

CONSUMER ADVISORY COMMITTEE (CAC) TERMS OF REFERENCE

Updated March 2025

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Glossary of terms

“**CAC**” means the Consumer Advisory Committee established pursuant to section 71 (1)(b) of the Pae Ora (Healthy Futures) Act 2022

“**CAC Chair**” means the Chairperson of the CAC.

“**Consumer**” means any person who uses (or may use) health and disability services, including a ‘patient’. They may also include the person’s family or whānau or support persons, or other individuals or groups representing people with a health condition, or community perspective, or world view.

“**Chief Executive**” means the Chief Executive of Pharmac, or their delegate.

“**Deputy Chair**” means the Deputy Chairperson of the CAC.

“**Meetings**” mean any meeting of CAC members facilitated by Pharmac.

“**Member**” means a member of the CAC.

“**PHARMAC**” means the Pharmaceutical Management Agency, a Crown Entity continued pursuant to section 67 (1) of the Pae Ora (Healthy Futures) Act 2022, its staff and Board

“**Pharmaceutical(s)**” means, as defined in the Pae Ora (Healthy Futures) Act 2022 a medicine, therapeutic medical device, or related product or related thing.

“**Record (formerly Minutes)**” means the written record of discussion made at a strategic meeting of CAC which have been finalised by the CAC Chair.

“**Strategic meeting**” means the fixed meetings generally convened face to face with CAC members, held at least three times a year.

“**Terms of Reference**” means these Terms of Reference for the CAC.

1 Establishment

1.1 The CAC

- 1.1.1 The CAC is an expert advisory committee required under the Pae Ora (Healthy Futures) Act 2022 that has been established by the Pharmac Board (under clause 14 (1)(a) of Schedule 5 of the Crown Entities Act 2004), to 'provide input from a consumer or patient point of view' (section 71 Pae Ora Act (Healthy Futures) Act 2022).

2 Functions

2.1 Purpose of the CAC

- 2.1.1 The CAC advises Pharmac on strategic, policy and operational activities in the remit of Pharmac that have an impact on consumers.
- 2.1.2 Recognising the diverse range of views held by diverse consumers, it is not intended that the CAC's advice represents all consumer views.
- 2.1.3 The CAC does not make decisions on behalf of Pharmac.

2.2 Advice to be given by the CAC

- 2.2.1. In providing advice to Pharmac, it is expected that CAC members will:
- where relevant and appropriate, take into account Pharmac's decision-making framework, currently the Factors for Consideration;
 - reflect the Associate Minister of Health's letter of expectations to the Pharmac Chair;
 - work towards improving health outcomes for populations with the highest health needs¹
 - reflect consumer interests broader than those of a specific group;
 - demonstrate an understanding of issues related to medicines and medical device use within wider health, health and disability services and health equity contexts;
 - think and operate at a strategic level, particularly on Pharmac's strategic priorities;
 - be respectful and open to considering diverse perspectives and
 - have a quality and process improvement focus.

¹ Reflecting the Government Policy Statement on Health 2024-2027

3 Relationship Management

3.1 Relationship with the PHARMAC Board

- 3.1.1 The Pharmac Board appoints CAC Members in accordance with clause 14 (1)(a) of Schedule 5 of the Crown Entities Act 2004.
- 3.1.2 Records of each strategic meeting of the CAC shall be provided to the Pharmac Board. The CAC Chair will report back on the Pharmac Board's response to the CAC's records at its next meeting.
- 3.1.3 The CAC Chair (or in their absence, a delegated Member of the CAC approved in advance by the Pharmac Board Chair) may attend all meetings of the Pharmac Board as an observer. The CAC Chair may participate in discussion at the invitation of the Pharmac Board Chair but may not vote on any matter at that meeting. The CAC Chair must, subject to any specific confidentiality obligations in relation to their participation as an observer, report back to the CAC on relevant discussions of the Board.
- 3.1.4 A Pharmac Board member may attend all meetings of the CAC as an observer. The Pharmac Board Chair may participate in discussion but may not have any role in determining the CAC's advice on any matter at that meeting. The Pharmac Board Chair may report back to the Pharmac Board on the discussions of the CAC.

3.2 Relationship with PHARMAC staff

- 3.2.1 A representative from Pharmac's Senior Leadership Team will attend part of or all of each CAC meeting.
- 3.2.2 Pharmac will provide administrative and support services to the CAC.
- 3.2.3 Pharmac staff members will attend and contribute where relevant to the items being discussed by the CAC.
- 3.2.4 Pharmac may seek to use the expertise of the CAC members outside of the allocated CAC meeting times on an ad-hoc basis.

