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# LAW COMMISSION

## TE AKA MATUA O TE TURE

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### Commissioners Conflict of Interest Declaration

1. At the November 2012 Board meeting of the Law Commission it was agreed that, consistent with the obligations to disclose conflict of interests under the Crown Entities Act 2004, the Commission will adopt a process of a 6 monthly (March and September) declaration of:
  - a. Perceived or actual conflicts for each Commissioner after consideration of the Law Commission's actual and proposed work programme; and
  - b. Arrangements, agreements, or contracts made or entered into, or proposed to be entered into, by the Law Commission and the Commissioner (excluding the appointment as a Law Commissioner).
2. Note that the section 64(d) of the Crown Entities Act 2004 requires that if the Chairperson is 'interested' then the Minister is required to be advised.
3. Note that the section 68(6) of the Crown Entities Act 2004 requires that the Board must disclose an interest to which a permission relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.

**Roland Daysh**  
General Manager

## Crown Entities Act 2004

### *Conflict of interest disclosure rules*

#### **62 When interests must be disclosed**

- (1) In this section, **matter** means—
- (a) a statutory entity's performance of its functions or exercise of its powers; or
  - (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the entity.
- (2) A person is **interested** in a matter if he or she—
- (a) may derive a financial benefit from the matter; or
  - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
  - (c) may have a financial interest in a person to whom the matter relates; or
  - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (e) may be interested in the matter because the entity's Act so provides; or
  - (f) is otherwise directly or indirectly interested in the matter.
- (3) However, a person is not interested in a matter—
- (a) only because he or she is a member or an officer of a wholly-owned subsidiary of the entity or of a subsidiary that is owned by the entity together with another parent Crown entity or entities; or
  - (b) because he or she receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or
  - (c) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act or another Act; or
  - (d) if an entity's Act provides that he or she is not interested, despite this section.

#### **63 Obligation to disclose interest**

- (1) A member who is interested in a matter relating to the statutory entity must disclose details of the interest in accordance with section 64 as soon as practicable after the member becomes aware that he or she is interested.
- (2) A general notice of an interest in a matter relating to the statutory entity, or in a matter that may in future relate to the entity, that is disclosed in accordance with section 64 is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.

#### **64 Who disclosure of interests must be made to**

- The member must disclose details of the interest in an interests register kept by the statutory entity and to—
- (a) the chairperson or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy or temporary chairperson; or
  - (b) the responsible Minister, if there is neither a chairperson nor a deputy or temporary chairperson, or if both the chairperson and the deputy or temporary chairperson are unavailable or interested.

#### **65 What must be disclosed**

- The details that must be disclosed under section 64 are—
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
  - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

#### **66 Consequences of being interested in matter**

- A member who is interested in a matter relating to a statutory entity—
- (a) must not vote or take part in any discussion or decision of the board or any committee relating to the matter, or otherwise participate in any activity of the entity that relates to the matter; and
  - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and
  - (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board or committee during which a discussion or decision relating to the matter occurs or is made.

#### **67 Consequences of failing to disclose interest**

- (1) The board must notify the responsible Minister of a failure to comply with section 63 or section 66, and of the acts affected, as soon as practicable after becoming aware of the failure.
- (2) A failure to comply with section 63 or section 66 does not affect the validity of an act or matter.
- (3) However, subsection (2) does not limit the right of any person to apply, in accordance with law, for judicial review.

#### **68 Permission to act despite being interested in matter**

- (1) The chairperson of a statutory entity may, by prior written notice to the board, permit 1 or more members, or members with a specified class of interest, to do anything otherwise prohibited by section 66, if the chairperson is satisfied that it is in the public interest to do so.
- (2) The permission may state conditions that the member must comply with.
- (3) The deputy or temporary chairperson may give the permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (4) The responsible Minister may give the permission if there is neither a chairperson nor a deputy or temporary chairperson, or if both the chairperson and the deputy or temporary chairperson are unavailable or interested.
- (5) The permission may be amended or revoked in the same way as it may be given.
- (6) The board must disclose an interest to which a permission relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.

#### **69 Entity may avoid certain acts done in breach of conflict of interest rules**

- (1) A statutory entity may avoid a natural person act done by the entity in respect of which a member was in breach of section 66.
- (2) However, the act—
  - (a) may be avoided only within 3 months of the affected act being disclosed to the responsible Minister under section 67; and
  - (b) cannot be avoided if the entity receives fair value in respect of the act.
- (3) An act in which a member is interested can be avoided on the ground of the member's interest only in accordance with this section.

#### **70 What is fair value**

- (1) The entity is presumed to receive fair value in respect of an act that is done by the entity in the ordinary course of its business and on usual terms and conditions.
- (2) Whether an entity receives fair value in respect of an act must be determined on the basis of the information known to the entity and to the interested member at the time the act is done.

#### **71 Onus of proving fair value**

- (1) A person seeking to prevent an act being avoided, and who knew, or ought reasonably to have known, of the member's interest at the time the act was done, has the onus of establishing fair value.
- (2) In any other case, the entity has the onus of establishing that it did not

#### **72 Effect of avoidance on third parties**

The avoidance of an act under section 69 does not affect the title or interest of a person to or in property that that person has acquired if the property was acquired—

- (a) from a person other than the entity; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the act under which the person referred to in paragraph (a) acquired the property from the entity.