

# Terms of Reference

## Newborn Metabolic Screening Programme Advisory Group

### 1. Background

The newborn metabolic screening service has been operating with an advisory group (named the National Testing Centre Advisory Committee) for some years. With the change in governorship of the service to the National Screening Unit (NSU) – a unit within the Ministry of Health - the advisory committee will now be funded by the Ministry and reformed as the Newborn Metabolic Screening Programme (NMSP) Advisory group.

The last meeting of the National Testing Centre Advisory Committee was held on the 6<sup>th</sup> April 2005. At this meeting, the committee discussed representation on the new group, which is now reflected in these terms of reference

### 2. Mission and roles of the Group

The NSU is establishing the NMSP Advisory Group to support the NSU to achieve its vision, namely:

*Saving lives, reducing inequalities, and building the Nation's health by leading the delivery of screening programmes, uncompromising in their quality and trusted by the communities we serve.*

The roles of the NMSP Advisory Group include:

- To provide multidisciplinary advice to the NSU regarding strategic direction, policy and quality standards, funding objectives, legislation reviews and documentation<sup>1</sup> relating to the NMSP
- To provide multidisciplinary advice to the NMSP Clinical Director regarding technical and operational aspects of the NMSP
- To share responsibility with the NSU, for providing liaison back to their respective formal bodies and constituencies<sup>2</sup>

The role of the Group's Chair includes:

- Chairing the quarterly meetings
- Assisting the NSU with preparing the agenda and advising on papers required for each meeting
- Assisting the NSU, as required, with media matters relating to the NMSP

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<sup>1</sup> Examples of documentation may include (but is not limited to) storage, retention and use of residual blood spots, practitioner manual, early intervention/referral guidelines, expanded screening, educational materials, website developments.

<sup>2</sup> For those members who are endorsed by their college/body.

### **3. Principles**

The Group will:

- involve key stakeholder groups, including consumers
- use the best available evidence to inform its work
- operate in accordance with the Treaty of Waitangi principles of partnership, participation and protection
- identify relevant linkages to the Treaty of Waitangi where appropriate to inform its work
- have a strong focus on quality improvement and equity.

### **4. Membership**

The following representation will be included:

- Newborn metabolic screening technical experts (at least one with an external/international perspective)
- Midwife (with endorsement from the New Zealand College of Midwives)
- Paediatricians (with endorsement from the Paediatric Society of NZ)
- Chief Advisor Child Youth Health – Ministry of Health
- Representative from the Commissioner for Children
- Legal advisor
- Geneticist
- NMSP Clinical Director
- NMSP Metabolic Physician
- Maori advisor
- Pacific Island advisor

The NSU may co-opt other members as required.

Meetings will also be attended by members of the NSU including the Group Manager, Public Health physician, NMSP Programme Manager and others as required.

#### **Term of office**

The term of office for the Chair will be three years, and for other members will be either two or three years to stagger the replacement of Group members. Membership may be renewed for a further term/s.

If a vacancy arises, the NSU Group Manager will appoint a replacement after taking into account the advice of the group on desirable skills and experience.

#### **Working arrangements of the Group**

The group will meet formally on a quarterly basis with meeting dates established at the first meeting and then reconfirmed at the commencement of the calendar year. The meetings will be held in the Ministry of Health offices in Wellington from 0930 - 1600 unless otherwise advised.

Papers for the meetings will be distributed at least one week prior to the meeting. The NSU will endeavor to disseminate these documents as far in advance of the meeting as possible.

Teleconferences may be arranged if required to discuss particular issues.

This group is not a decision making body but rather a forum at which advice can be given to the NSU and the programme. Final decisions rest with the NSU Group Manager.

The NSU will provide funding and administrative support for the group.

The NSU Group Manager has the discretion to form sub-groups of this group for specific issues if required.

### **Conflicts of interest protocol**

Members of the group will identify and document their conflicts of interests prior to a discussion of a particular issue. The Group will then decide what part the member may take in any relevant discussion.

Further guidance can be found in the document "Board Appointment and Induction Guidelines; Annex 2: Identifying and dealing with conflicts of interest", State Services Commission. (Appendix 1)

### **Media Policy**

Group members are not agents of the Ministry of Health and therefore are not permitted to speak on behalf of the group, the NSU or the Ministry of Health. However, this does not restrict members to media statements relating to their personal expertise.

If a member receives a media request or enquiry relating to the NMSP, they must inform the NSU Group Manager or the Ministry of Health Communications Manager (Appendix 2).