3.3 Indemnity for Members

- 3.3.1 Pharmac indemnifies all Members against all litigation costs, liabilities, expenses and claims. Members may incur as a direct or indirect result of advice given in their capacity as Members. This indemnity only applies to circumstances where a Member has acted in good faith and in performance or intended performance of the CAC's functions.

4 Tiriti o Waitangi obligations

4.1.1 As a Crown Entity, Pharmac understands and is committed to, its obligations under te Tiriti o Waitangi. This commitment includes ensuring Māori representation on CAC.

4.1.2 In alignment with Pharmac's [Te Whaioranga strategy](#), and related Te Tiriti policy the following principles will guide CAC as appropriate in providing expert advice to Pharmac.

4.1.3

Tino rangatiratanga	<i>We recognise and respect the right of Māori to have control over their own health and wellbeing. We support Māori in the exercise of tino rangatiratanga, through self-determination and mana motuhake in the design, delivery and monitoring of our work. We build enduring relationships and partnerships with our te Tiriti partners.</i>
Equity	<i>Māori are one of our priority population for all equity work. We consider inequitable access to medicines and poor health outcomes for Māori to be unfair, unjust and avoidable and we actively work to achieve equitable health outcomes for Māori.</i>
Active protection	<i>Alongside our commitment to equity, we are well informed on the extent and nature of Māori health outcomes and what is being done to achieve Māori health equity. We actively protect tino rangatiratanga through increasing Māori participation in governance, leadership, management and decision making at all levels of PHARMAC. We ensure mātauranga Māori is given respect in any decision-making process.</i>
Options	<i>We deliver for and work with whānau Māori in a sustainable, enduring and culturally appropriate way that recognises and supports the expression of mātauranga Māori.</i>
Partnership	<i>We work in utmost good faith with Māori in the governance, design, delivery and monitoring of our work to ensure our mutual goals are met. We ensure our governance and management structure guarantees we have capability and capacity to deliver on our commitments. We continually broaden our understanding of te ao Māori and build our capability to deliver on all our priorities.</i>

5 Membership

5.1 Health equity

- 5.1.1 Pharmac requires members to bring an understanding of and commitment to, health equity and improving health outcomes including for those with the highest health needs in providing advice to Pharmac. This includes the priority populations identified in the Pae Ora Act 2022 (Māori, Pacific peoples, tangata whaikaha, women and people living in rural communities).

5.2 Diversity of the CAC membership

- 5.2.1 The CAC will consist of up to ten members, including at least two Māori and at least one Pacific member. In making appointments to the CAC, the Pharmac Board will endeavour to ensure the CAC has an appropriate mix of people including representing different age groups, gender identities, patient and or consumer advocacy groups in Aotearoa New Zealand, together and those with lived experience of the Aotearoa New Zealand health system.

5.3 Recruitment and appointment of the CAC members

- 5.3.1 Members of the CAC are appointed by the PHARMAC Board.
- 5.3.2 Pharmac staff and members of the CAC (usually the CAC Chair) will be involved in the selection process for new CAC members. Other people may be included as needed if consumer expertise or focus is being recruited for.
- 5.3.3 The CAC members will be appointed for a term of up to three years. Members can be reappointed for a second three-year term at the discretion of Pharmac staff. In deciding on a reappointment Pharmac may consider the need to balance regularly refreshing consumer input with developing an understanding of Pharmac's processes. Pharmac staff may also consider the outcomes of any performance review (refer to section 7.4). The maximum term of membership will be no longer than six years.

5.4 Termination of appointment

- 5.4.1 Members will inform the Pharmac Board Chair and the CAC Chair in writing at the earliest possible opportunity of their intention to resign from the CAC. A minimum notice period of 2 weeks is required.
- 5.4.2 The Pharmac Board Chair may at any time remove a Member (including the CAC Chair or Deputy Chair) from the CAC. The Chief Executive will inform the Member in writing of the termination of their membership.

In accordance with section 43 Crown Entities Act 2004, Pharmac may not make any payment to, or otherwise compensate, any person in respect of the person ceasing to be a Member.

