



**Office of the Clerk of the House of Representatives**

*Te Tari o te Manahautū o te Whare Māngai*

# **Register of Pecuniary Interests of Members of Parliament**

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**Supplementary explanatory notes – 2008/09**

**Trusts**

## The purpose of this supplementary explanatory note

The purpose of this supplementary explanatory note is to clarify the requirements relating to trusts in relation to your pecuniary interests return. After reading this supplementary explanatory note you should understand:

- What a beneficial interest in a trust is; and
- Which transactions involving a trust you must declare in your return under other provisions in Appendix B of the Standing Orders.

## What is required in your return in terms of an interest in a trust?

Clause 4(1)(d) of Appendix B of the Standing Orders states that a member must include in their return of pecuniary interests “*the name of each trust in which the member has a beneficial interest*”.

## What is a trust?

A trust is an equitable<sup>1</sup> obligation under which a person (trustee) having control of property (trust property) is bound to deal with that property for the benefit of other persons (beneficiaries)<sup>2</sup>, any of whom may enforce the obligation. If they are alive at the time, the person who provides the trust property and creates the trust is called the settlor and the document containing the terms of the trust is called the trust deed<sup>3</sup>. A trust that is created under a will is called a testamentary trust.

## What is a beneficial interest in a trust?

A “*beneficial interest*” in a trust is an enforceable, proprietary interest in the trust property. Examples of a proprietary interest include ownership and a right to possession or occupation.

If you are a beneficiary of a trust, it is likely that you have a beneficial interest in that trust. There will be a beneficial interest irrespective of whether you have received a benefit under the trust or the benefit will happen at some point in the future.

The exception is where the trustee has a discretion as to which of the beneficiaries will receive a benefit from the trust. In this situation a beneficiary named in a trust<sup>4</sup> will have a mere expectation or hope in respect of that trust and not a beneficial interest.

If you are a named beneficiary in a trust to which the exception does not apply, you must declare the name of that trust in your pecuniary interest return under clause 4(1)(d) (Form 4).

<sup>1</sup> Equity is a body of rules and procedures that developed separately from the common law and arose where a party who could get no remedy in the common law courts would apply to the Chancellor as the “keeper of the King’s conscience” for equitable relief.

<sup>2</sup> A trustee may also be a beneficiary under a trust.

<sup>3</sup> Hinde & Hinde, *New Zealand Law Dictionary*, 3<sup>rd</sup> ed.

<sup>4</sup> This includes persons named by class, eg all children of x.

## Transactions involving the trust

Some transactions involving a trust must be declared under other provisions of Appendix B of the Standing Orders. These include the provisions for declaring gifts (clause 7(1)(b) (Form 11)), discharge of debts (clause 7(1)(c) (Form 12)) and debtors of the member (clause 4(1)(h) (Form 8)).

### Gifts

Under clause 7(1)(b) every return must include information concerning “*each gift received by the member that has an estimated market value in New Zealand of more than \$500 and the name of the donor of each of those gifts (if known or reasonably ascertainable by the member)*”.

A gift to a trust in which a member has an interest in excess of \$500 will not be “*a gift received by a member*” under clause 7(1)(b) as the trust and the member are not one and the same.

However, a payment by a trust to a member without adequate consideration will be a gift received by that member and must be declared under clause 7(1)(b). This is so regardless of whether the gift is paid directly to the member themselves, or is paid to another party in discharge of a debt owed by the member to that party (in which case clause 7(1)(c) would also apply).

#### *Examples of gifts that should be declared*

Member X receives the sum of \$5,000 from a testamentary trust.

Member Y receives a payment of \$50,000 from their family trust following the sale of a property owned by the trust.

### Debts

Under clause 7(1)(c) every return must also include information concerning “*all debts of more than \$500 that were owing by the member that were discharged or paid (in whole or in part) by any person and the names of each of those persons*”.

Where a debt of more than \$500 owed by a member is paid or partially paid by a trust, this is a debt paid by another party. Such a payment will come within clause 7(1)(c) and must be declared by the member in their return.

#### *Examples of debts that should be declared*

Member X’s solicitor’s fees of \$12,000 incurred in challenging a resource consent granted in their electorate are paid by Trust A.

Member Y’s builder is paid \$1,500 by Trust B for repairs to Y’s constituency office after a vandalism attack on the premises.

### **A trust as a debtor of the member**

Clause 4(1)(h) requires a member to include in their pecuniary interests return “*the name of each debtor of the member who owes more than \$50,000 to the member and a description of each of the debts that are owed to the member by those debtors*”.

Where the member is responsible for setting up a trust and has transferred their property into the trust, the trust may be a debtor of the member to the value of the property that has been so transferred<sup>5</sup>. Where any such debt owed by the trust to the member exceeds \$50,000, it must be declared in their return under clause 4(1)(h).

#### *Examples of debtors that must be declared*

The XYZ Family Trust owes member X the sum of \$304,000 as the balance of the amount owing for settlement of a \$360,000 property on the trust in 2006.

Member A pays \$60,000 per annum into Family Trust B for maintenance and improvements to the trust property (the family home), and the payment is considered a debt owed by the Trust.

<sup>5</sup> Subject to any schedule of forgiving that debt.