

# **GUIDELINES FOR ACCESS TO INFORMATION BY BENEFICIARIES OF ELECTRICITY COMMUNITY AND CUSTOMER TRUSTS**

## **1. Definitions**

- 1.1 “Beneficiary” means a beneficiary of a Trust.
- 1.2 “Document” means a document in any form, and includes:
  - (a) Any writing on any material;
  - (b) Any information recorded or stored by means of any tape-recorder, computer, or other device, and any material subsequently derived from information so recorded or stored;
  - (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
  - (d) Any book, map, plan, graph, or drawing;
  - (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being produced.
- 1.3 “Trust” means either a “community trust” and/or a “customer trust” as those terms are defined in the Electricity Act 1992.
- 1.4 “Trust Information” means information regarding the affairs of a Trust.

## **2. Purpose**

- 2.1 The purpose of these Guidelines is to:
  - (a) Promote the accountability of Trusts to their Beneficiaries;
  - (b) Provide a process for dealing with requests for access to Trust Information by Beneficiaries;

## **3. Status**

- 3.1 The trustees of a Trust are at all times obliged to comply with their obligations under the relevant trust deed, the Trustee Act 1956, the Electricity Act 1992, the common law and any other applicable rule of law.
- 3.2 These Guidelines are subject to the obligations of trustees described in clause 3.1.

## **4. Commencement Date**

- 4.1 These Guidelines shall apply to a Trust from the date on which they are formally adopted and/or approved by that Trust.

## 5. **Meetings of Beneficiaries**

- 5.1 Pursuant to section 158C of the Electricity Act 1992 the Trust is obliged to hold an annual meeting of Beneficiaries at which time:
- (a) The Beneficiaries will appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual meeting of Beneficiaries; and
  - (b) The Beneficiaries will be allowed a reasonable opportunity to question, discuss or comment upon the management of the Trust.
- 5.2 The trustees must give no less than 14 days notice of the annual meeting of Beneficiaries in the news section of two separate editions of each newspaper that is widely read by the Beneficiaries of the customer trust or by persons in the community of the community trust, as the case may be.

## 6. **Disclosure of Trust Information**

- 6.1 The Trust undertakes to make Trust Information available to Beneficiaries in accordance with their obligations under the law and pursuant to these Guidelines.
- 6.2 The Trust is obliged to make available to Beneficiaries upon request:
- (a) The trust deed which governs the Trust;
  - (b) Financial statements of the Trust, which may include a statement of assets and liabilities and a statement of income and expenditure;
  - (c) The Trust's annual report;
  - (d) Minutes of annual meetings;
  - (e) These Guidelines;
  - (f) Any other information which a Trust makes publicly available, whether through its website or any other means.
- 6.3 Beneficiaries may request disclosure of Trust Information other than that referred to in clauses 6.1 and 6.2.
- 6.4 Information requested under clause 6.3 may be withheld by the Trust where there is good reason to do so including in the following circumstances:
- (a) To protect the privacy of a natural person, including that of deceased natural persons; or

- (b) Where the making available of the information would or would be likely to prejudice the commercial position of the person who supplied or is the subject of the information; or
  - (c) Where the disclosure of the information would or would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the Trust; or
  - (d) To protect information which is otherwise subject to an obligation of confidence;
  - (e) Where the information is required to be withheld in order to enable the Trust, or any entity in which the Trust has any form of investment, to carry out, without prejudice or disadvantage, commercial activities or negotiations; or
  - (f) Where the disclosure of the information would or would be likely to prejudice the commercial position of the Trust or any entity in which the Trust has any form of investment; or
  - (g) To prevent the disclosure or use of the information for improper gain or improper advantage; or
  - (h) To maintain legal professional privilege including litigation privilege; or
  - (i) To protect information relating to the exercise by the trustees of any discretionary power, subject to any contrary principle of law; or
  - (j) Where the request for information is frivolous or vexatious; or
  - (k) Where the information requested is not Trust Information.
- 6.5 Where a request under these Guidelines relates to information described in clause 6.3 the Trust, if it is satisfied that the interests protected by that information would be likely to be prejudiced by the disclosure of the existence or non-existence of such information, may give notice in writing to the Beneficiary that it neither confirms nor denies the existence or non-existence of that information.
- 7. Procedure**
- 7.1 A Beneficiary may request disclosure of Trust Information orally or in writing. The Trust may require a Beneficiary to put any oral request for Trust Information in writing.
- 7.2 Before the Trust is required to respond to a request the Beneficiary must provide evidence to demonstrate to the Trust's satisfaction that person's status as a Beneficiary of the Trust, provided that such a requirement will not be used to unduly delay the processing of a Beneficiary's request.

