



Public Trust

# Board Charter

August 2018



## 1. GOVERNANCE AT PUBLIC TRUST

- 1.1 **Legislation:** Public Trust was established under the Public Trust Act 2001. Provisions affecting the Board's governance, members and reporting are set out in the Public Trust Act 2001 and the Crown Entities Act 2004 (CE Act).
- 1.2 **Board and management:** The Board has responsibility for the affairs and activities of Public Trust. The Board recognises the importance of focusing on governance of the business and value growth, rather than management of the business. The Chief Executive is charged with the day to day management of Public Trust, and provides the principal link between the Board and management, acting within authorities delegated by the Board.
- 1.3 **Corporate Governance Principles:** The core governance principles of Public Trust are underpinned by its obligations under the Public Trust Act 2001 and the Crown Entities Act 2004. The Board has also adopted the Financial Markets Authority Corporate Governance Handbook dated February 2018 (so far as it is applicable to Public Trust), as well as principles set out in the Institute of Directors Code of Practice and relevant guidance from the State Services Commission and the Office of the Auditor General to form the basis of Public Trust's corporate governance framework.

## 2. BOARD STRUCTURE, REMUNERATION AND EVALUATION

- 2.1 **Structure:** The Board must comprise at least five, but no more than nine, members. The structure of the Board is set out in sections 28 to 46 of the CE Act. Board members are appointed and removed by the responsible Minister.
- 2.2 **Responsibilities of the Chair:** The Chair's role is to manage the Board effectively and provide leadership and guidance consistent with the Minister's expectations, to ensure that it is operating to the highest governance standards. Specific responsibilities of the Chair include:
- a) developing and maintaining sound relationships with Ministers, relevant officials and other stakeholders;
  - b) ensuring an annual performance review of the Board as a whole, as well as of the Chair and members individually;
  - c) fostering a constructive governance culture and ensuring that members and management apply appropriate governance principles;
  - d) ensuring that Public Trust's governance arrangements are continually reviewed and updated to reflect current best practice;
  - e) providing the necessary guidance and support to the Chief Executive and the Executive Team to ensure Public Trust is managed effectively;
  - f) ensuring that all members are enabled to and encouraged to play their full part in the affairs of the Board and have adequate opportunities to express their views; and
  - g) promoting cooperation, mediating between different perspectives and leading informed debate and decision making.
- 2.3 **Remuneration:** Board and Committee members' remuneration is set by the responsible Minister in accordance with section 47 of the CE Act. Members are also entitled to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their Board member duties under section 48 of the CE Act.
- 2.4 **Delegations:** Sections 18 to 20 of the Public Trust Act govern the Board's powers of delegation. Certain powers cannot be delegated by the Board. The Board maintains a formal set of delegated authorities



which clearly define the responsibilities that are delegated to management and those which are retained by the Board. The Board has formally delegated responsibilities and authorities to:

- 2.4.1 the Audit & Risk Committee;
- 2.4.2 the Investment Committee;
- 2.4.3 the Human Resources & Remuneration Committee; and
- 2.4.4 the Chief Executive.

Delegated authorities are approved and are subject to annual review by the Board.

- 2.5 **Access to information:** Members may access such Public Trust information and advice as they consider necessary to fulfil their responsibilities and permit independent judgement in decision-making. Any queries as to matters of management will be provided to the Chief Executive for action, with correspondence to be copied to the Board Chair. Members may have access to external auditors without management present.
- 2.6 **Independent Advice:** Board members are entitled to obtain, at Public Trust's cost, independent professional advice relating to the discharge of their responsibilities as a Board member. Board members are expected to consult the Chair and the General Manager, Legal & Governance prior to obtaining the advice, to ensure independence and avoid duplication. Where the advice relates to the Chair, Board members should consult the Deputy Chair. Where the advice relates to the General Manager Legal & Governance, Board members should consult the Chair only. A copy of any advice will be made available to all Board members (other than in exceptional circumstances).
- 2.7 **Indemnities and Insurance:** Public Trust indemnifies each Board member in a standard form of deed approved by the Board, and provides Board members with insurance cover while acting in good faith in their capacities as Board members.
- 2.8 **No surprises protocol:** Public Trust has a no surprises protocol between the Board and the Minister, and Management and the Board. It is anticipated that the Chair will meet at least twice yearly with the Minister.
- 2.9 **Evaluation of Board Performance:** The performance of the Board will be evaluated annually, alternating each year between a Board effectiveness review and a review of the performance of individual Board members including the Chair. The Chair will meet annually with each Board member to provide feedback on individual performance and in turn to seek from individual Board members feedback on the Chair's own performance