Any media enquiry relating to the strategic intent, funding or any activity in which the Ministry of Health is responsible for, shall be directed to the NSU Group Manager or the Ministry of Health Communications Manager

## Appendix 1: Conflict of interest Guidelines

### Annex Two: Identifying And Dealing With Conflicts Of Interest

#### **GENERAL BACKGROUND**

Successive Governments have recognised and emphasised the importance of appointing the best possible people to the bodies that make up the wider State sector. New Zealand is a small country, where only a few individuals may possess critical skills and therefore are sought for a number of (potentially conflicting) tasks. As a consequence, the potential for conflicts of interest may be unavoidable in a reasonable number of appointments - they are often the price of appointing people with knowledge of and expertise in specialised areas.

A conflict of interest will not necessarily bar an appointment, although a serious conflict may mean a candidate is not suitable for an appointment, or should resign if the conflict arises during the course of the appointment. It is commonplace in both the public and private sectors for systems to be put in place to ensure that potential conflicts of interest are identified and managed, in order to protect the decision-making integrity of the bodies concerned, and public confidence in them.

The key points in respect of conflicts of interest are **identification** and **management**. Whenever an appointment is made, the Minister should be confident that:

- every actual or potential conflict of interest that can reasonably be identified has been identified; and
- where a conflict of interest has been identified, an acceptable mechanism or system has been proposed or established to deal with the conflict appropriately.

#### **WHAT IS A CONFLICT OF INTEREST?**

##### **Ethical Context**

Conflicts of interest should be viewed within an ethical context of **good faith, honesty and impartiality**:

- **good faith:** members of Crown boards and offices have an obligation to act at all times in good faith and in the best interests of the body to which they have been appointed;
- **honesty:** members of Crown boards and offices have an obligation to act honestly at all times in relation to all matters concerning the body to which they have been appointed;
- **impartiality:** members of Crown boards and offices must observe the principles of fairness and impartiality in all official dealings. No individual or organisation with which board members or officers are involved may be given improper preferential treatment - whether by access to goods and services, or access to information, or anything similar.

##### **Definition**

A conflict of interest arises where a prospective or existing board member has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the Crown body itself.

The key question to ask when considering whether an interest might create a conflict is:

**does the interest create an incentive for the appointee to act in a way which may not be in the best interests of the Crown body?**

If the answer is 'yes', a conflict of interest exists. The existence of the incentive is sufficient to create a conflict. Whether or not the appointee would actually act on the incentive is irrelevant.

### *Types of conflicts of interest*

A conflict of interest may take a number of forms. It may be financial or non-financial. It may be direct or indirect. It may be professional or family related. A conflict of interest may arise from:

- directorships or other employment;
- interests in business enterprises or professional practices;
- share ownership;
- beneficial interests in trusts;
- existing professional or personal associations with the Crown body concerned;
- professional associations or relationships with other organisations;
- personal associations with other groups or organisations; or
- family relationships.

A conflict of interest may be more perceived than actual. Perception is a very important factor in the public sector; the processes of government (including agencies in the wider State sector) must be fair and ethical, and must be very clearly seen to be so.

In identifying conflicts of interest, those involved should focus on interests that are specific to the appointee, rather than generic in nature. Generic interests are those held in common with the general public or a significant sector of the general public (e.g. where the appointment relates to an agency in the transport sector and the appointee has a car, or the appointment relates to an agency in the education sector and the appointee has school age children).

Interests that are solely generic are not relevant and should be disregarded.

### *Examples*

Some hypothetical examples of conflicts of interest follow. This is not an exhaustive list of every possible conflict of interest - conflicts are many and varied and some can be very subtle. (Note: the purpose of the examples in this paragraph is simply to identify a range of conflicts of interest, without suggesting how or if they could be managed. Suggested methods of dealing with each of the following conflicts of interest are discussed below.)

**Example 1:** An appointee to the board of a trading Crown body holds shares in a company that is in direct competition with the Crown body.

*Comment: The appointee has a direct financial interest in the competing company. A poor performance on the part of the Crown body may translate into greater profits for the competing company and its investors (including the appointee). The appointee therefore has an incentive to put her own financial interest ahead of the interests of the board.*

**Example 2:** An appointee to the board of a Crown body is a partner in an accountancy firm which regularly undertakes consultancy work for the body.

