

## CLIMATE CHANGE COMMISSION INTERESTS POLICY – COMMISSIONERS

Date last updated: February 2021

### INTRODUCTION

#### Purpose

1. The purpose of this policy is to set out the approach of the Climate Change Commission (the **Commission**) to the disclosure of Commissioners' interests and the management of any interests that arise in respect of matters before the Commission.

#### Principles

2. It is fundamental that the Commission carries out its work of providing independent, expert advice to the Government in a fully independent manner, and is seen to do so.
3. Accordingly, the Commission is committed to managing all issues relating to interests in accordance with:
  - 3.1 its obligations under the Crown Entities Act 2004 (the **Crown Entities Act**);
  - 3.2 relevant case law;
  - 3.3 government policy in relation to the management of conflicts of interests;<sup>1</sup> and
  - 3.4 the principles of integrity, transparency and accountability.

#### Scope

4. This policy applies to all Commissioners and should be considered alongside other Commission policies.

#### Responsibilities

5. Commissioners are responsible for disclosing all potential standing interests and potential interests in matters before the Commission.
6. The General Manager, Governance and Corporate Services is responsible for maintaining the Commission's internal Interests Register (**Interests Register**).
7. The Chair, Deputy Chair and General Manager, Governance and Corporate Services (as appropriate) are responsible for determining which potential standing interests disclosed by Commissioners constitute standing interests that should be disclosed in the Interests Register.
8. The Chair, Deputy Chair and responsible Minister (as appropriate) are responsible for determining:

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<sup>1</sup> Including the most recent guidance provided by the Controller and Auditor General: Controller and Auditor-General *Managing conflicts of interest: A guide for the public sector* (June 2020).

- 8.1 when a standing interest or other potential interest constitutes an interest in a matter before the Commission;
- 8.2 where a Commissioner has an interest in a matter before the Commission, whether it is appropriate to grant permission for the Commissioner to continue to act notwithstanding their interest.

**Policy owner**

- 9. Given the role and responsibility for advising on interests the owner of this policy is the Chair of the Commission. Changes to the policy are to be determined by the Board, on the recommendation of the Senior Leadership Team.

**MEANING OF “INTEREST”**

*Crown Entities Act, s 62*

- 10. A Commissioner will have an interest in the Commission’s performance of its functions or exercise of its powers or an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commission where the Commissioner:
  - 10.1 May derive a financial benefit from the Commission’s performance of its functions or exercise of its powers or an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commission.
  - 10.2 Is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the Commission’s performance of its functions or exercise of its powers or an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commission.
  - 10.3 May have a financial interest in a person to whom the Commission’s performance of its functions or exercise of its powers or an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commission relates.
  - 10.4 Is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the Commission’s performance of its functions or exercise of its powers or an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commission relates.
  - 10.5 May be interested in the matter because the Commission’s Act so provides.
  - 10.6 Is otherwise directly or indirectly interested in the matter.
- 11. However, a Commissioner will not have an interest in the Commission’s performance of its functions or exercise of its powers or an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Commission:
  - 11.1 Only because he or she is a member or an officer of a wholly-owned subsidiary of the Commission or of a multi-parent subsidiary of the Commission and one or more other Crown entities.
  - 11.2 Because he or she receives an indemnity, insurance cover, remuneration, or other benefits authorised under the Crown Entities Act or another Act.

- 11.3 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 the Crown Entities Act or another Act.
- 11.4 Only because he or she has past or current involvement in the relevant sector, industry, or practice.
- 11.5 If the Commission's Act provides that he or she is not interested, despite this section.

## **REQUIREMENTS BEFORE APPOINTMENT**

*Crown Entities Act, s 31*

- 12. Prior to being appointed as a Commissioner, a prospective Commissioner must disclose to the responsible Minister the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the Commission.
- 13. Where there has been any failure to comply with this obligation, the Commission Board will notify the responsible Minister of this failure as soon as practicable after becoming aware of the failure.

## **STANDING INTERESTS**

- 14. Standing interests are ongoing interests (this may include a past interest) in any entity or matter which could in reasonable contemplation become relevant to the work of the Commission.

### **Requirement to disclose**

*Crown Entities Act, s 63(2) and (3)*

- 15. The Crown Entities Act does not require Commissioners to declare standing interests. However, Commission policy is that such disclosures are mandatory. Standing interest disclosures are valuable as they enable Commissioners to be aware of the most relevant ongoing interests and act as a reminder of the need to be alert for interests in the Commission's work.
- 16. Accordingly, Commissioners must disclose all potential standing interests to the Commission by completing the *Disclosure of Potential Interest* form (schedule 1) and submitting it to the General Manager, Governance and Corporate Services:
  - 16.1 on their commencement at the Commission; and
  - 16.2 as soon as practicable after becoming aware that their interests have changed.
- 17. In addition, at every Board meeting there will be an agenda item reminding Commissioners to ensure that their standing interest disclosures are up to date.
- 18. Once a Commissioner has declared a potential standing interest, the process will be as follows:
  - 18.1 The General Manager, Governance and Corporate Services will provide the *Disclosure of Potential Interest* form (schedule 1) to the Chair, or if the Chair is unavailable or potentially interested, the Deputy Chair.