### 3. ETHICS, CONFLICTS AND CONFIDENTIALITY

- 3.1 **Integrity and ethical behaviour:** Board members must at all times comply with the express terms and spirit of their statutory obligations to Public Trust, including acting honestly and in good faith and in what they reasonably believe to be the best interests of Public Trust. This includes compliance with Public Trust's Ethics Framework and Code of Conduct Policy.
- 3.2 **Conflicts of Interest:** The Board is subject to the State Services Commission Model Standards for Conflicts of Interest. Board members must advise the Chair of all outside Board memberships or other appointments and interests which may have a bearing on their role as a Public Trust Board member, prior to becoming a Board member; and thereafter in respect of any new appointment, prior to taking up such an appointment. Where conflicts (or potential conflicts) of interest may arise, Board members must formally notify any matter relating to that conflict (or potential conflict) in the following manner:



- a) if the conflict is identified by the Board Member or Chair:
    - i. Board Member notifies Board Chair; or
    - ii. Board Chair notifies Chair of Audit & Risk Committee;
  - b) if the conflict is identified by management:
    - i. in the case of a Board member, the Chief Executive notifies the Board Chair and the affected Board Member; or
    - ii. in the case of the Board Chair, the Chief Executive notifies the Chair of the Audit & Risk Committee and the Board Chair.
- 3.3 **Crown Entities Act and Conflicts of Interest:** Sections 62 to 72 of the CE Act govern potential conflicts of interest which may arise between Board members and Public Trust's business. A copy of those sections is attached as Schedule A.
- 3.4 **Confidentiality and security of information:** Board members must ensure that information they hold about Public Trust is kept securely and treated in strict confidence, and that property of Public Trust (including information) is used solely in the best interests of Public Trust.

#### 4. DUTIES AND RESPONSIBILITIES OF THE BOARD

- 4.1 **Crown Entities Act:** The individual and collective duties of the Board are set out in the CE Act. Collective duties include a duty to ensure that Public Trust acts in a manner consistent with its objectives, functions, Statement of Intent and Statement of Performance Expectations; and performs its functions efficiently and effectively, in a manner consistent with the spirit of service to the public and in collaboration with other public entities where practicable.
- 4.2 **Specific duties:** Specific responsibilities of the Board include:
- a) *Strategy:* approving and oversight of appropriate strategies, annual budgets, business plans, and (subject to the approval of the responsible Minister) Statements of Intent.
  - b) *Chief Executive:* the appointment and removal of the Chief Executive, and approving their employment conditions, remuneration and performance assessment.
  - c) *Employees:* approval of any performance related remuneration framework for employees, and reviewing management succession planning and development.
  - d) *Audit:* ensuring that effective audit systems are in place, facilitating regular and full dialogue between the Audit & Risk Committee, external auditors and management.
  - e) *Risk management and compliance:* managing all types of risk (the Board has adopted a risk framework comprised of three types of risks: strategic<sup>1</sup>, preventable<sup>2</sup> and external risks<sup>3</sup>) with the Audit & Risk Committee making recommendations on preventable risks, and ensuring that effective risk management and compliance systems are in place.
  - f) *Privacy:* approving (and regularly reviewing) strategies on Privacy to ensure effective systems are in place to address Privacy risks and monitor those systems.
  - g) *Health, Safety and Wellness:* leading the health, safety and wellness culture and providing governance for managing health, safety and wellness risks through a positive due diligence process. This includes:

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<sup>1</sup> Strategic risks are risks that an entity voluntarily accepts in order to generate superior returns from its strategy (source: Kaplan and Mikes Risk Framework).

<sup>2</sup> Preventable risks are internal risks, arising from within the organisation that are controllable and ought to be eliminated or avoided (source: Kaplan and Mikes Risk Framework)

<sup>3</sup> External risks are risks that arise from events outside the entity and are beyond the entity's influence or control (source: Kaplan and Mikes Risk Framework).