*Comment: The appointee has a direct conflict of interest. Persuading the board to give more consultancy work to her firm is likely to result in financial gain for the appointee. She therefore has an incentive to place the interests of her firm ahead of the board's interest in finding the best value consultants. Other board members may find it difficult to criticise the performance of the accountancy firm in light of the appointee's presence on the board. Additionally, the appointee may be tempted to pass confidential information relating to the board's activities to her employers, providing them with inside information which will give them an advantage over their competitors.*

**Example 3:** An appointee is considered for appointment to the board of a Crown body that has a regulatory function in respect of a particular industry. The appointee is the director and major shareholder in a company that operates in that industry.

*Comment: There is often value in including industry representation on the board of a regulatory body. Sometimes it is a statutory requirement. However, there may also be risks. In this case the appointee has a strong financial incentive to influence board decisions in favour of his company or the industry as a whole. The appointee may also be tempted to disclose confidential board information to colleagues or other industry participants for improper purposes.*

**Example 4:** An appointee to a board of a Crown body is the wife of the body's chief executive.

*Comment: The board must be able to appraise critically the performance of the chief executive and other employees of the Crown body. A close family relationship between a board member and the chief executive is very likely to inhibit or prevent that critical appraisal.*

**Example 5:** An appointee to a board of a Crown body was in the past employed by a lobby group in the same industry as the Crown body, although the association has now ceased.

*Comment: The candidate no longer has any personal or financial interest in the lobby group, so there is no actual conflict in this case. However, the past association may mean that there is a public perception of a conflict of interest.*

These are just some examples of the types of conflicts of interest that may arise. There will be many variations on these themes. Legal advice should be sought where there is any doubt.

## **ASSESSING CONFLICTS OF INTEREST**

Having established the existence of a conflict of interest, the next consideration is the seriousness of the conflict. Conflicts can be divided into two categories:

a **Unmanageable conflicts of interest:** where a conflict of interest is:

- unavoidable (i.e. the appointee cannot or will not divest him or herself of the conflicting interest); and
- serious (in terms of the significance and/or value of the interest, and the appointee's circumstances); and
- pervasive (i.e. would affect so many of the board's decisions that management mechanisms are not practical);

the conflict is likely to render the appointee ineligible for the position.

b **Manageable conflicts of interest:** where a conflict of interest has been identified, but:

- the appointee is prepared to divest him or herself of the

- interest or sever the connection that is causing the conflict; or
- the conflict of interest is so minor (taking into account the circumstances of the appointee) or so remote that:
  - it provides no real incentive to the appointee to act against the best interests of the Crown body; and
  - there is little risk of a negative public perception; or
- the conflict of interest affects a confined area of the board's operations;

the conflict of interest can probably be avoided, or alternatively managed through some appropriate mechanism.

### ***MECHANISMS FOR AVOIDING OR MANAGING THE RISK OF CONFLICTS OF INTEREST***

Many conflicts of interest fall into the "manageable" category. If a candidate is otherwise suitable, there will often be mechanisms available to avoid or minimise any risk to the decision making integrity of the board. The main methods of dealing with a conflict of interest are:

a **Divestment:** the appointee agrees to divest him or herself of the interest that is creating the conflict (e.g. to sell shares).

b **Blind trusts:** a blind trust is a trust structure designed to avoid conflicts of interest arising out of public office. Under this arrangement, the appointee transfers assets (such as shares) to a trust. A trustee manages the trust and the investment of its assets with nearly complete autonomy. After transfer, the appointee retains very little knowledge or control of the transferred assets.

c **Severing connections:** the appointee agrees to leave an employment position or an organisation which gives rise to the conflict.

d **Confidentiality agreements:** the appointee agrees not to pass confidential information relating to the Crown body or the board to professional or personal associates outside the ambit of board business. Confidentiality agreements should be entered into with new appointees as a matter of standard practice. Confidentiality agreements will often help to minimise the risk of conflicts of interest.

e **Declarations of interest:** the appointee retains the interest, but agrees to declare it when related issues arise for discussion and/or decision at board meetings. The process for recording declarations of interest may vary, depending on the nature of the body. For some bodies, the rules and procedures relating to declarations of interest are provided by statute [either the legislation establishing the agency, or general legislation such as the Companies Act 1993 or the Local Authorities (Members' Interests) Act 1968]. In the absence of specific legislative provisions, boards should establish appropriate systems for recording declarations of interest, preferably using statutory precedents as a guide. A declaration of interest should be noted on each occasion in the board minutes. Note: because a declaration of interest affects a board member's participation in the board's decision making, it is not a suitable mechanism for managing conflicts of interest that apply to a wide range of the board's activities.

f **Abstaining from voting:** the appointee agrees that, in addition to declaring the interest, he or she will not participate in any vote on related issues. The abstention should be noted on each occasion in the minutes.

g **Withdrawing from discussion:** the appointee agrees that, in addition to declaring the interest and abstaining from voting when related issues arise for discussion and/or decision at board meetings,

he or she will withdraw from the meeting for the duration of the item. The withdrawal should be noted on each occasion in the minutes.

