

# Code Of Practice Adopted by The West Coast Electric Power Trust

## 1. PURPOSE

- 1.1 The purpose of the Code of Practice is to **promote best practice** in energy trust administration so as to ensure:
- a) **lawful transparency** of Trust operations by giving beneficiaries adequate information about the activities of the trust; and
  - b) **lawful accountability** to the beneficiaries enabling Trustees and beneficiaries to monitor Trust performance against clear objectives.

## 2 OBJECTIVES

- 2.1 To set up agreed standards for the auditing and publishing of annual accounts.
- 2.2 To set up an agreed standard for the preparation and publishing of an Annual Report.
- 2.3 To set up an agreed standard for the notification and holding of an annual meeting with beneficiaries.
- 2.4 The confirmation of the auditor at the annual meeting.
- 2.5 To set up an agreed mechanism for handling complaints about breaches of Trustees' duties.
- 2.6 To encourage Trustees to periodically inform beneficiaries of Trust matters.
- 2.7 To periodically review the operation of the code and update as required.

## 3 PRINCIPLES

- 3.1 Trustees will at all times fully comply with their obligations under their trust deed.
- 3.2 Trustees will at all times comply with their obligations under the Trustee Act 1956 and trustee law generally including, except as otherwise provided within their Trust Deed, their duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. Refer to **Schedule 1** for a summary of relevant Trustees' duties.
- 3.3 When responding to a request for information (in addition to any specific entitlement to information contained within the Trust Deed or these guidelines) from a beneficiary and/or giving information to a beneficiary, Trustees shall only be required to give out information in accordance with

their common law obligations. Refer to **Schedule 2** for a summary of current beneficiary rights to trust information.

- 3.4 Trustees will act promptly, fairly and with respect for the beneficiaries in handling all queries or complaints.

## **4 RULES**

### **4.1 Trustees to prepare audited financial statements**

#### 4.1.1 The Trust shall:

- a) Prepare financial statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993, applied as if the trust were a reporting entity) with respect to the affairs of the trust for that financial year; and
- b) Submit those financial statements to an auditor for audit; and
- c) Make available to the beneficiaries those audited financial statements and the auditor's report on those financial statements.

#### 4.1.2 Publication of audited financial statements

- a) The Trust will make the financial statements available for viewing by the public at the Trust Offices during ordinary office hours, and for purchase at a reasonable price.
- b) The Trustees must also notify the fact that copies are so available (and where) by advertisement in the news section of each newspaper widely read by beneficiaries.

#### 4.1.3 Auditor of Trust:

- a) The Trustees will in each financial year, hold an annual meeting of beneficiaries at which the beneficiaries appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next
- b) The auditor must not be a Trustee, employee or agent of the Trust;
- c) Every beneficiary has 1 vote.
- d) The quorum for the annual meeting is 20 beneficiaries.
- e) No business will be transacted at the annual meeting if a quorum is not present

#### 4.1.4 In addition to complying with section 3 of the Financial Reporting Act 1993 the financial statements of the Trust shall show separately:

- a) the amount of the total distribution paid to individual beneficiaries in that financial year; and
- b) the amount of the average distribution (referred to in clause 4.1.1 (a)) paid to individual beneficiaries in that financial year; and
- c) if applicable, the names of organisations or persons to whom grants have been approved or paid in that financial year.

## **4.2 Annual General Meeting**

- 4.2.1** Trustees shall hold an annual general meeting in accordance with (except as provided for by this code of practice) the terms of their Trust Deed.
- 4.2.2** The Trustees shall hold an annual general meeting, open to the beneficiaries, within six months after the end of each Financial Year to:
- a) report on the operations of the Trust during the preceding Financial Year; and
  - b) report on the financial statements of the Trust for that Financial Year;
  - c) report on any changes made to the Trust Deed during that Year.
- 4.2.3** The Trustees shall give not less than 14 days notice of the meeting in 2 or more separate editions of a newspaper, which is widely read by the beneficiaries. This notice shall specify the availability of the Annual Report.

## **4.3 Disputes Procedure**

- 4.3.1** Where a beneficiary wishes to complain about the decisions or operation of the Trust they may do so by voicing their concern direct to the Trust Secretary, Chairperson or Trustees generally, in writing.
- 4.3.2** All complaints shall be dealt with fairly and efficiently.
- 4.3.3** The Secretary or Chairperson (or a substitute if necessary) will offer to meet with the beneficiary within 7 working days of receiving the complaint.
- 4.3.4** An attempt will be made to resolve the complaint within 10 working days from the date of the meeting.
- 4.3.5** If the matter is not able to be resolved the Secretary or Chairperson will invite the beneficiary to lodge his or her complaint to the full Trust.
- 4.3.6** Following receipt of a complaint in writing by the full Trust the Trustees shall:
- (a) respond in writing to the complaint and/or
  - (b) invite the beneficiary to discuss the complaint with all the Trustees (or a delegated complaints committee) at the next regular Trust meeting following receipt of the complaint.
- 4.3.7** Should the matter not to be resolved either at that meeting, within a further 5 working days from that meeting, or the beneficiary does not wish to attend such a meeting, the Trustees may, at their discretion, offer the beneficiary the opportunity to have the complaint or dispute referred to a non-binding mediation.
- 4.3.8** Any such mediation shall be mediated by an independent appropriately qualified mediator, appointed by the President of the New Zealand Law Society.
- 4.3.9** All mediator costs, but not complainant costs, associated with the mediation shall be paid for by the Trust.

