

Jamie Baddeley  
President  
Internet New Zealand Inc  
Wellington

PO Box 11 881  
Level 11, 80 Boulcott Street,  
Wellington 6011,  
New Zealand  
Office: +64 4 555 0123  
Email: [office@internetcz.net.nz](mailto:office@internetcz.net.nz)  
[www.internetcz.net.nz](http://www.internetcz.net.nz)

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**internetcz**

Jordan Carter  
Chair  
Brent Carey  
Domain Name Commissioner  
Domain Name Commission Ltd  
Wellington

By email: [dnc@dnc.org.nz](mailto:dnc@dnc.org.nz)  
[jordan@internetcz.net.nz](mailto:jordan@internetcz.net.nz)

Dear Jordan and Brent

## RESPONSE TO THE PICKENS REVIEW

This letter is InternetNZ's formal response to the findings of the Pickens Review (the Review), published by DNCL (the Commission) earlier this year. It also notes the Commission's own response to the Review, published alongside the final review.

Thank you to you and to the reviewer, David Pickens, for a thoughtful analysis of the Commission's role and environment. New understandings have been teased out, and constructive suggestions for a meaningful programme of change and improvement for the Commission to take on board.

As with any review in limited time and with a reviewer new to the role, there are some aspects where the findings do not reflect a full understanding of the matters within the scope of the review. This does not detract from the overall review, but the purpose of this letter is to set out InternetNZ's view as shareholder and as the ccTLD manager for .nz on some of the matters raised, or to correct some matters.

By making this response public, we intend to contribute to the ongoing evolution of the Commission's role in a transparent and open way.

If you have any questions arising, please feel welcome to raise them with me.

### Commission's overall role - a vital and successful part of .nz

The Review coincided with significant structural changes to the InternetNZ Group, driven by a desire to simplify and reduce the management and governance overhead of the Group and to make it more flexible, nimble and effective.

**Helping New Zealanders  
harness the power  
of the Internet.**

As part of these changes, the Commission's role was changed. Responsibility for the .nz policy framework now rests with InternetNZ, and the service level agreement framework between DNCL and NZRS/InternetNZ has been replaced by service level expectations committed to by InternetNZ.

A strong expectation was set, with the appointment of the Group CEO as Chair of the Commission's Board, that there would be very close collaboration on all key issues, and a seamless operational approach to making the group work effectively.

In this changed environment the Commission has a more focused role. That role consists of key elements of the management of the .nz marketplace:

- A fair and effective compliance framework applicable to participants in .nz
- Dispute resolution services
- Authorisation and deauthorisation of .nz registrars
- Oversight and monitoring of the market for .nz domain names

An important aspect of the Commission's work is in its independent exercise of its compliance and dispute resolution roles. Without fear or favour, and without regard to economic issues like registration numbers, the Commission acting through the independent judgement of the Commissioner assures InternetNZ, registrars, registrants, key stakeholders and the public at large that .nz is operating on a fair basis.

These functions and this particular aspect of independence are a significant contribution towards making .nz the preferred domain of choice for New Zealand domain name registrants.

Aside from the independence of decision noted above, the InternetNZ group intends to act "as one" - and so in the work to operate .nz in the public interest, InternetNZ and DNCL work hand in glove.

Our observation is that the Commission's strategy is consistent with this statement of its role, and that the Review's findings are, broadly, a welcome endorsement of how well the Commission is discharging these responsibilities. These findings are particularly heartening given our goals for the structural changes to InternetNZ and the new role for the Commission. There is much to be proud of here, alongside areas for improvement.

Congratulations to you and the team for the positive findings.

There are two areas where we have specific comments that qualify or disagree with the reviewer's findings (fees setting and the Commission's role in the public promotion of .nz). These are detailed in the following sections. A further section notes some other minor points, and a closing section notes forthcoming updates to the foundational documents of DNCL.

## Setting of fees

The Reviewer's report deals at pages 70-75 (findings 13-17) with fee setting by the Commission. This section of the report mixes together two issues, in our view:

- the fees the Commission charges for authorisation of new .nz registrars and for dispute resolution, and
- the fees charged for registrations of .nz domain names

To the extent the findings are relevant to the Commission and the fees that it sets, the logic set out in the report is accurate.

