significant disagreement remains between stakeholders, a process of public consultation should be initiated centred on the new approach and the status quo. Ideally that process should be taken forward by a working group of key stakeholders who would hear and consider submissions, and oversee the preparation of the discussion document and final decisions.

Supported in principle

Building on the Commission’s invalid details process and existing material it provides to regulators for naming the Domain Name Commission as a second respondent in any legal proceedings, the Commission will undertake a review of its processes in regard to domain name cancellations.

The Commission will undertake to publish new materials to its website to explain how under current .nz policy the Commission handles requests for removal of domain names from the register.

**REC15:** The DNCL, together with relevant Māori stakeholders, review its performance in incorporating Māori values, perspectives and ways of doing things into its decision-making and, having regard to the discussion in this chapter, take steps as necessary to ensure it is working towards achieving best practice.

The Domain Name Commission supports this principle. It is consistent with good stewardship of the .nz domain name space and operating in a multi-stakeholder environment.

The Commission will work with InternetNZ in this area to develop a strategy and implementation plan to incorporate Māori values in its operations.