



Kevin Hague MP



05 December 2014

Lyn Provost
Controller and Auditor-General
Office of the Auditor-General
PO Box 3298
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(by email enquiry@oag.govt.nz)

Dear Auditor General

I write to request your investigation of matters associated with the management of serious conflicts of interest for Katherine Rich as a Board Member of the Health Promotion Agency.

The Health Promotion Agency is the ministerially-appointed body that “leads and delivers innovative, high quality and cost-effective programmes that are tasked to:

- promote health, wellbeing and healthy lifestyles
- prevent disease, illness and injury
- enable environments that support health and wellbeing and healthy lifestyles
- reduce personal, social and economic harm.

It also undertakes functions specific to providing advice and research on alcohol issues.”

New Zealand’s leading causes of preventable illness and death are tobacco and unhealthy food consumption, and the Health Promotion Agency should be active in promoting healthy public policy (including legislation and regulation) in these areas, and modifying the environments around communities to support healthier outcomes.

When Katherine Rich was first appointed to the Board of the Health Promotion Agency, considerable concern was raised over her clear conflicts of interest. While the Health Promotion Agency’s essential job is to minimise consumption of tobacco, alcohol, and unhealthy foods, for example, her professional role is as the Chief Executive of the Food and Grocery Council, whose members’ interests are to maximise consumption of these same substances.

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These concerns were met with assurances that any conflict of interest would be manageable.

Management of potential conflicts of interest is an extremely important aspect of ensuring both that Crown entities work in the way they are established to do (in this case improving the health of New Zealanders) and that the public is able to retain trust and confidence in the public service. This latter point was one that then Health Minister Hon Tony Ryall emphasised in his letters of appointment for Katherine Rich, and for Board Chair, Lee Mathias.

In addition to well-established principles concerning the management of conflicts of interest there are also specific requirements of the Crown Entities Act 2004. You will be familiar with the Act itself, but I have attached guidelines on the proper management of such conflicts produced by the State Services Commission, entitled 'Module 7: 'Preserving the integrity of public sector values means'

This module deals with the declaration and then *proactive management* (ongoing) of conflicts of interest. Slide 6 says;

“A board member of a statutory entity, who has an interest (as defined in legislation):

- *Must not vote or take part in any discussion or decision of the board relating to the matter or otherwise participate in any activity of the entity that relates to the matter*
- *Must not sign any document relating to the matter*
- *Must be disregarded for the purpose of forming a quorum for any part of a meeting of the board relating to the matter*

“Exceptions to these requirements may be made by the chairperson if he/she is satisfied it is in the public interest.

“The pragmatic test – “how will it look on the front page of tomorrow’s paper?”

Footnote to same slide:

“See s. 66 of the Act.

“An exception to these requirements may be made when the chairperson of the board is satisfied that it is in the public interest to allow a member with a "specified class of interest" to act despite their interest in a matter (s. 68). In order to allow this, the chairperson must give prior written notice to the Board, and the exception must be published in the annual report. The Minister may give this permission if the chairperson, deputy or temporary Chairperson is unavailable or themselves interested.

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“Boards should have formal processes for identifying, declaring and registering interests (s.64), which includes maintaining an interests register. Interests are not static: a board member’s circumstances will change over time, as may the activities and focus of the entity. So, interests need to be kept under review, and added to or removed from the entity’s register as necessary.

“As good practice, boards should include an item on interests as a regular part of their meeting agendas.

“Board staff also should be aware of declared interests so the distribution of meeting papers can be adjusted accordingly.

“A board member failing to disclose a known interest is likely to breach the duties to act in good faith, to act honestly, and with care, diligence and skill. Such a breach of duty is a basis for removing a board member.

“There are some legislative variations, for example between the Crown Entities Act and the Public Health and Disability Act (for DHB members), on participation by board members with an ‘interest’.”

I have attached the full minutes of the Health Promotion Agency Board meetings, and the annual reports. I have also attached a document obtained and made public through the OIA that details the full register of interests for board members updated at each meeting.

These documents show that the Board’s practice is to maintain a general ‘Register of Interests’ for Board members, and to update this at the beginning of each meeting. Where a conflict of interest exists (distinct from merely having an interest), the Board’s practice is to have this declared also at the beginning of the meeting in relation to the specific agenda item or paper being considered at the meeting over which the conflict exists. Such declarations of conflicts of interest are then recorded in the minutes as separate items (see the 23rd of July 2012, the 7th of July 2014, the 26th of August 2014, for example).

The minutes show that while Katherine Rich appears to have maintained the recording of her general “interests” in the Register, several times recording changes to these, she has **on no occasion at all** declared that she had a conflict of interest with any agenda item or paper being considered.

However, **every single meeting** of the Health Promotion Agency Board that Katherine Rich has attended involved discussion of matters over which a reasonable observer would conclude that she had a conflict. The minutes also show that Katherine Rich was routinely present during briefing and discussions regarding the sale, regulation and marketing of

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alcohol, the food environment, the Health Promotion Agency's efforts to reduce tobacco consumption, and the Health Promotion Agency's strategic direction in these matters and others which are very clearly conflicts of interest with Katherine Rich's positions on the Food and Grocery Council and the Front of Pack Labelling Advisory Group.

