

**Key provisions of and proposed changes to “Managing Integrity of Vehicle Certification Inspection and Inspection Organisations - Operational Policy”**

**Clause 10**

1 The clause currently states:

**10 Application of Policy Principles**

To achieve high standards of vehicle inspection and certification, the Access & Use group will:

- appoint Vehicle Inspectors and Inspecting Organisations to different categories of inspection and certification activities in ways that ensure potential harms presented by any (real or perceived) conflicts of interest are prevented, and
- apply requirements and conditions of appointment to different categories of inspection and certification activities to maintain the integrity of the services, and
- monitor and review the performance of Vehicle Inspectors and Inspecting Organisations to ensure that risk of unnecessary and/or unwarranted variation in inspection and certification outcomes is mitigated.

2 The proposed change provides:

**10 Application of Policy Principles**

To achieve high standards of vehicle inspection and certification, the Transport Agency will:

- appoint Vehicle Inspectors and Inspecting Organisations to different categories of inspection and certification activities in ways that seek to ensure potential harms presented by any conflicts of interest are avoided, and
- apply requirements and conditions of appointment to different categories of inspection and certification activities to maintain the integrity of the services, and
- monitor and review Vehicle Inspectors and Inspecting Organisations to seek to ensure that risk of unnecessary and/or unwarranted variation in inspection and certification outcomes is avoided and to ensure minimum acceptable standards are met in the interests of public safety.

A conflict of interest means a situation where an applicant is or could be influenced, or could reasonably be perceived to be at risk of being influenced, by a financial, professional, or personal interest. For the avoidance of doubt, a conflict of interest includes:

- (a) an actual conflict of interest;
- (b) a potential conflict of interest; or
- (c) a situation that may give rise to the appearance of a conflict of interest.

**Clause 10.1.3.1**

3 The clause currently states:

**10.1.3.1 Transparency**

The following applicants must disclose any financial or professional interest in selling, or importing vehicles or vehicle parts, or repairing or modifying vehicles and specify to the satisfaction of the Transport Agency how any conflicts of interest will be managed (whether avoidable or unavoidable):

- used vehicle border Inspecting Organisations and Vehicle Inspectors, and
- used vehicle entry certifiers.

4 The proposed change provides:

**10.1.3.1 Transparency**

The following applicants are subject to a continuing duty to promptly disclose any financial, professional, or personal interest in selling, or importing vehicles or vehicle parts, or repairing or modifying vehicles and specify to the satisfaction of the Transport Agency whether or how any conflicts of interest will be managed (whether avoidable or unavoidable):

- used vehicle border Inspecting Organisations and Vehicle Inspectors, and
- used vehicle entry certifiers and Vehicle Inspectors.

For the avoidance of doubt, the continuing duty to disclose referred to in this paragraph applies to an applicant:

(a) after they have submitted an application to the Transport Agency and before the Transport Agency has told the applicant that the Transport Agency has determined the application; and

(b) after the Transport Agency has granted the application (including in situations where the application is granted subject to any conditions).

**Clause 10.1.3.2.2**

5 The clause currently states:

**10.1.3.2.2 Separation of Used Light Vehicle Entry Certification Activities**

- Inspecting Organisations and Vehicle Inspectors applying to carry out used light and heavy vehicle entry certification functions will be required to demonstrate, to the satisfaction of the Access & Use group, that a high degree of functional separation will exist between entry certification activities and any other vehicle inspection, repair, and maintenance activities.
- The Entry Certifier (including Parent and subsidiary organisations) may not have any ownership or financial interest in the vehicles being entry certified, unless they can demonstrate to the satisfaction of the Access and Use group that a transparent and robust system is in place to negate any (real or perceived) conflict of interest, and to ensure accurate assessment of each vehicle is still undertaken.

6 The proposed change provides:

**10.1.3.2.2 Separation of Heavy Vehicle & Used Light Vehicle Entry Certification Activities**

- Inspecting Organisations and Vehicle Inspectors applying to carry out used light and heavy vehicle entry certification functions will be required to demonstrate, to the satisfaction of the Transport Agency, that functional separation will exist between entry certification activities and any other vehicle inspection, repair, and maintenance activities.