- i. approving (and regularly reviewing) strategies and policies on health, safety and wellness;
  - ii. ensuring management put in place effective systems to implement those strategies and policies, and to monitor those systems;
  - iii. holding management to account for the health, safety and wellness of its workers and that other people are not put at risk by its work;
  - iv. providing feedback on health, safety and wellness reports to drive ongoing improvement initiatives and enhance reporting criteria; and
  - v. understanding and adopting the responsibilities for Directors in relation to policy and planning, delivering, monitoring and reviewing, as established in the Institute of Directors (IoD) guidance: 'Health and Safety Guide: Good Governance for Directors'.
- h) *Operational efficiency*:
- i. taking an active interest in legislative and other developments which affect Public Trust's ability to operate efficiently;
  - ii. encouraging a disciplined and innovative approach to improving operational efficiency; and
  - iii. encouraging cost-effective compliance.

## 5. BOARD COMMITTEES

- 5.1 **Role of Committees:** Board Committees exist to increase the overall effectiveness and efficiency of the Board. Committees have no legal standing and all Board members remain accountable for Committee activities. Committees do not take actions or make decisions on behalf of the Board, except where they have been specifically mandated to do so.
- 5.2 **Current Committees:** The Board has three standing Committees:
- a) the Audit & Risk Committee;
  - b) the Investment Committee; and
  - c) the Human Resources & Remuneration Committee.
- 5.3 **Other Committees:** From time to time the Board may create specific sub-committees to deal with particular matters and/or to have certain decision-making authority as may be delegated by the Board. Terms of reference will be prepared by the sub-committee and approved by the Board prior to the sub-committee exercising its functions.
- 5.4 **Governance and Membership of Committees:** The Board appoints the members and Chair of each Committee. The Board Chair is an ex-officio member of each Committee but may not chair any Committee.
- 5.5 **Committee Charters:** Each standing Committee operates under a Charter agreed by the Board. The Charter of each standing Committee is formally reviewed by the Committee and the Board annually. The Charters for each of the standing Committees will be considered to be an addendum to this Charter. A copy of each of the current Charters is included in Schedule C.

## 6. BOARD MEETINGS

- 6.1 **Frequency:** The Board will meet at least six times a year on a formal, scheduled basis and on other occasions as may be required. Members must notify the Chair of any absences.
- 6.2 **Procedures for Board Meetings:** The procedures in clauses 6 to 13 of Schedule 5 of the CE Act apply to the Board. A copy of those clauses is attached as Schedule B.
- 6.3 **Agenda:** The Board has sole authority over its agenda which will be set by the Chair in consultation



with the Chief Executive and the Board Secretary. Any Board member may, through the Chair, request the addition of an item to the agenda.

- 6.4 **Temporary/acting Chair:** If the Chair is absent from a meeting, the Deputy Chair will act as Chair of the meeting. If both are not present, the members of the Board who are present at the meeting may choose one of the members present to chair that particular meeting.
- 6.5 **Special meetings:** A special meeting may be called by the Chair (or, in the Chair's absence from New Zealand, the Deputy Chair (if any), and in the Deputy Chair's absence, any other Board member), in exceptional circumstances. At least 2 days' notice of a meeting of the Board should be given unless the Chair (or meeting convenor) believes that the urgency is such that a shorter notice is required, so long as at least 2 hours' notice is given. Any such shorter notice may be given by telephone communication to each Board member where it is not practicable to give written notice within that timeframe.
- 6.6 **Motions:** The Chair or any Board member may propose a motion to a meeting and will not require a seconder for such a motion.
- 6.7 **Board Secretary:** The Board Secretary will be the General Manager, Legal & Governance. Other than during Board member only time, the Board Secretary is to be present throughout all Board meetings.
- 6.8 **Minutes:** The Board Secretary will take minutes of each meeting, which will be presented for approval at the next scheduled meeting of the Board.
- 6.9 **Members' only time:** The Board may request members' only time prior to the commencement of a Board meeting. Matters discussed in members' only time will not be formally minuted. If a formal record is required such matters should be repeated as part of the following Board meeting, or for substantive matters, may be minuted in separate minutes.