**h Non-receipt of relevant information:** the appointee agrees that, in addition to declaring an interest and withdrawing from the discussion and the vote, that he or she should not be given any information (i.e. board papers, written or oral briefings etc.) relating to the interest by the board or the body.

**i Agreement not to act:** the appointee agrees not to participate in any other board action concerning the interest (e.g. signing documents that relate to the interest on behalf of the board). These methods of managing a conflict of interest may be used singly or in combination, depending on the nature and extent of the conflict of interest that is being considered. If the board is governed by statute, there may be relevant statutory provisions that provide appropriate rules and procedures [this is particularly likely in respect of the mechanisms set out in (d) to (i) above].

### **Examples**

The various mechanisms for avoiding or managing conflicts of interest can be considered in relation to the factual examples above, as follows:

**Example 1:** an appointee to the board of a trading Crown body holds shares in a company which is in direct competition with the Crown body.

*Comment: the appropriate action will depend on the value of the shares held, and, possibly, on the appointee's own circumstances (i.e. the relative importance of the shares to the appointee's financial situation). If the value of shares is very small and there is no risk of a negative public perception, the conflict may be immaterial. If the value of the shares to the appointee is more significant, it would probably be necessary to require that they be sold or placed in a blind trust. Declarations of interest would not be suitable, because the conflict of interest concerns the performance and success of the Crown body as a whole, rather than one specific area of its operation.*

**Example 2:** an appointee to the board of a Crown body is a partner in an accountancy firm which regularly undertakes consultancy work for the body.

*Comment: This conflict of interest is unlikely to be manageable, because it is ongoing and serious. Even if the appointee were to sign a confidentiality agreement, and to agree to remove herself from discussions on specific items relating to her firm, her relationship with the other board members might affect their decision making on those items. In addition, the public perception of the arrangement would be likely to be very negative.*

**Example 3:** an appointee is considered for appointment to the board of a Crown body that has a regulatory function in respect of a particular industry. The candidate is the director and major shareholder in a company that operates in that industry.

*Comment: declaring an interest (and possible absencing himself from board discussions and votes) will be suitable only if regulating the industry in which the appointee's company operates is just one of the board's activities. If regulation of that industry is the board's main activity, the conflict of interest may be too serious to allow the appointee to be confirmed, unless he severs his relationship with the company and divests himself of his shareholding in the company. Decisions on whether this type of conflict can be managed may depend on statutory provisions. A number of body-specific statutes provide for some type of industry representation, but explicitly rule out candidates who are intimately or financially connected to the industry concerned. Where there is any doubt, legal advice should be*

sought to determine whether the conflict means that the appointment is untenable.

**Example 4:** the appointee to a board of a Crown body is the wife of the agency's chief executive.

*Comment: the closeness of the family relationship, combined with the ongoing and pervasive nature of the conflict, means that the appointee is probably unsuitable for appointment, or if the situation arises mid-term, should resign.*

**Example 5:** an appointee to a board of a Crown body was in the past employed by a lobby group in the same industry as the Crown body, although the association has now ceased.

*Comment: whether the perception of a conflict is manageable or not will depend on a number of factors: the significance of the Crown body, the political sensitivity of the appointment, the passage of time between the appointee's involvement with the lobby group and the date of the appointment, the public profile of the appointee and/or the body, the likelihood of the appointee resuming contact with the lobby group after the expiration of his term on the board, etc. Even though the conflict of interest may be more perceived than real, the appointment may not be tenable if it would seriously compromise the integrity and standing of the board in public opinion.*

Not all conflicts of interest will be clear-cut in terms of how serious they are and how (or if) they can be managed. In considering these issues, those involved should take into account:

- the nature of the body's functions;
- the values and broad criteria applicable to the appointment;
- the qualifications and expertise required for the appointment and the size of the available pool of candidates;
- the significance of the appointment;
- the political sensitivity of the appointment;
- the nature of the conflict;
- the extent of the conflict;
- any relevant legislative provisions; and
- the candidate's own circumstances.

It is sensible to err on the side of caution. In many cases it will be desirable to obtain legal advice.

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[http://www.ssc.govt.nz/upload/downloadable\\_files/Board\\_guidelines.pdf](http://www.ssc.govt.nz/upload/downloadable_files/Board_guidelines.pdf)

## Appendix 2: Contact details for the Ministry of Health

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