**Clause 10.1.3.2.3**

7 This is a new provision. The proposed change provides:

**10.1.3.2.3 Conflicts of interest arising from used vehicle entry certification applications**

1. The Transport Agency recognises that the used vehicle entry certification process plays a critical role in promoting:
  - (a) public safety by ensuring that only safe used vehicles are certified for use in New Zealand; and
  - (b) public confidence in the used vehicle inspection and certification process as part of an effective, efficient, and safe land transport system.
2. If an applicant (including any employee or officer of the applicant), or any natural or legal person (whether incorporated or unincorporated) who has effective control of the applicant (Person A), has a relationship with any other person (Person B) which gives rise to a conflict of interest concerning the applicant's provision of any used vehicle entry certification services, the Transport Agency must either:
  - (a) decline the application if the conflict of interest arises because either Person A or Person B:
    - (i) engages in or provides border inspection services; and/or
    - (ii) has any ownership interest (whether legal, beneficial or otherwise);in respect of any of the used vehicles that would be certified by Person A if they were to be appointed by the Transport Agency; or
  - (b) if the application does not involve a conflict or conflicts of interest described in paragraph (2)(a) above:
    - (i) give significant weight to the conflict or conflicts of interest identified at paragraph 2 when weighing factors relevant to the Transport Agency's assessment of the application under clause 2.5(2)(b)(iii) and (vii) of the Rule; and
    - (ii) decline such an application unless the applicant can satisfy the Transport Agency that:
      - (A) a key inspection service cannot reasonably be provided otherwise; and
      - (B) the applicant will reduce or mitigate any risks arising from the conflict of interest to a level that is acceptable to the Transport Agency in its sole discretion.

3. For the purpose of paragraph 2, effective control includes but is not limited to:
  - (a) any shareholding in the applicant and/or Person A;
  - (b) any common directors, officers, or members of any governing body between the applicant and/or Person A and Person B;
  - (c) any ultimate holding company of the applicant or Person A;
  - (d) beneficial entitlement to or beneficial interest in an Applicant or Person A's securities (including shares);
  - (e) power to control the composition any of the applicant or Person A's governing body (including a Board of Directors);
  - (f) the right to exercise or control the exercise of any voting power at a meeting of the Applicant; or
  - (g) any close personal relationship with the applicant or a staff person or officer of the applicant, or Person A or a staff person or officer of Person A.
4. In weighing the considerations described at above in order to reach a decision about whether to decline or approve an application under paragraph 2(b)(i), Transport Agency staff may have regard to any requirements and conditions of performance of used vehicle entry certification which may be imposed in relation to any of the matters referred to in paragraph 10.2.4 below and set out in the appendix attached to this policy.

#### **Clause 10.2.4**

- 8 The clause currently states:

##### **10.2.4 Entry Certification (Used Light Vehicle) Activities**

- Inspecting Organisations and Vehicle Inspectors applying to carry out used light vehicle entry certification functions will be required to demonstrate, to the satisfaction of the Access & Use group, that a high degree of functional separation will exist between entry certification activities and any other vehicle inspection, repair, and maintenance activities.
- The Entry Certifier (including Parent and subsidiary organisations) may not have any ownership or financial interest in the vehicles being entry certified, unless they can demonstrate to the satisfaction of the Access and Use group that a transparent and robust system is in place to negate any (real or perceived) conflict of interest, and to ensure accurate assessment of each vehicle is still undertaken.

- 9 The proposed change provides:

##### **10.2.4 Entry Certification (Used Light & Used Heavy Vehicle) Activities**

- Inspecting Organisations and Vehicle Inspectors applying to carry out used light and used heavy vehicle entry certification functions will be required to demonstrate, to the satisfaction of the Transport Agency, that a high degree of functional separation will exist between entry certification activities and any other vehicle inspection, repair, and maintenance activities.

- The Transport Agency may impose any other condition and requirement, including any condition which may be imposed in relation to any of the matters set out in the appendix attached to this policy.

#### **Proposed global changes**

- 10 The current policy refers to the “Access and Use” group and staff. The Agency proposes to remove these references and replace them with references to “Transport Agency” staff.
- 11 The current policy refers to “real or perceived” conflicts of interest. The Agency proposes to remove these references because the new definition of “conflict of interest” captures actual, potential, and perceived conflicts of interest.