## 7. CHARTER

- 7.1 **Review of Board Charter:** This Board Charter has been approved by the Board and will be reviewed annually by the Board.



## SCHEDULE A: CLAUSES 62 TO 72 OF THE 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 multi-parent subsidiary of the entity and 1 or more other Crown 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
  - (ca) only because he or she has past or current involvement in the relevant sector, industry, or practice; 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 deputy chairperson; or
- (b) the responsible Minister, if there is neither a chairperson nor a deputy or temporary deputy chairperson, or if both the chairperson and the deputy or temporary deputy 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 deputy 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 deputy chairperson, or if both the chairperson and the deputy or temporary deputy 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 receive fair value.

**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.



## SCHEDULE B: EXTRACT FROM SCHEDULE 5 OF THE CROWN ENTITIES ACT 2004 (BOARD PROCEDURE FOR STATUTORY ENTITIES (OTHER THAN CORPORATIONS SOLE))

### Procedure of board

#### 6 Procedure generally

Except as otherwise provided under this or another Act, the members may regulate their own procedure.

#### 7 Notice of meetings

- (1) The board or the chairperson must appoint the times and places of ordinary meetings of the board, and give notice of those meetings to each member not present when the appointment is made.
- (2) The chairperson or any 2 members (or, if the board consists of only 2 members, either member) may call a special meeting of the board by giving at least 5 working days' notice (or any shorter notice period that all the members agree) of the special meeting, and the business to be transacted at the meeting, to each member for the time being in New Zealand.
- (3) Only the business stated in the notice of special meeting may be transacted at the special meeting.
- (4) Notice of a meeting—
  - (a) must be written, and state the time and place of the meeting; and
  - (b) may be given by post, delivery, or electronic communication; and
  - (c) must be given or sent to each member's current postal or electronic address.
- (5) An irregularity in a notice of a meeting is waived if all members entitled to receive the notice either—
  - (a) attend the meeting without protesting about the irregularity; or
  - (b) do not attend the meeting, but agree before the meeting is held to the waiver of the irregularity.

#### 8 Methods of holding meetings

A meeting of the board may be held—

- (a) by a quorum of the members, being assembled together at the time and place appointed for the meeting; or
- (b) by means of audio, audio and visual, or electronic communication provided that—
  - (i) all of the members who wish to participate in the meeting have access to the technology needed to participate in the meeting; and
  - (ii) a quorum of members can simultaneously communicate with each other throughout the meeting.

#### 9 Quorum

- (1) A quorum for a meeting of the board is the number that is—
  - (a) half the number of members (if the board has an even number of members); or
  - (b) a majority of the members (if the board has an odd number of members).
- (2) If the board has only 2 members, the quorum for a meeting is both members.
- (3) No business may be transacted at a meeting of the board if a quorum is not present.

#### 10 Special provisions for boards with only 1 member available to act

- (1) This section applies while a board has only 1 member who is available (for example, because of a vacancy or because section 66, but not section 68, applies to 1 or more members).
- (2) The quorum for a meeting of the board is 1.
- (3) The available member—
  - (a) may appoint the times and places of ordinary meetings; and



- (b) may call a special meeting; and
- (c) need not send a notice of meeting for those meetings; and
- (d) may enter into any obligation that, under section 127(2), may be entered into by 2 or more members.

#### **11 Presiding at meetings**

- (1) At a meeting of the board, the following person presides:
  - (a) if there is a chairperson and he or she is present and is not interested in the matter, the chairperson; or
  - (b) if there is no chairperson or he or she is not present or is interested in the matter, the deputy chairperson; or
  - (c) in any other case, the temporary deputy chairperson.
- (2) A person referred to in subclause (1)(b) or (c) may exercise all the powers and functions of the chairperson for the purposes of the meeting.

#### **12 Voting at meetings**

- (1) Each member has 1 vote.
- (2) In addition to his or her general vote, the chairperson at a meeting has, in the case of an equality of votes, a casting vote.
- (3) A resolution of the board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.
- (4) A member present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from or votes against the resolution at the meeting.

#### **13 Unanimous written resolutions**

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members who are entitled to vote on the matter is as valid and effectual as if it had been passed at a meeting of the board duly called and constituted.
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.



SCHEDULE C: STANDING COMMITTEE CHARTERS