



The Australian

Call for new rules on conflicts of interest after Samuel case

- Richard Gluyas
- From: **The Australian**
- October 13, 2010 12:00AM

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A GROUP of experts wants an overhaul of rules governing conflicts of interest for senior public servants, after the Graeme Samuel case.

According to members of the group, a Victorian suburban council has more rigorous provisions to manage conflicts than those that were imposed on Mr Samuel as chairman of the Australian Competition and Consumer Commission, which determines the fate of takeovers worth billions of dollars.

The group is pushing for the creation of a public register of interests held by ACCC commissioners, or even US-style Senate confirmation hearings to spotlight conflicts or potential conflicts that regulators bring to their positions.

Mr Samuel went beyond what was required of him by the Trade Practices Act, setting up a blind trust called Lyngrae to hold his family's interest in the DFO parent company, Austexx, as a means of preserving the integrity of ACCC decision-making.

However, David Yarrow, a Melbourne barrister and expert in trusts, said blind trusts were a "North American invention" that were not always accepted in Australia. He said they were "out of step with contemporary international best practice for management of conflicts of interest".

Queen's Counsel and former National Crime Authority chairman Peter Faris also said there could be a perception that the Lyngrae trust was "partially sighted" because Mr Samuel's 38 year-old son Warren has held the role of secretary since 2006.

When approached for comment yesterday, Mr Samuel declined.

However, he has previously said he received only "headline information" about the group for the preparation of personal tax returns.

Controversy surrounding the ACCC chief has swelled since last week, when his DFO business partners, David Goldberger and David Wieland, called for an inquiry into the way he handled a conflict of interest.

The conflict related to Mr Samuel's adjudication of the \$14 billion takeover by National Australia Bank of Axa Asia Pacific, at the same time as NAB was a key lender to the heavily indebted South Wharf DFO project at Docklands in Melbourne.

Mr Samuel withdrew from any consideration of NAB's bid for Axa on August 18.

The next day, after negotiations lasting many weeks, NAB and a syndicate of three other banks owed \$450 million extended more credit to the South Wharf project, giving the DFO chain a financial lifeline.

The ACCC blocked the NAB/Axa deal for a second time on September 9.

Mr Goldberger and Mr Wieland, through their lawyer Leon Zwier of law firm Arnold Bloch Liebler, said there should be a "full, open and transparent inquiry about what Mr Samuel knew about DFO and when he knew it". Mr Zwier cited Mr Samuel's commentary to The Australian in August that his heirs could lose tens of millions of dollars as a result of DFO transactions that the ACCC chief knew nothing about. Under section 17 of the Trade Practices Act, the ACCC chairman is only required to give the responsible minister written notice of pecuniary interests in any business carried on in Australia.

Documents obtained under Freedom of Information show that, in August last year, as well as July this year, Mr Samuel wrote to then-competition minister Craig Emerson, enclosing a statement of private interests. Treasury refused to release Mr Samuel's statement, on the grounds it contains personal information, apart from a one-paragraph note.

The note says that the directors and shareholders of Austexx (and two other blacked-out companies) are "independent individuals unrelated to Graeme Samuel or any member of his family".

Mr Yarrow said it was difficult to draw any conclusions about the note, without access to the complete document. "But my argument is that Mr Samuel makes very important commercial decisions as ACCC chairman, he has interests that should be on a public register, and there should be a verification process," he said. "The ACCC has less substantial conflict of interest provisions than local councils in Victoria, and that's a concern. The idea that you can just send a statement off to the minister is very old-fashioned."

Mr Yarrow said the issue was when Mr Samuel became aware that his DFO interests were in conflict with the NAB/Axa matter before the ACCC. "Only he can answer that question," he said.

The Rule of Law Institute, whose patron is NSW chief justice Jim Spigelman, also weighed into the controversy.

Vice-president Malcolm Stewart, a commercial litigation specialist and director of law firm Speed and Stracey, said that, in general terms, it was important for regulators to avoid conflicts of interest and perceived conflicts.

Mr Stewart said there needed to be a policy that governed how regulators handled "actual, potential and perceived conflicts of interest".

"In the US, the Senate confirmation hearings have provided a systematic, prima facie safeguard to conflicts and potential conflicts which regulators might bring to their positions," he said.

Mr Faris agreed there should be a public register.

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