6 Fees and expenses

- 6.1.1 CAC Members will be remunerated for the services they provide to Pharmac, including attendance at meetings, time spent preparing for meetings and any other work requested by Pharmac, or requested by the CAC Chair and approved in advance by Pharmac.
- 6.1.2 (The Public Service Commission administers the Cabinet Fees Framework which determines the level of fees paid. Fees payable is set out in the CAC payment schedule (refer Members Handbook).
- 6.1.3 Pharmac will cover travel and accommodation expenses for Members to attend meetings². Other travel and accommodation may be covered at the discretion of PHARMAC.
- 6.1.4 If Pharmac seeks a Member's advice or work outside of the whole of the CAC meetings, fees and expenses will be paid in line with the CAC payment schedule.

7 Responsibilities of the CAC Members

7.1 Responsibilities of the CAC Chair

- 7.1.1 The key responsibilities of the CAC Chair are to:
- liaise with Pharmac staff to finalise meeting schedules and agendas.
 - chair meetings of the Committee or designate another member to chair in their absence.
 - report to the Pharmac Board on the work of the Committee as required.
 - attend meetings of the Pharmac Board as an observer and subject to confidentiality requirements, report back to the CAC on relevant discussion;
 - other administrative tasks as set out in the *Member Handbook*.

7.2 Responsibilities of Deputy Chair of the CAC

- 7.2.1 The key responsibilities of the Deputy Chair are to:
- Act as Chair meetings of the CAC when the CAC Chair is unable to or delegates this role to the Deputy Chair.
 - Provide support to the CAC Chair during the preparation for meetings and the meetings themselves
 - Assist coordinate member views as needed on agenda items to be discussed at meetings

² In accordance with the Travel & Expense Policy for Board Members and Committee Members

7.3 Responsibilities of all CAC members

7.3.1 All Members are responsible for:

- attending and fully participating in all CAC meetings, unless otherwise agreed with the CAC Chair and Pharmac staff.
- complying with all relevant obligations set out in the Crown Entities Act and other relevant legislation.
- complying with the obligations set out in this Terms of Reference.
- complying with relevant Pharmac policies and responsibilities as detailed in the *Member Handbook*, provided as part of induction process or at other times; presiding over CAC meetings if requested by the Chair;
- other administrative tasks as requested and/or as set out in *Member Handbook*

7.3.2 CAC members have no financial delegation and cannot approve any financial expenditure on behalf of Pharmac without the agreement of Pharmac staff.

7.4 Review of member performance

7.4.1 The performance of each Member will be assessed, preferably at the end of the first year of the Member's term and before the end of the three years, if reappointment is being considered.

7.4.2 The CAC Chair, in consultation with the Chief Executive or delegated member of Pharmac's Senior Leadership Team, will assess the performance of each Member. The performance of the CAC Chair will be assessed by the Pharmac Board Chair.

7.4.3 As part of this review process, CAC members will also provide an assessment and feedback on their engagement and relationship with Pharmac.

7.5 Interest reporting

7.5.1 Members are to, at all times, fully disclose and appropriately manage any interests and conflicts of interest in the performance of their duties and obligations, consistent with their role as Members of a Committee of a statutory entity. Members are to avoid, to the greatest extent possible, any conflict with the performance of their duties and obligations as Members. The legislative requirements for disclosure and management of conflicts are set out in Appendix One. Section 62 of the Crown Entities Act 2004 sets out the legal definition of being "interested in a matter".

7.5.2 A Member who reasonably believes they may have an actual or potential conflict of interest is to disclose the nature of that interest to the CAC Chair (via Pharmac staff) as soon as practicable after they become aware of it.

- 7.5.3 Where a Member declares or discloses an interest of any kind or an actual or potential conflict of interest, this shall be recorded in an interest register, which is to be circulated prior to each meeting of CAC. The interest's register is to be considered and confirmed as up to date at the commencement of each meeting. The interest's register is managed by Pharmac staff.
- 7.5.4 Where a Member is "interested in a matter" (as defined in section 62 Crown Entities Act) relating to Pharmac, they must not vote or take part in any discussion or decision of CAC relating to the matter, or otherwise participate in any activity of Pharmac that relates to the matter, unless permitted by the Pharmac Board Chair (including under any standing permission issued by the Pharmac Board Chair). The Record of the meeting will record this fact.
- 7.5.5 Should the CAC Chair (or Deputy Chair, when the Chair is "interested in a matter") consider that it is in the public interest to permit one or more Members, or Members with a specified class of interest, to vote or take part in any discussion of CAC relating to that matter, or otherwise participate in any activity of Pharmac that relates to that matter, they should apply for such permission in advance from the Pharmac Board Chair. The Pharmac Board Chair may give such permission if they are satisfied it is in the public interest to do so and may state conditions that the Member(s) must comply with. The Pharmac Board Chair may issue a 'standing permission' in relation to certain categories of interest.
- 7.5.6 Where the Pharmac Board Chair determines that it is "in the public interest" for a Member to continue to participate in a matter, despite any declared conflict of interest, this will be documented in the Record.