- 7.3 Once the Trust is satisfied of the Beneficiary's status it shall as soon as is practicable, and no longer than 15 working days after receipt of the request for Trust Information, decide whether the request is to be granted.
- 7.4 The request for Trust Information shall be dealt with in the following manner:
- (a) If the Trust agrees to disclose the whole or any part of the information requested then, where the information is comprised in a document, that information may be made available for inspection at every office of the Trust or at any other place advised by the Trust, or by providing to the Beneficiary a copy of the document. If the information requested is comprised in a document and there is a good reason for withholding other information contained in that document, the information in that document may be made available with such deletions or alterations as are necessary.
  - (b) Subject to clause 6.5 above, if the request is declined in whole or in part the Trust will provide the Beneficiary with reasons for the refusal.
- 7.5 The Trust may fix reasonable charges in respect of the collection and provision of Trust Information and may require payment of those charges before any information is provided to the Beneficiary.
- 7.6 The Trust shall inform the Beneficiary in writing of his or her right to seek a review under these Guidelines of the refusal by the Trust to provide any Trust Information requested.
- 7.7 The Beneficiary shall advise the Trust in writing of a request for a review of the Trust's decision. A Beneficiary's request for a review shall be without prejudice to any other rights which the Beneficiary may have in respect of the Trust's decision.
- 8. Reviewer**
- 8.1 The decisions of the Trust under clause 7 above shall be subject to review pursuant to these Guidelines by a Reviewer appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc. ("AMINZ").
- 8.2 Upon receipt of written notice from a Beneficiary requesting a review of the decision of the Trust, the Trust shall initiate the appointment process in clause 8.1.
- 8.3 The Trust shall notify the Beneficiary of the identity and contact details of the Reviewer once appointed.
- 9. Review Process**
- 9.1 The Reviewer shall investigate a complaint referred for review and may act as a conciliator in relation to the complaint.
- 9.2 The Reviewer shall conduct and conclude the investigation with due expedition and no later than 60 working days after receipt of the complaint.

Within that time the Reviewer shall give the Beneficiary and the Trust the opportunity to provide written submissions.

- 9.3 At the conclusion of the investigation the Reviewer shall issue a written opinion concerning the complaint. In the written opinion the Reviewer may, among other things:
- (a) Recommend to the Trust that the whole or any part of the information requested by the Beneficiary be provided to the Beneficiary;
  - (b) Uphold the Trust's decision not to disclose the information on the grounds advanced by the Trust, or on other grounds identified by the Reviewer which are consistent with the provisions of these Guidelines;
  - (c) Without limiting the above, the Reviewer may decide to recommend that the information not be disclosed to the Beneficiary if the Reviewer considers that:
    - (i) The length of time that has elapsed between the date when the complaint arose and the date when the complaint was made is such that actions or recommendations in respect of the complaint are no longer practicable or desirable; or
    - (ii) The subject matter of the complaint is trivial; or
    - (iii) The complaint is frivolous or vexatious or is not made in good faith.
  - (d) The Reviewer shall deliver a copy of the opinion to the Beneficiary, the Trust, the Secretary of the Energy Trusts of New Zealand Inc ("ETNZ") and the Chief Executive Officer of AMINZ.
- 9.4 The Trust shall not be required to carry out any recommendations made by the Reviewer pursuant to clause 9.3(a).
- 9.5 The Reviewer shall be entitled to charge the Trust the reasonable costs incurred in respect of the investigation and the opinion.
10. **Monitoring of Compliance with Guidelines**
- 10.1 The Trust in its annual report shall report on the operation of the Guidelines during the financial year including:
- (a) The number of requests for information received, other than requests for information listed in clause 6.2 of these Guidelines;
  - (b) The costs incurred to process those requests and any recoveries made;
  - (c) The number of Trust decisions which were subject to review;
  - (d) A summary of the outcome of those reviews; and

- (e) The costs incurred in respect of those reviews.
- 10.2 A copy of the Trust's annual report shall be provided to AMINZ who shall have the right to audit the Trust's records in relation to the information disclosed in the annual report concerning the operation of the Guidelines. AMINZ shall provide to the Trust a report regarding the outcome of any audit conducted by AMINZ pursuant to this clause.
- 10.3 The Trust acknowledges that AMINZ shall be entitled to disclose the outcome of any audit to the Minister of Energy.
- 11. Review of Guidelines**
- 11.1 These Guidelines shall be reviewed by each Trust no later than two years after their adoption by that Trust and every three to five years thereafter with no more than five-year intervals between each review.
- 11.2 Prior to making any changes to the Guidelines arising out of a review, a Trust shall consult with its Beneficiaries and other interest groups on the need for and content of any such changes and such consultation may occur at the time of the annual meeting of that Trust.
- 11.3 Each Trust shall report to ETNZ concerning the outcome of any review and shall advise ETNZ if that Trust proposes to amend these Guidelines as they apply to that Trust. If ETNZ does not support the proposed amendments, then AMINZ will not be required to appoint Reviewers for that Trust pursuant to these Guidelines.
- 12. Energy Trusts of New Zealand Inc**
- 12.1 ETNZ shall:
- (a) Consult with Trusts in respect of the content of these Guidelines;
  - (b) Encourage all Trusts to adopt these Guidelines and amendments proposed by ETNZ thereto;
  - (c) In its discretion, make recommendations to any Trust concerning that Trust's review of these Guidelines;
  - (d) Receive the opinions of the Reviewer(s) and circulate those opinions to all member Trusts;
  - (e) Produce and publish an annual report on the opinions of the Reviewer(s) in the previous year, a copy of which shall be provided to the Minister of Energy and the Chief Executive Officer of AMINZ;
  - (f) Report to the Minister of Energy annually, or at any other time as ETNZ in its discretion shall determine, on the content of all changes made by Trusts to these Guidelines.

13. **Publicity**

- 13.1 Each Trust shall publicise its adoption of these Guidelines in a suitable manner to inform the Beneficiaries of such adoption, and of how they can obtain or inspect a copy of these Guidelines, including publication through newsletters, websites and at annual meetings of Beneficiaries.

Prepared 26 April 2006