- 18.2 The Chair, Deputy Chair or General Manager (as appropriate) will make a determination as to whether the situation constitutes a relevant standing interest that should be included on the Interests Register. If both the Chair or Deputy Chair are unavailable or potentially interested, the General Manager, Governance and Corporate Services will determine whether the situation constitutes a relevant standing interest that should be included on the Interests Register.
- 18.3 In situations where the Chair, Deputy Chair or General Manger (as appropriate) determines that the situation does not constitute a relevant standing interest, the nature of the potential interest and the decision taken, including reasons, should be recorded in writing.
- 18.4 The General Manager, Governance and Corporate Services will update the Interests Register as required.
19. Commissioners should err on the side of openness when deciding whether a potential standing interest should be disclosed. If a Commissioner is uncertain about whether or not something constitutes a relevant potential interest, it is safer and more transparent to disclose the potential interest. The Chair (or Deputy Chair) can then assess whether the situation constitutes a relevant standing interest or an interest in relation to any particular matter, and whether the situation warrants any further action.
20. It is important to emphasise that the Interests Register is not a substitute for disclosing and dealing with interests that relate to the Commission's work as and when they arise, including in relation to an interest already disclosed in the Interests Register. This is discussed further below.

#### **Public availability of the Interests Register**

21. It is Commission policy that the Interests Register is publically available on the Commission's website.

#### **INTERESTS IN MATTERS BEFORE THE COMMISSION**

##### **Requirement to disclose**

*Crown Entities Act, ss 63(1) and 67*

22. Where a Commissioner considers they may have an interest in a matter before the Commission, for example because it is a matter with respect to which the Commission is giving advice, this must be disclosed as soon as practicable.
23. In order to assist Commissioners in identifying potential interests in matters before the Commission, the following processes are in place:
- 23.1 At each monthly Commission meeting there will be an agenda item reminding Commissioners to ensure their interest disclosures are up to date, and to consider whether any of their standing interests might constitute an interest in a matter before the Commission.
- 23.2 Each time the Commission starts a new piece of work:

- (a) Commissioners will be asked to ensure their interest disclosures are up to date, and to consider whether any of their standing interests may constitute an interest in the new piece of work; and
  - (b) the Chair will review the Interests Register to determine whether any of the previously disclosed standing interests constitute an interest in respect of the new piece of work.
24. Any failure to comply with the obligation to disclose an interest must be notified to the responsible Minister.

### **Disclosure process**

#### *Crown Entities Act, s 64*

25. In order to comply with the requirements of the Crown Entities Act, disclosure must be undertaken by the relevant Commissioner by carrying out the following steps:
- 25.1 Disclosure to the Interests Register
    - (a) If the interest is not already recorded in the Interests Register, the Commissioner must fill out the *Disclosure of a Potential Interest* form (schedule 1) and provide it to the General Manager, Governance and Corporate Services.
  - 25.2 The Commissioner must also disclose the interests to the appropriate person:
    - (a) Generally, the appropriate person will be the Chair, or if the Chair is unavailable or interested, the Deputy Chair.
    - (b) If both the Chair and Deputy Chair are unavailable or interested, the appropriate person is the responsible Minister.

### **Extent of disclosures**

#### *Crown Entities Act, s 65*

26. Disclosure of any relevant interest must be made in sufficient detail that the Chair, Deputy Chair, or responsible Minister can determine whether the Commissioner may act on a particular matter.
27. Commissioners must disclose the following details:
- 27.1 the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
  - 27.2 the nature and extent of the interest (if the monetary value cannot be quantified).

### Consideration of the disclosure

28. Once the interest has been disclosed, the Chair, the Deputy Chair (in the case the Chair is unavailable or interested) or the responsible Minister (in the case both the Chair and the Deputy Chair are unavailable or interested) must determine whether or not the situation disclosed constitutes an interest for the purposes of s 62 of the Crown Entities Act (set out above at paragraphs [10] and [11]).
29. In considering whether there is an interest the Chair, Deputy Chair, or the responsible Minister must focus on what the Commissioner's disclosed interest has to do with the particular matter before the Commission. The relevant considerations are likely to include:
  - 29.1 whether there is a connection between the interests and the matter;
  - 29.2 how the interest and the matter could be related;
  - 29.3 the relative significance of the interest; and
  - 29.4 how the situation could reasonably appear to an outside observer.<sup>2</sup>
30. In situations where the Chair, Deputy Chair or responsible Minister determines that the situation does not amount to an interest in a matter before the Commission for the purposes of s 62 of the Crown Entities Act,<sup>3</sup> the nature of the potential interest and the decision taken, including reasons, should be recorded in writing.