7.6 Confidentiality

- 7.6.1 Records of CAC meetings will be published. All other information, documents and other material relating to matters on the CAC's agenda, are confidential to the CAC and to Pharmac.
- 7.6.2 Members must comply with any communications regarding confidentiality obligations from Pharmac and will, if required, sign confidentiality undertakings.
- 7.6.3 Members are required to store all confidential material received from Pharmac in a secure place until the matter has been finally determined by Pharmac, after which time Members must either destroy the confidential material (by secure destruction) or return it to Pharmac.

7.7 External communications and public statements

- 7.7.1 Members of the CAC may not speak write to the media or post content on any online social media platform or other digital medium, or other external organisation or individuals, or in public fora in relation to the activities of the CAC or Pharmac without prior agreement of the CAC Chair and the Pharmac Chief Executive or delegated member of the Senior Leadership Team.

8 Management of meetings

8.1 Meetings of the CAC

- 8.1.1 In general, Pharmac and the CAC Chair will work together to manage meeting proceedings. This means reaching consensus and a shared view through appropriate and regular communications.
- 8.1.2 The CAC will have at least three strategic meetings a year that will generally be convened face to face but may be held remotely at the discretion of Pharmac staff.
- 8.1.3 Meetings with the CAC may also be held on a monthly basis, or at the discretion of Pharmac staff in discussion with the CAC Chair, to seek Members' advice or keep them informed about relevant Pharmac work.
- 8.1.4 The CAC Chair or the Deputy Chair is to preside at each meeting of the CAC unless the CAC Chair delegates authority to another CAC Member.
- 8.1.5 Members can request leave of absence from any particular CAC meeting, but it is expected that CAC members will attend most scheduled CAC meetings.
- 8.1.6 Subject to the above, the CAC may regulate its internal procedures as it thinks fit.

8.2 Observers and invited guests

- 8.2.1 At the invitation of Pharmac staff, following consultation with the CAC Chair, observers and invited guests may attend CAC meetings.
- 8.2.2 Observers and invited guests will be required to sign confidentiality undertakings, prior to attending any meeting of the CAC. At the discretion of the CAC Chair and Pharmac staff, observers and invited guests may be excluded from discussions of a confidential or commercially sensitive nature. The attendance of observers and invited guests at a strategic meeting will be documented in the Records.

8.3 Publication of CAC Records

- 8.3.1 Records of the CAC's strategic meetings will be made publicly available.
- 8.3.2 Once the CAC Chair has received comments from Members and signed off the Record, the Record will be provided to the Pharmac Board for consideration.
- 8.3.3 Pharmac will endeavor to publish the Record on the [Pharmac website](#) within a month of the Pharmac Board meeting at which it was considered.
- 8.3.4 Portions of the Records may be withheld from publication in accordance with the Official Information Act and at Pharmac's discretion. The names of observers and attendees at a meeting will be published where Pharmac considers it appropriate.

9 Terms of Reference

9.1 Variation of Terms of Reference

9.1.1 These Terms of Reference set out the CAC's roles and responsibilities but are not intended to cover every eventuality. They are to be interpreted flexibly and pragmatically, to allow CAC the scope to adapt as the need arises. These Terms of Reference may be varied or revoked (which may, where Pharmac considers it appropriate, involve consultation) from time to time, by the Pharmac Board.

9.2 Disputes

9.2.1 Any dispute or disagreement about the meaning or application of any part of these Terms of Reference is to be determined by the Pharmac Board Chair or delegate, whose decision is final.

9.3 Review

9.3.1 These Terms of Reference will be reviewed every three years or as appropriate in accordance with 9.1.1 and provided to the Pharmac Board for approval.

Appendix One – Relevant Statutory Provisions

Pae Ora (Healthy Futures) Act 2022

71 ⁵⁰ **Board of Pharmac to ensure advisory committees**

(1)

The board of Pharmac must ensure that there are the following advisory committees under [clause 14\(1\)\(a\)](#) of Schedule 5 of the Crown Entities Act 2004:

(a)

a pharmacology and therapeutics advisory committee to provide objective advice to Pharmac on pharmaceuticals and their benefits:

(b)

a consumer advisory committee to provide input from a consumer or patient point of view.