For example, on Monday the 26th of November 2012, item 11, Mapping the Strategic Environment- Alcohol- "Andrew briefed the Board on the Mapping the Strategic Environment- Alcohol paper. He presented on partners and players, and the HPS strategic future in alcohol. Discussion followed." Under item 6 of the same meeting, 'Strategy Discussion' there was a discussion on 'where to from here which included.... Infant and maternal nutrition...Alcohol moderation marketing. '

At the very next meeting, Katherine Rich was again present for discussion with the CE on the passage of the Alcohol Reform Bill, on which she had submitted extensive modifications (in her FGC role), all restraining or diluting the power of the Bill and authorities to restrict the sale, supply and marketing of alcohol in her role as a lobbyist. I have attached a copy of her submission. Five days before the December meeting, she was also commenting publicly on the bill as a lobbyist, along with media comments about her influence on the legislation (http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10853482).

These are only a few of many examples throughout the HPA minutes where it is incomprehensible how Ms Rich has complied with the Crown Entities legislation, to the letter of the law, or acted in good faith and with the probity expected of a person in her position of responsibility for public health on the Board of the HPA.

The minutes kept by the Board use a style that does not usually record an individual member's contribution to the discussion. Nonetheless, not only do the minutes record her presence, they also record her active participation on at least one occasion (see Monday the 24th of September 2012, "Katherine Rich was interested in Andrew Hearn's keynote at the NZ liquor Licensing Inspector's Conference....". **On no occasion** is she recorded as having withdrawn from discussion or decision-making on any item.

Katherine Rich has herself confirmed that she never followed the requirements of the Crown Entities Act as set out above: "The answer remains unclear, but it is not by Mrs Rich recusing herself from certain discussions at board meetings. She says she has never done that." (NZ Doctor, 22nd October 2014, 'Rich pickings from Hager book ready to hit health minister')

Of course there are sometimes situations where a person who has a conflict of interest can make a helpful contribution to a discussion because of their knowledge or expertise. The law provides for this situation and codifies it (presumably to prevent this from becoming a loophole for unmanaged conflicts). In these situations the Chairperson of the Board must indicate a waiver of the normal requirements in writing, prior to the meeting, and this then

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must be recorded in the Annual Report of the entity (as well as the minutes presumably). The annual reports and minutes of the Board show that this power of Lee Mathias has never been used.

I'm sure you are also aware of the full extent and nature of allegations in the 'Dirty Politics' book involving Katherine Rich, in her role with the Food and Grocery Council, paying for personal smear attacks on public health academics and advocates, particularly those allied with the Health Promotion Agency's work, who seek to ameliorate the harm caused by consumption of sugar, alcohol and tobacco marketed and sold by her clients. These allegations do not fundamentally change the nature of the unmanaged conflicts of interest Katherine Rich has, but are a graphic and extreme illustration of those conflicts. The evidence in Mr Hager's book appears circumstantial but strong, and none of those alleged to be involved, including Katherine Rich, have denied involvement, to the best of my knowledge

After these very serious allegations were made, and after public health professionals raised these issues with the Minister of Health to no avail, I have been asking the Minister what he intends to do about both those allegations and the clear evidence of non-compliance with the law regarding her conflicts of interest. The answer, unfortunately, has been a resounding lack of interest and he has declined to take any action, excepting two actions- to ask the Chair of the Board about the matter: "I have had direct communication from the chair of the Health Promotion Agency, which states: 'She has always been an ethical member of the board. As chair I have always had confidence in her contribution.' That satisfies me'; and then having Ministry of Health officials review the Health Promotion Agency Board minutes and taking the official's advice that the Crown Entities Act was complied with. Please see the exchanges in the House here:

<https://home.greens.org.nz/oralquestions/kevin-hague-questions-minister-health-about-katherine-richs-conflicts-interests-health>

<https://home.greens.org.nz/oralquestions/kevin-hague-questions-minister-health-management-katherine-richs-conflicts-interest-he>

<https://home.greens.org.nz/oralquestions/kevin-hague-questions-minister-health-katherine-richs-actions-regards-public-health>

Since the exchange in parliament where the Minister declared this, however, he has admitted in written questions that the Ministry of Health is not the appropriate or responsible authority to make this determination, but declined to answer my question on who he thought should be responsible. Please see attached the table of written questions on the matter.

He has also named the Chair of the Health Promotion Agency Board, Lee Mathias, as being responsible for the conduct of Health Promotion Agency Board meetings, and yet declined to answer very specific questions about her actions, despite being the appointing Minister

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for both Lee Mathias and Katherine Rich. When I have again asked the Minister in writing what advice he has received or sought from the Chair, therefore, he has referred us back to his answer that Lee Mathias is entirely responsible for the HPA Board. Advice from the State Services Commission as provided, in fact confirms: “Both the Chairperson and the Minister have the prerogative to explore the situation with a board member, either on their own initiative or on the basis of information provided to them.”

It is clear, however, that neither has, nor intends to, and State Services Commission cannot investigate without instruction from the Minister, which he will not give.

I refer you to the attached letter to the State Services Commissioner and reply from their Chief Legal Adviser on the responsibility for investigations into such breaches of the Crown Entities Act.

The advice from the State Services Commission says that although they do not have the discretion to launch an investigation into these matters themselves, you as Auditor General very clearly do. As a point of last resort, having exhausted other options, I now urge you to please take on this investigation.

Yours Sincerely,



Kevin Hague,

Green Party MP

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