### Effect of having an interest in a matter before the Commission

*Crown Entities Act, ss 66 and 67*

31. Where it is determined by the Chair, the Deputy Chair or responsible Minister that the situation disclosed by the Commissioner does constitute an interest for the purposes of s 62 of the Crown Entities Act, the Commissioner:
  - 31.1 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;
  - 31.2 must not sign any document relating to the entry into a transaction or the initiation of the matter; and
  - 31.3 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.
32. These restrictions apply unless permission is obtained for the Commissioner to act despite being interested in a matter.
33. Any failure to comply with these restrictions must be notified to the responsible Minister.

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<sup>2</sup> See *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2010] 1 NZLR 76.

<sup>3</sup> See above at paragraphs [10] and [11].

### **Obtaining permission to act despite being interested in the matter**

*Crown Entities Act, s 68*

34. In some circumstances, it may be in the public interest for the Commissioner to continue to act on the matter, notwithstanding that they have an interest in a matter before the Commission. In this situation, permission to do any of the acts outlined above at paragraph [31] may be granted in writing by the Chair, the Deputy Chair where the Chair is unavailable or interested, or the responsible Minister if both the Chair and the Deputy Chair are unavailable or interested.
35. In determining whether it is in the public interest to grant any such permission, the Chair, Deputy Chair or responsible Minister needs to assess the seriousness of the interest and the level of risk it gives rise to. With respect to the seriousness of the interest, several factors may need to be considered, including:
  - 35.1 the type or size of the person's interest;
  - 35.2 the nature or significance of the particular decision or activity being carried out by the Commission;
  - 35.3 the extent to which the person's other interest could specifically affect, or be affected by, the Commission's decision or activity;
  - 35.4 the nature or extent of the person's current or intended involvement in the public organisation's decision or activity; and
  - 35.5 how the situation could reasonably appear to an outside observer.<sup>4</sup>
36. In cases where such permission was obtained, this must be disclosed in the Commission's annual report, together with a statement of who gave the permission and any conditions or amendment to, or revocation of, the permission.

### **Reconsideration**

37. Once the Chair, Deputy Chair or responsible Minister has made a decision about how to manage the conflict, the appropriate person must advise the disclosing Commissioner.
38. If the disclosing Commissioner disagrees with the decision, that Commissioner may ask the appropriate person to reconsider the decision by notice in writing.
39. The Chair, Deputy Chair must then reconsider the decision, or refer to the responsible Minister (where appropriate).

### **Removal of a Commissioner**

*Crown Entities Act, s 39*

40. In some rare cases, an interest in a matter before the Commission may be so significant that it is no longer appropriate for the Commissioner to maintain their role. Responsibility for any removal lies with the Governor-General, on the advice of the responsible Minister.

### **QUESTIONS**

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<sup>4</sup> See *Saxmere Company Ltd*, above n 2.

41. If a Commissioner has any questions as to the application of this policy, they should speak to the General Manager, Governance and Corporate Services.



**SCHEDULE 1**

**DISCLOSURE OF POTENTIAL INTEREST**

How to use this form:

- Use this form to disclose any potential interest that is relevant to the Climate Change Commission’s work, or any change with respect to interests already disclosed.
- In filling out this form, refer to the guidance in the Commission’s Interests Policy.

<b>Date:</b>	
<b>Commissioner name:</b>	
<b>Type of potential interest:</b>	<input type="checkbox"/> Employment or partnership relationship (an employment or partnership relationship in which the Commissioner is involved) <input type="checkbox"/> Company interests (relationships with other companies which may be relevant to the work of the Commission) <input type="checkbox"/> Self-employment (clients who may have a connection with the work of the Commission) <input type="checkbox"/> Charities (trusteeship or any employment with any charities, non-governmental or voluntary organisations which may have a connection with the work of the Commission) <input type="checkbox"/> Public appointments (paid or unpaid, including non-executive and special advisory roles) <input type="checkbox"/> Memberships (Including membership of professional or external bodies which may have a connection to the work of the Commission) <input type="checkbox"/> Interests of close family members Other type of potential interest: _____
<b>Description of potential interest:</b>	

<b>Monetary value of potential interest (if quantifiable):</b>	
<b>Extent of potential interest (if not quantifiable by reference to monetary value):</b>	

<b>Assessment by Chair/Deputy Chair/General Manager Governance and Corporate Services</b>  [assessment as to whether amounts to a standing interest <i>or</i> interest in a matter before the Commission.]	
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