(2)

Despite [clause 14\(1\)\(a\)](#) of Schedule 5 of the Crown Entities Act 2004, the members of the pharmacology and therapeutics advisory committee are appointed by the Director-General in consultation with the board of Pharmac.

Crown Entities Act 2004

43 No compensation for loss of office

A member of a statutory entity is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member.

Remuneration and expenses

47 Remuneration of members

(1) A member of a statutory entity is entitled to receive, from the funds of the entity, remuneration not within section [48](#) for services as a member at a rate and of a kind determined by—

(a) the responsible Minister, in the case of a member of a Crown agent or autonomous Crown entity, in accordance with the fees framework; or

(b) the Remuneration Authority in accordance with the [Remuneration Authority Act 1977](#), in the case of—

(i) a member of an independent Crown entity; or

(ii) a member of a Crown agent or autonomous Crown entity that is a corporation sole.

(2) The following office holders are not entitled to any remuneration for services as a member of the statutory entity in addition to his or her remuneration in respect of that office:

(a) a Judge:

(b) a member of Parliament:

(c) an employee (including a chief executive) within any part of the State services who is acting as a member of the statutory entity as a representative of all or any part of the State services.

48 Expenses of members

A member of a statutory entity is entitled, in accordance with the fees framework, to be reimbursed, out of the funds of the entity, for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.

Individual duties of members

57 Duty not to disclose information

- (1) A member of a statutory entity who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except—
 - (a) in the performance of the entity's functions; or
 - (b) as required or permitted by law; or
 - (c) in accordance with subsection (2); or
 - (d) in complying with the requirements for members to disclose interests.
- (2) A member may disclose, make use of, or act on the information if—
 - (a) the member is first authorised to do so by the board or, in the case of a corporation sole, by the responsible Minister; and
 - (b) the disclosure, use, or act in question will not, or will be unlikely to, prejudice the entity.

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 subsidiary that is owned by the entity together with another parent Crown entity or 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
 - (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 chairperson; or
- (b) the responsible Minister, if there is neither a chairperson nor a deputy or temporary chairperson, or if both the chairperson and the deputy or temporary 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 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 chairperson, or if both the chairperson and the deputy or temporary 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.

Miscellaneous provisions relating to board

77 Vacancies in membership of board

The powers and functions of a statutory entity are not affected by any vacancy in the membership of its board.

Employees

118 Crown entity to be good employer

- (1) A Crown entity must, if it employs employees,—
 - (a) operate a personnel policy that complies with the principle of being a good employer and
 - (b) make that policy (including the equal employment opportunities programme) available to its employees and
 - (c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.
- (2) For the purposes of this section, a good employer is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
 - (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—

- (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the entity; and
 - (e) opportunities for the enhancement of the abilities of individual employees; and
 - (f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities.
- (3) For the purposes of this section, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

Protections from liability of members, office holders, and employees

120 Protections from liabilities of statutory entity

A member, office holder, or employee of a statutory entity is not liable for any liability of the entity by reason only of being a member, office holder, or employee.

121 Immunity from civil liability

- (1) A member of a statutory entity is not liable, in respect of an excluded act or omission,—
 - (a) to the entity, unless it is also a breach of an individual duty under any of sections [53 to 57](#):
 - (b) to any other person.
- (2) An office holder or employee is not liable to any person in respect of an excluded act or omission.
- (3) Nothing in this section affects—
 - (a) the making of an order under section [60](#);
 - (b) the liability of any person that is not a civil liability;
 - (c) the right of any person to apply, in accordance with the law, for judicial review.

122 Indemnities in relation to excluded act or omission

- (1) A statutory entity may only indemnify a member, office holder, or employee in respect of an excluded act or omission.
- (2) An indemnity under subsection [\(1\)](#) is limited to—
 - (a) liability for conduct; and
 - (b) costs incurred in defending or settling any claim or proceeding relating to that liability.

123 Insurance for liability of member, office holder, or employee

A statutory entity may effect insurance cover for a member, office holder, or employee of the entity in relation to his or her acts or omissions, except an act or omission that is—

- (a) in bad faith;
- (b) not in the performance or intended performance of the entity's functions.

124 Saving of judicial protections from liability

A Judge who is appointed as a member of a statutory entity has the same immunities and limitations or other protections from liability when acting as a member of that entity as he or she would have as a Judge.

125 Breach of indemnity and insurance limits

- (1) A member, office holder, or employee who is indemnified or insured by a statutory entity in breach of this Act must repay to the entity the cost of providing or effecting that indemnity or insurance cover, to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act.
- (2) The entity may recover the amount as a debt due in a court of competent jurisdiction.

