

TERMS OF REFERENCE

A. INITIAL ESTABLISHMENT OF THE OVERSIGHT COMMITTEE

- 1) For establishment purposes, NZTech, Netsafe and the Signatories will jointly recommend candidates from the various stakeholder groups and invite them to join the Oversight Committee for an initial term of two (2) years.
- 2) As part of the establishment phase, the Oversight Committee will develop and implement a nominations and appointments process, that will enter into force on the agreement of the Signatories but shall be before the end of the initial two (2) year term.

B. PURPOSE OF THE OVERSIGHT COMMITTEE

- 1) The purpose of the Oversight Committee is to:
 - (a) Investigate and resolve eligible complaints that remain unresolved between the complainant and the Signatory
 - (b) Provide reports and recommendations to the impacted Signatory or Signatories concerning the resolution of potential systemic issues or material breaches
 - (c) Review, and where necessary, make recommendations on improving the complaints mechanism
 - (d) Review The Code periodically to ensure it remains responsive to the rapidly changing online environment
 - (e) Act as the Spokesperson for The Code, through the elected Chair
 - (f) Review and approve new Signatories to The Code (following agreement with the Signatories)
- 2) In giving effect to its purpose, the Oversight Committee:
 - (a) must try to achieve agreement concerning the matters before them through consensus decision and, if achieved, will be recorded as such
 - (b) must follow a fair, consistent, and transparent process that provides equal and equitable opportunities for complainants and Signatories to be heard and may, in its discretion, review the handling of complaints at any meeting
 - (c) shall generally only accept written arguments and evidence but may in its discretion request meetings with other parties

(d) may seek the advice of one or more independent experts where Committee members require specialist knowledge, subject matter expertise, or insights gained through lived experience

(e) may, at any time, request further information relevant to the matters before them

C. MEMBERSHIP TO THE OVERSIGHT COMMITTEE

1) The Oversight Committee will comprise representatives from a diversity of stakeholder groups that include industry, civil society, government, and Māori representatives.

2) Signatories that sign up to a Tier 1 membership (\$15,000.00NZD) will receive automatic representation on the Oversight Committee.

(a) For certainty, "Signatories" refers to all organisations that have a paid membership to The Code regardless of their membership tier. However, only Signatories with Tier 1 membership status will have a role on the Oversight Committee.

3) NZTech and Netsafe will both be represented by their respective Chief Executives on the Oversight Committee.

4) The Oversight Committee must also include at least three (3) independent members who do not work within or represent relevant technology companies.

(a) Each independent member will be required to declare any actual or potential conflict of interest as a condition of their appointment.

5) The role of secretary of the Oversight Committee will be undertaken by the Programme Director.

6) The secretary may provide advice and recommendations to the Oversight Committee regarding the operation of The Code, and will record minutes of meetings, and assist in documenting the Oversight Committee's decisions and reports.

7) The secretary is not a member of the Oversight Committee and cannot vote on decisions at meetings.

D. COMMITTEE COMPOSITION AND ROLES

1) The Oversight Committee must comprise a minimum of five (5) non-Signatory members, and three (3) of those members must be independent (refer section 3.3.4).

2) There is no maximum number of Tier 1 Signatories who may obtain membership to the Oversight Committee.

3) Oversight Committee candidates may be nominated by the Signatories or any member of the Oversight Committee but will be appointed by the Chair following approval from the Signatories.

4) The Oversight Committee may co-opt non-voting members to fill any gaps in expertise or experience.

E. OVERSIGHT COMMITTEE CHAIR

1) The Chair will be elected by the members of the Oversight Committee for a term of two (2) years.

2) The Chair may only serve a maximum of two consecutive terms at any one time.

3) The Chair plays a central function in the ongoing development and maintenance of The Code and is responsible for:

(a) guiding the Signatories and stakeholders involved in the governance and oversight of The Code

(b) progress reporting and communications for public awareness

(c) engaging with potential new signatories and making recommendations to the Oversight Committee

(d) appointing Oversight Committee members following consultation with the Signatories and the Oversight Committee

4) In fulfilling their duties, the Chair:

(a) will act as the spokesperson for The Code and provide oversight and guidance to the Secretariat on the day-to-day administration of The Code.

(b) may issue public comments about The Code including naming individual Signatories for positive or negative progress, where there is a proper basis to do so. However, they must provide reasonable notice and consult with the relevant Signatory before making any public comments about the Signatory with respect to the Code.

