



## CONFLICT OF INTEREST POLICY

March 2019<sup>1</sup>

### Introduction and purpose

1. The purpose of this policy is to ensure the Royal Commission effectively identifies and where appropriate manages any actual, potential or perceived Conflicts of Interest to protect the integrity of the Inquiry and manage risk.
2. It is recognised that the question of Conflicts of Interest – actual or perceived – is of paramount importance to the Royal Commission, and that public trust and confidence are essential to the Royal Commission’s success. It is fundamental that the Royal Commission carries out its work in a fully independent, impartial and fair manner – and is seen to do so.
3. This policy has drawn from guidance published by the Office of the Controller and Auditor General and State Services Commission,<sup>2</sup> as well as the Inquiries Act 2005 (UK).<sup>3</sup>

### Scope

4. This policy applies to Commissioners, Secretariat, Counsel Assisting, and all suppliers, contractors, sub-contractors or others engaged on behalf of the Royal Commission, referred to in this policy as “members” of the Royal Commission.

### Definitions

5. A “**conflict of interest**” means any situation where the member has:
  - (a) a direct interest in a matter to which the Inquiry relates, or
  - (b) a close association with an interested party,

which could be reasonably regarded by a fair-minded and informed observer as affecting the member’s impartiality.

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<sup>1</sup> Policy substantively approved at the Commissioners’ meeting of 11/12/18. Final Commissioner approval on 20/3/19.

<sup>2</sup> <http://www.oag.govt.nz/2007/conflicts-public-entities/>  
<http://www.oag.govt.nz/2016/reflections/docs/reflections-governance/> p.28-31  
<http://www.ssc.govt.nz/sites/all/files/board-appt-guidelines-oct15.pdf>

<sup>3</sup> See also the commentary in Beer, *Public Inquiries* (2011)

6. A “**direct interest**” includes a financial or personal interest, and may for example include having made a relevant public comment on a matter to which the Inquiry relates.
7. An “**interested party**” includes without limitation a core participant, witness, or any person or organisation whose interests may be directly affected by the Inquiry. In the case of procurement decisions, an interested party includes a potential supplier.
8. An “**interest**” means any interest or close association that could give rise to a conflict of interest. A non-exhaustive list of examples is contained in Appendix A.
9. A “**member**” means a person within the scope of this policy as set out in paragraph [4] above.
10. A “**matter to which the Inquiry relates**”, includes the matters within the Terms of Reference, as well as any questions of administration including for example procurement or employment decisions.

### **Policy Statement**

11. The Royal Commission requires all members to follow this policy, and in particular to:
  - 11.1 identify and promptly disclose interests, on an ongoing basis, so the potential for conflict can be assessed and any necessary steps taken;  
and
  - 11.2 comply with any management plan or other directions given in accordance with this policy.
12. Members must ensure they conduct their work independently and impartially, by:
  - 12.1 avoiding any situation where actions taken in their capacity as a member of the Inquiry could be seen to influence or be influenced by their personal or professional interests;
  - 12.2 avoiding situations that could impair objectivity or create personal bias that
  - 12.3 may influence their judgements; ensuring they are free from any obligation to another party; and keeping interests under review.
13. The Executive Director will maintain a Disclosure of Interests Register

(Register). The Register will include interests as well as identified conflicts,<sup>4</sup> together with any relevant management plan.

14. The Royal Commission expects that all members will comply with the Standards of Integrity and Conduct, published by the State Services Commissioner pursuant to s 57 of the State Sector Act 1988,<sup>5</sup> while maintaining the independence of the Royal Commission. For the avoidance of doubt, no member is required to comply with any aspect of the Code of Conduct to the extent that doing so would undermine the Royal Commission's independence.
15. While this policy attempts to provide clear guidance, it is not possible to be prescriptive about every possible form of Conflict of Interest, and the policy should be interpreted in light of its purpose, with due consideration for the perceptions that may arise in the mind of a fair-minded and informed observer.

### **When an Interest is Disclosed**

16. In this section, the “**decision maker**” means the Chair, or in the case of an Interest declared by the Chair, a committee comprising at least one Commissioner, the Executive Director and Counsel Assisting.
17. The Executive Director will ensure the Interest is recorded on the Register.
18. The decision maker will consider the information provided and determine whether the interest amounts to a Conflict of Interest. Further information may be sought from any person, and legal advice may be sought.
19. The decision-maker will determine whether a Conflict of Interest can be avoided or managed - for example by divesting a financial interest or by implementing a management plan. A management plan may, for example, include steps to ensure the member is not involved in the particular aspect of the Royal Commission to which the Conflict relates.
20. If a Conflict of Interest is considered to be unavoidable, and cannot be mitigated by a management plan, the decision-maker will take such steps as are required to preserve the integrity of the Royal Commission. In the case of an identified Conflict of Interest on the part of a Commissioner, this may involve notifying the Responsible Minister.
21. Any decisions about the existence of a Conflict of Interest, the implementation of a management plan, or any further steps, will be made in accordance with the principles of natural justice.

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<sup>4</sup> An exception is disclosed interests which are identified as sensitive e.g. commercial. These interests will be kept in a separate confidential register.

<sup>5</sup> See: <http://www.ssc.govt.nz/code>

## APPENDIX A

### EXAMPLES OF TYPES OF INTERESTS

The following is a non-exhaustive list of potential interests:

- Being or having been an employee, consultant, advisor, trustee, officer, partner (or equivalent role in the management or governance) of an interested party
- having a professional or legal obligation to an interested party
- having any financial interest in an interested party
- having received a gift, hospitality, or other benefit from an interested party
- owing a debt to an interested party
- having publicly expressed views on a contested issue likely to be addressed by the Royal Commission
- being a relative or having a close association with someone who has one of these interests.