

# Board and Committees Conflicts of Interest and Duties Policy



## *(sub-policy of the Conflicts of Interest Policy)*

*Declaring, documenting, and managing conflicts of interest keeps the SEC and its people safe from perceptions or allegations of bias, undue influence or poor conduct. It also builds and maintains trust and confidence in our integrity, our people and our decision-making.*

## 1. What is the purpose of this policy?

- 1.1. This document sets out the policy and procedures for how the SEC Board, directors and members of SEC committees declare and manage conflicts of interest.
- 1.2. If left undeclared or unmanaged, conflicts of interest can create problems in that they may:
  - inhibit free discussion in Board and Committee meetings;
  - lead to an actual or perceived bias or lack of impartiality in decision making;
  - result in decisions or actions that are not in the interests of the SEC;
  - harm public perception of the SEC and the broader public sector by giving the impression that the SEC has or may have acted improperly.
- 1.3. The purpose of this policy is to protect the SEC, its Board, directors and Committee members from any appearance of poor conduct.
- 1.4. This is a sub-policy and should be read in conjunction with the parent document Conflict of Interests Policy (parent policy).

## 2. Scope

- 2.1. The Board Conflicts of Interest Policy is supplementary to the Conflicts of Interest parent policy and applies specifically to members of the SEC Board, the Board of any SEC subsidiaries, any committees the Board may establish, and members of any other boards, committees or governance-type groups established by the SEC.
- 2.2. Obligations outlined under this policy are additional to the obligations and duties under the Corporations Act 2001 (Cth), the Public Administration Act 2004, the Financial Management Act 1994, or any other relevant legislation or policy.

## 3. Definitions

- 3.1. In this document:
  - 'the Board' means 'the SEC Board or the boards of any SEC subsidiaries.
  - 'the Committee' means any committee of the SEC Board, or any committees or governance-type groups (including advisory, executive and steering groups) established by the SEC.
  - 'director' means 'any director on the SEC Board or the board of any SEC subsidiaries.
  - 'member' means any member of a Board committee, or other committee or governance-type group (including advisory, executive and steering groups) established by the SEC'.
  - 'Chair' means 'the Chair' of the SEC Board or any committee established by the Board, or the Chair of a committee or governance-type group (including advisory, executive and steering groups) established by the SEC'.
- 3.2. The definitions relating to interests and conflicts of interest are those used in the *Conflict of Interests Policy (parent policy)*.

## 4. When does this policy apply?

- 4.1. This policy applies at all times, for the duration of a director's or member's Board and/or Committee appointment, and applies to all interests, including actual, perceived, or potential, third party, duty, role, financial and non-financial interests.

## 5. Obligations and good practice

- 5.1. The Board, directors, Committees, and members will act in accordance with their obligations, which may include:
- the SEC company constitution;
  - the *Corporations Act 2001* (Cth);
  - the duties of directors in section 79 of the *Public Administration Act 2004* (PAA);
  - the public sector values in section 7 of the PAA, including section 7(1)(b)(iv) that any real or apparent conflicts of interest are avoided;
  - the requirement in section 81(1)(f) of the PAA that processes be in place for dealing with conflicts of interest;
  - the Code of Conduct for Directors of Victorian Public Entities issued by the Victorian Public Sector Commission (VPSC);
  - any direction, guideline or statement of obligations or expectations issued by the SEC shareholders;
  - all other laws and obligations that bind the SEC.

## 6. Recording interests

- 6.1. When first appointed to a Board or Committee, each director or member will complete a declaration of interests. The Company Secretary will ensure that the information is recorded in the relevant Interests Register.
- 6.2. Directors and members will update their declaration at least annually. If a director's or member's circumstances change prior to the annual update, they are to notify the Chair and submit an updated declaration.
- 6.3. The Company Secretary will ensure that the register of interests is current and includes:
- interests contained in all declarations of interests completed by directors and members;
  - any additional interests which have been declared and recorded in the minutes of a Board or Committee meeting.
- 6.4. The Company Secretary will ensure that the register of interests is available for reference at each Board or Committee meeting or provided at the request of any Board or Committee member.

## 7. Confirmation and declaration of interests at the start of Board meetings

- 7.1. Confirmation of the register, a request for new declarations of interests, and a request for declarations of conflicts related to items on the agenda will be a standing item at the beginning of each Board or Committee meeting.
- 7.2. If a director or member has a new interest they must declare it, including the nature of the interest and the conflict that results or may result. If a conflict arises in relation to an agenda item, this must be declared in the meeting even if it is already recorded in the register. If a director subsequently becomes aware during the meeting that they have an interest, they must declare it immediately.
- 7.3. If there are no changes to the register, the minutes will note that all directors present confirmed that their entry in the register of interests remains complete and correct. If any updates or new declaration are declared, these will be recorded in the minutes for entry into the register.

- 7.4. Any director, the Company Secretary, or Board or Committee secretary who believes that another director or member may have an undeclared interest must raise this as a query, to enable the other director to declare and manage the interest if it exists.

## 8. Principles for managing a conflict of interest

- 8.1. Boards and Committees will manage all conflicts of interest to the highest possible standard. Principles for managing a conflict of interest include:
- **Record** – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.
  - **Restrict** – the director's or member's involvement in discussion or decision making on the matter is restricted to the appropriate extent. Monitoring occurs to check whether this remains the best option.
  - **Remove** – the director or member leaves the room and does not participate at all in the conflicted matter.
  - **Request** – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer, or governance expert from the SEC).
  - **Relinquish or resign** – the director or member relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the director or member resigns from the Board or Committee itself.