4.3.10 A complaints log shall be kept by the Trust of all complaints.

4.3.11 The complaints log shall record the complainant's name and address, what each complaint was about, how it was resolved and what the outcome was.

#### **4.4 Communication With Beneficiaries**

4.4.1 Trustees are encouraged to, in addition to the Annual Reporting requirements, communicate with their beneficiaries. Such communication could be via the Trust's web-site, newsletter , etc

### **5 ADMINISTRATION**

#### **5.1 Monitoring of Code Of Practice**

5.1.1 The Auditor of the trust shall report on the application of and compliance with this Code of Practice.

#### **5.2 Periodic Review and Update**

5.2.1 The West Coast Electric Power Trust shall:

- a) review the operation of this Code Of Practice every 3 years, or sooner if deemed appropriate, so as to ensure that the Code continues to meet its purpose and to ensure that the purpose remains relevant; and
- b) following consultation with the beneficiaries, update this Code as required.

**TRUSTEES' DUTIES**

1. To be acquainted with the terms of the Trust Deed and Trust assets;
2. (For an incoming Trustee) to inquire into the propriety of the acts of an outgoing Trustee;
3. To obey the terms of the Trust Deed;
4. To act impartially and in an even handed manner between beneficiaries and groups of beneficiaries – without however restricting the breadth of the Trustees' discretion's under the Trust Deed;
5. To keep and render proper accounts and to give full information to beneficiaries when required (refer to Schedule 2);
6. Trustees must not make a profit for themselves out of the Trust estate or out of the office of Trustee; however remuneration is permitted if the deed expressly provides for it;
7. To act at all times in the best interests of the beneficiaries;
8. To avoid all conflicts of interest with the Trustees' fiduciary position;
9. To invest prudently, or in accordance with the Trust Deed;
10. To administer the Trust personally with no delegation.

**Disclaimer:** The above does not constitute legal advice. Trustees or beneficiaries should seek legal advice where any question arises as to the application of the duties in any particular circumstance.

## SCHEDULE 2

### BENEFICIARY RIGHTS TO TRUST INFORMATION

#### **“Trust Documents” required to be disclosed to beneficiaries:-**

1. The Trust Deed;
2. Financial Statements of the Trust;
3. Any legal advice obtained by the Trustees in respect of any steps contemplated or undertaken by the Trustees in respect of the Trust assets;
4. Any financial advice obtained by the Trustees in respect of any steps contemplated or undertaken by the Trustees in respect of the Trust assets;
5. Any valuation of the Trust’s assets;
6. Any non-privileged documents disclosed as affecting a decision made by the Trustees which potentially affects the beneficiary in question;
7. Advice from the Trust’s advisors obtained by the Trustees as to the state of the Trust assets or concerning the beneficiaries or summarising past or possible future distributions; and
8. Information which is the property of the Trust and which relates to the getting in, administration, management and distribution of the Trust.

#### **“Trust Documents” not required to be disclosed to beneficiaries:-**

9. Information which is not for the purposes of the getting in, administration, management and distribution of the Trust but is for the Trustees’ own purposes even if such information relates to the Trustee’s discharge of his or her duty as Trustee;
10. Any privileged advice obtained in respect of actual or anticipated litigation between the Trustees and any beneficiary;
11. Papers prepared by a Trustee containing suggestions which have been circulated to co-Trustees or relating to inquiries as to the circumstances of a particular beneficiary;
12. Agendas and minutes of Trustees’ meetings or other information private to the Trustees which may indicate the reasons for the exercise of a discretion in a particular way;
13. Notes of, or information in respect of, discussions held with beneficiaries other than the beneficiary seeking disclosure;

14. Information relating to the exercise of a discretion by Trustees unless impropriety on the part of the Trustees is alleged; and
15. Information supplied to or by the Trust or Trustees on a confidential basis.

**Disclaimer:** The above list is indicative only and is not to be taken as an exhaustive list of the types of trust documents which are/are not required to be disclosed. The actual documents required to be disclosed will depend on the nature of the Trust and the circumstances in each case, and developing legal precedents.