Fee setting for .nz domain name registration rests with InternetNZ. Council adopted a framework for fee setting at its meeting in October 2019, and the Commission plays a role in that process through assessing the market impact of any possible fee changes.

InternetNZ is not contemplating any different role for the Commission in setting fees for .nz domain name registrations, and we are not contemplating any changes to the Commission's discretion to set fees at an appropriate level for the services it offers.

## **Promotion of the .nz domain name space**

The review briefly considers promotion of .nz at page 45 (finding 9).

InternetNZ is responsible for the promotion and marketing of the namespace. DNCL has experience in the promotion role. InternetNZ is experimenting with marketing. Together the Group has the insight and creativity needed to market and promote .nz effectively, but separately neither part does.

As part of the changes made last year, agreement was reached to develop a new common brand framework. This has now been rolled out and it is great to see some common visual elements between the organisations and offerings of the group - DNCL and InternetNZ, .nz and the Broadband Map, NetHui and more.

As the framework rolls out, InternetNZ's view is that the vast majority of promotion of .nz will be done using the product brand, with the ideas and work done on that promotion done by InternetNZ and DNCL working together.

The reviewer suggests that there is no reason in principle for the Commission to be or not be doing promotion work. InternetNZ's view is somewhat different, based on placing the responsibility for this work being done effectively with the right organisation based on responsibilities within the .nz system.

InternetNZ's overall goals include the promotion and marketing of the namespace so the public can realise most value from it, and so as to maximise registrations and thus the income InternetNZ can devote to its public good work.

DNCL can support this work given its role, but it cannot lead it - and cannot in public use its brand to promote the namespace with these ends in mind. Promotion is not ever totally detached from a sales effort, unless separate brands are used - and we do not wish to see past efforts to use different brands for .nz being re-energised.

Where DNCL is promoting its role in the .nz system, for instance around compliance and dispute resolution, we anticipate it will be using its brand and that other parts of the brand family will amplify this work.

Getting promotion right should be a clear focus of management across InternetNZ and the Commission. Council's expectation is that collaboration is vital here for outcomes that best serve the public interest.

## Other matters

- We welcome and support the Commission's decision to provide ongoing reporting on the implementation of the Review's recommendations. This is an important component of showing the public that the findings are being worked through and delivering meaningful change.
- We note that the Report provides useful constructive input to the ongoing .nz policy review, and also to future work about how to engage the public in .nz most effectively. The .nz policy review team panel had the Report in front of them already, at the time of writing.
- Exploring the concept of 'registrant voice' is something we support, both for the Commission and for InternetNZ in all aspects of the .nz domain name system. It would be useful to work out what can reasonably be expected from the public in taking an interest in how .nz operates, and developing effective 'voice' channels alongside traditional 'exit' ones where it makes sense to do so.
- We note that the balancing of commercial and public interest objectives in respect of the operation of the .nz domain name space (Rec 2) is largely the responsibility of InternetNZ - the Commission's role is generally exclusively public interest focused, given its role in the .nz system.
- We would like you to consider along with InternetNZ the broader impact - including on the ccTLD manager - of any proposed changes to the market concentration policies (Rec 6). For instance, what would be the impact if one registrar controlled 80%+ of the market, as a hypothetical edge case?
- We welcome a collaborative approach to implementing a number of the recommendations where they fit with a broader whole-of-dotNZ or InternetNZ-DNCL approach (e.g. performance of the domain, influencing ICANN re information disclosure re other TLDs, linkage to Te Ao Māori).

## DNCL foundational documents update

InternetNZ is committed to updating the key foundational documents applying to DNCL - the company constitution, the operating agreement, terms of reference for the Board and other key documents.

This work has been deferred following the 2018 structural changes to allow for litigation to be dealt with without changing any aspect of the company's role.

As that process moves towards a conclusion, InternetNZ will pick this up and will look forward to bringing the governance framework for the Commission up to date, and into coherence with the rest of the revised operating model.

## Conclusion

Thank you again to David Pickens, to the former Commissioner and DNCL Board members and current and directors, for the instigation and conclusion of this review.

I reiterate our view that it has been a worthwhile exercise, and provides a strong vote of confidence for the Commission overall, while also highlighting important and worthwhile areas of improvement.

I look forward to InternetNZ and the Commission working together to make the most of the opportunity the Review represents.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Baddeley', with a long horizontal flourish extending to the right.

Jamie Baddeley  
**President**