## 9. Managing material conflicts of interest

- 9.1. When deciding how to manage a conflict of interest, the Chair, Board or Committee will determine whether the conflict is material.<sup>1</sup> In doing so, all relevant factors and circumstances will be considered, including (but not limited to):
- the objectives and functions of the SEC;
  - the matter that is to be discussed and determined by the Board or Committee;
  - the nature of the conflict (i.e. is it real, potential, or perceived?);
  - the severity of the conflict, including:
    - the amount, scope, and likelihood of any expected benefit (e.g. is it a large benefit primarily to the director/member or a small benefit shared by a large number of people);
    - any other relevant circumstances (e.g. if the conflict relates to a decision about an organisation where a close or personal contact of director or member works, is the contact connected to the decision being made?);
  - the potential effect of the conflict, including:
    - the extent to which the director's or member's ability to make an impartial decision could be compromised (or could reasonably be seen to be compromised); and
    - the overall likelihood that the conflict of interest may affect confidence in the integrity of the Board or Committee and its decisions.
- 9.2. The Board or Committee will have access to independent legal and governance advice if needed to support identifying and managing conflicts of interest and duties.

### Standard procedure for managing material conflicts of interest

- 9.3. The standard procedure for managing a material conflict of interest is to remove the director or member from all participation in the matter. The director or member will:
- **leave** the room at the start of the relevant agenda item and not return until the start of the next agenda item;

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<sup>1</sup> Determining whether a conflict of interest is material is consistent with the requirements of s 81(1)(f) of the *Public Administration Act 2004*

- **not discuss** the matter at all with any other director or member (either in the meeting or elsewhere); and
  - **not participate** in any Board or Committee decision on the matter.
- 9.4. The standard procedure will be followed unless the Board or Committee agrees and records in the minutes clear reasons why it is not necessary.
- 9.5. Where the standard procedure is applied, the director or member is no longer counted for the purposes of determining whether a quorum exists.

### Options for managing less significant material conflicts of interest

- 9.6. Where a conflict of interest is agreed by the Board or Committee to be non-material, it is possible to take a less stringent approach to managing the conflict. However, in making its decision, the Board must consider all relevant factors and circumstances.
- 9.7. If the Board is unsure whether a less stringent option is appropriate, it must err on the side of caution and apply the standard approach as outlined in this policy.
- 9.8. If the Board or Committee makes a decision not to apply the standard procedure then, in addition to recording in the minutes the reasons behind this, the interest must be carefully monitored to ensure that this approach remains appropriate.
- 9.9. Options for managing a less serious conflict, after considering all the relevant circumstances, include:
- **Participate in discussion:** If the conflicted director or member was appointed based on their expert knowledge of the matter, it may be preferable for them to be present for all or part of the Board's or Committee's discussion. However, if there is an unconflicted director or member who also has this expertise but is absent, it may be more appropriate for the discussion to occur at a future meeting when the unconflicted director is available.
  - **Participate in decision making:** If the conflict is not material, is less serious, or exclusion would mean that the meeting becomes inquorate for the decision, then the Board or Committee may decide to allow the director or member to remain for the item and participate in decision making.

### Options for dealing with serious or high-risk material conflicts of interest

- 9.10. If an independent individual could reasonably form the view that the conflict is of unacceptable seriousness, frequency or risk, then to maintain good governance and protect the integrity and reputation of the Board, Committee, director or member, and the SEC, it may be necessary for the director to:
- **relinquish** their private interest;
  - **resign** or stand down from the other organisation to which the director has a duty; or resign or stand down from the SEC Board.
- 9.11. If the Board is unsure whether this more serious treatment is required, advice will be sought from an impartial third party, e.g. a probity adviser, lawyer, or governance expert.

## 10. Breach of this policy

- 10.1. A director or member who may have breached this policy must notify the Chair immediately. If the Chair is of the view that the breach is minor or has not explicitly occurred, the Board or Committee will consider this at the next scheduled Board or Committee meeting, and record in the minutes, whether a breach has occurred.
- 10.2. If the Chair is of the view that a breach has occurred, they will arrange for the Board or Committee to determine on an urgent basis, and record in the minutes, whether a breach has occurred. If a significant or serious breach has occurred, the Chair will notify the Minister for the SEC in writing as soon as practicable.
- 10.3. A director or member who believes that another director may have breached this policy but has not yet notified the Chair will bring this to the attention of the Chair or will approach the other director or member, who is then to notify the Chair.

## 11. Key related policy, legislation and other documents

### 11.1. *Policies and procedures*

- Conflicts of Interest Policy (primary policy)

### 11.2. *Legislation*

- Corporations Act 2001 (Cth)
- Public Administration Act 2004
- Financial Management Act 1994

### 11.3. *Other*

- SEC Company Constitution
- Code of Conduct for Directors of Victorian Public Entities

## 12. Approval and review

<b>Policy name</b>	Board Conflicts of Interest Policy (sub-policy)
<b>Approved by</b>	SEC Board
<b>Policy owner</b>	Legal and Governance
<b>Contact</b>	Assistant Company Secretary and Governance Lead
<b>Date issued</b>	26/09/2024
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