(c) may, where necessary, recommend to the Oversight Committee the termination of a Signatory, based on repeated failures to comply with their commitments under The Code.

(d) may initiate the termination process of a Signatory for repeated non-compliance, only after consulting the Oversight Committee, and may issue a public announcement.

(e) must consult the relevant Signatory before any public announcement of termination is made.

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(f) may cancel a meeting of the Oversight Committee if no complaints have been received during the relevant period.

5) The Chair is expected to attend Signatory meetings and answer any questions on the Oversight Committee's activities and responsibilities.

F. MEETINGS

1) The minimum number of meetings convening the Oversight Committee annually will be two (2). Meetings may be held in-person or virtually.

2) Meetings will generally be no longer than 1 working day.

3) Exceptional meetings may be called for urgent issues or if there is significant increase in the volume of eligible complaints received. The Oversight Committee Chair will determine the duration of an exceptional meeting.

G. NOTICE OF MEETINGS

1) Meetings are called by the Administrator at the request of the Chair.

2) Unless otherwise agreed, the Administrator must provide notice of each meeting confirming the venue, time, and date together with an agenda of items to be discussed and supporting papers to each member of the committee, and any other person required to attend, not less than five (5) working days before the meeting.

3) The Chair must give written notice of a meeting of the Oversight Committee to the parties to complaints that will be heard at that meeting.

4) The Administrator will give that notice to the parties at least 48 hours in advance of the meeting (or such other period as may be agreed on by the Committee).

H. ATTENDANCE AT MEETINGS

1) Other advisers appointed by the committee may attend any meeting of the committee but cannot vote on decisions.

I. QUORUM AND MEETING PROCEDURES

1) At least three (3) independent members and one Tier 1 Signatory must be present at every meeting of the Oversight Committee for a quorum to be achieved.

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- 2) In the absence of the elected Chair, NZTech as The Code's Administrator will chair the meeting.
- 3) Each member present at a meeting of the Oversight Committee is entitled to one vote, excluding any co-opted members and the Programme Manager, who will perform the function of Secretary at those meetings.
- 4) Questions arising at any meeting must be determined by consensus of the committee members present that are entitled to vote.
- 5) Where consensus is not achieved or in the case of an equality of votes, the Chair must refer the matter to the next available meeting with the Signatories.
- 6) No member of the committee or person in attendance at a meeting will be present or will participate when matters relating to his or her own remuneration or terms and conditions of service are discussed.
- 7) Where a complaint is made about a Signatory who is a member of the Oversight Committee, that Signatory shall not attend any investigative meeting or otherwise intervene in any matters involving the complaint against it. Unless, required to by the Oversight Committee as part of the resolution process.
- 8) Meetings will be held at such place and time as the Chair may determine.

J. MINUTES OF MEETINGS

- 1) The Administrator will ensure that a formal record of committee proceedings and resolutions is maintained.
- 2) Following approval of the minutes by the Chair they are to be circulated to all members of the Committee and the Signatories.

K. INDEPENDENT REVIEWER

- 1) The Independent Reviewer will be appointed by the Oversight Committee following a nominations process.
- 2) The Independent Reviewer's role will be to:
 - (a) review the annual compliance reports submitted by Signatories
 - (b) evaluate the level of progress made against the Commitments, Outcomes and Measures in The Code, as well as the commitments made by Signatories in their Participation Form (see Appendix 2 of The Code).

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(b) produce an analysis of the Signatories' reports and their progress within 90 days after the reports are submitted

- 1) The Independent Reviewer will verify claims in each Signatory's transparency report, including whether they have published and implemented policies and processes that comply with their obligations, and verifying that those initiatives are accessible to Aotearoa New Zealand internet users.
- 2) If the Independent Reviewer can't attest a claim, it must advise the Oversight Committee. The Signatory must then either amend and resubmit the reports to the reviewer for further assessment or provide written reasons as to why they dispute the reviewer's assessment, which would be published with their transparency reports on The Code website.

L. REVIEW

- 1) The Oversight Committee will conduct an annual review of its performance, ensure that it is provided with sufficient resources to undertake its duties and recommend any changes it considers necessary to the Administrator, Chair and Signatories for approval.
- 2) Signatories and members of the Oversight Committee can suggest a change to these Terms of Reference to the Chair at any time subject to the requirements of The Code.
- 3) The Chair can also make their own suggestion for a change to these Terms of Reference at any time. However, Signatories will decide whether to make the suggested change.