126 Definitions for protections from liability

In sections [120 to 125](#),—

- effect insurance** includes pay, whether directly or indirectly, the costs of the insurance
- employee** includes a person who was an employee at any time after the commencement of this Act but who is no longer an employee
- entity's functions** include any function that an Act confers separately on a member, office holder, or employee of the entity
- excluded act or omission** means an act or omission by the member, office holder, or employee in good faith and in performance or intended performance of the entity's functions
- indemnify** includes relieve or excuse from liability, whether before or after the liability arises, and indemnity has a corresponding meaning
- member** includes a person who was a member at any time after the commencement of this Act but who is no longer a member
- office holder** includes a person who was an office holder at any time after the commencement of this Act but who is no longer an office holder.

Subpart 3—Miscellaneous provisions

135 Members, office holders, and employees are officials

- (1) This section applies to—
- (a) members, office holders, and employees of the following Crown entities:
 - (i) a statutory entity:
 - (ii) a Crown entity company:
 - (iii) a school board of trustees:
 - (iv) a Crown entity subsidiary that is wholly owned by 1 or more Crown entities referred to in subparagraphs [\(i\) to \(iii\)](#):
 - (b) office holders and employees of—
 - (i) a tertiary education institution:
 - (ii) a Crown entity subsidiary that is wholly owned by 1 or more tertiary education institutions or by 1 or more tertiary education institutions and 1 or more Crown entities referred to in paragraph [\(a\)\(i\) to \(iii\)](#).
- (2) A person to whom this section applies is an official for the purposes of sections [105](#) and [105A](#) of the [Crimes Act 1961](#).
- (3) This section does not limit the meaning of **official** in section [99](#) of the [Crimes Act 1961](#).

Reporting: Annual report

152 Disclosure of payments in respect of members, committee members, and employees

- (1) The annual report must include, in respect of the Crown entity or, in the case of a Crown entity group, for each Crown entity in the group,—
- (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) details of any indemnity provided by the entity during the financial year to any member, office holder, or employee; and
 - (f) details of any insurance cover effected by the entity during the financial year in respect of the liability or costs of any member, office holder, or employee.
- (2) In subsection [\(1\)](#), member and office holder and employee include a person who was a member or office holder or employee at any time after the commencement of this Act but who is no longer a member, office holder, or employee.

Transitional and savings provisions

189 Existing protection from liability provisions

- (1) This section applies to a member, an office holder, or an employee of a Crown entity who is entitled, immediately before the date of commencement of this section, to be indemnified by a Crown entity in respect of any proceedings for any liability or costs arising from any act or omission as a member, office holder, or employee that occurred before that date.
- (2) This Act does not affect the member, office holder, or employee's entitlement to an indemnity if that entitlement is, in its overall effect, as favourable to that person as, or more favourable to that person than, the entitlement provided for in this Act.

190 Existing insurance cover

- (1) This section applies to a member, office holder, or employee of a statutory entity who has insurance cover at the commencement of this section in respect of any liability or costs arising from any act or omission as a member, office holder, or employee.
- (2) The insurance cover is not affected by the enactment of this Act.
- (3) However, if the insurance cover expires, or the member, office holder, or employee is reappointed or re-employed, the insurance can be renewed or effected only if permitted by this Act or the entity's Act.

Schedule 5 - Board procedure for statutory entities (other than corporations sole)

Procedure of board

14 Board may appoint committees

- (1) The board may, by resolution, appoint committees—
 - (a) to advise it on any matters relating to the entity's functions and powers that are referred to the committee by the board; or
 - (b) to perform or exercise any of the entity's functions and powers that are delegated to the committee, if the committee includes at least 1 member of the board and any other person or persons that the board thinks fit.
- (2) A person must not be appointed as a member of a committee unless, before appointment, he or she discloses to the board the details of any interest the person may have if he or she were a member of that committee.

15 Provisions relating to committee members

- (1) Sections [43](#), [47](#), [48](#), [57](#), [77](#), [118](#), [120 to 126](#), [135](#), [152\(1\)\(e\)](#), [\(f\)](#), and [\(2\)](#), [189](#), and [190](#) apply to each member of a committee who is not a member of the board with necessary modifications.
- (2) Sections [62 to 72](#) apply to each member of a committee who is not a member of the board as if the committee member were a board member and as if the disclosure must be made to both the committee and the board, and with other necessary modifications.