

# PROTOCOL

# CONFLICT OF INTEREST

RESPONSIBILITY: COMPANY SECRETARY

## 1 PURPOSE

The purpose of this protocol is to provide guidance to the members (Board Members) of the boards of Group entities in the event of a conflict of interest arising for those Board Members (either duty v's duty or duty v's personal interest) and to provide for the establishment of procedures to facilitate good corporate governance and legal compliance.

## 2 BACKGROUND

- a. Each Group entity is regulated for these purposes by their individual constitutions and the Corporations Act 2001 (Cth) (Corporations Act) or other legislative enactive under which they are constituted. The law surrounding the disclosure of interests with respect to the Group is substantially contained in sections 191 to 196 of the Corporations Act. The constitution of the relevant Group entity also needs to be considered, and for Group entities incorporated outside Australia, the legislation under which they are constituted. Group subsidiaries of the Company are more likely to be proprietary companies but may from time to time include a public company. Stricter statutory obligations are imposed with respect to public companies (refer to section 195 of the Corporations Act).
- b. This policy document is confined to "conflicts of interest" and does not purport to extend to the broader general common law and statutory duties of Board Members.

## 3 ADOPTION AND MONITORING

- a. This policy document has been adopted and endorsed by the Board.
- b. The Board will periodically monitor compliance with this policy document.

## 4 PRINCIPAL OBLIGATIONS

- a. Generally (constitutions of Group entities)
  - **(constitutions read subject to Corporations Act)** rules prescribed in the Corporations Act generally take priority over any conflicting constitutional provision.
- b. Subsidiaries of the Company (sections 191 to 196 of the Corporations Act)
  - **(disclosure)** a director of a Group entity who has a material personal interest (not defined) in a matter that relates to the affairs of the Group must give the other directors notice of the interest unless one of the exceptions in section 191(2) applies;
  - **(contents of notice)** the notice must give details of the nature and extent of the interest and the relation of the interest to the affairs of the Group;
  - **(timing of notice)** the notice must be given at a Directors' meeting as soon as practicable after the Director becomes aware of the interest in the matter;
  - **(minutes)** the details must be recorded in the minutes of the meeting.
  - **(standing notice)** a director of a Group entity may give standing notice of an interest, including before the interest becomes a material personal interest (refer to section 192 of the Corporations Act);
  - **(participation)** the ability of a director to participate in the board meeting at which the matter will be considered and to count towards the quorum of that meeting will be governed by the Group entity's constitution.
- c. The Company and public company subsidiaries of the Company (section 195 of the Corporations Act):
  - **(generally)** special rules apply to such entities in addition to the references in paragraphs 4(a) and 4(b) of this policy document.
  - **(restrictions on voting and being present)** a Director of the Company who has a material interest (personal or otherwise) in a matter being considered at a Board meeting must not:
    - be present while the matter is being considered or deliberated;
    - vote on the matter;
  - unless S.191(2) of the Corporations Act excuses the need to disclose the interest or any the following 3 paragraphs apply:
    - **(participation with Board approval)** the other Directors who don't have a material interest pass a resolution identifying the relevant Director (and the extent and nature of his/her interest and its relation to the affairs of the Company) and stating they are satisfied the relevant Director should not be disqualified from being present and voting; or
    - **(participation with ASIC approval)** an ASIC order under S.196 of the Corporations Act is made; or

- (participation with shareholder approval) if a quorum of non-conflicted Directors is not possible, the Board may convene a meeting of shareholders to resolve the matter (notwithstanding the conflict of the Boards Directors).

## 5 BOARD PROCEDURES TO ASSURE GOOD CORPORATE GOVERNANCE

- a. Listed in paragraph 5a following are examples of circumstances which are likely to give rise to a Board Member having a conflict of interest or prospective conflict of interest (**Relevant Circumstance**) but excluding a circumstance, event or conflict arising only from the Board Member (or a Related Party – refer paragraph 5b following ):
  - being a member of the Company;
  - being a routine customer or recipient of goods or services from a Group entity in the ordinary course of the Group's operations;
  - holding a position of office in a Group entity;
- b. Non-exhaustive examples of Relevant Circumstances include:
  - a Board member or a Related Party has a direct or indirect pecuniary interest in a contract or proposed contract with a Group entity;
  - a Board Member or a Related Party holds an office in an entity with which a Group entity may have dealings;
  - a Board Member or a Related Party has an investment in an entity with which a Group entity may have dealings, other than a mere portfolio investment where investment discretion substantially resides with a third party(s);
  - any other transaction or circumstance affecting a Group entity where the Board Member (acting in good faith with objectivity and reasonableness) may believe that they might not be able to exercise independent judgement with impartiality in the best interests of the Group entity.
- c. For the purpose of this policy a **“Related Party”** refers primarily to a Board Member's spouse or other “close” family member (depending upon the circumstances without prescriptive intent) or other corporate, trust or nominee entity, or person over whom the Board Member or other persons as aforesaid may substantially exercise control or influence.
- d. Each Board Member must give notice in writing to the Company Secretary of the nature and extent of each Relevant Circumstance as soon as he or she becomes aware of it (or in the case of the Company Secretary, to the CEO and Chairman). If such notice is not given prior to the Board meeting at which a matter will be considered which relates to the Relevant Circumstance, the Board Member must declare the Relevant Circumstance to the Board meeting prior to the matter being considered.

- e. The Company Secretary should cause every notification or disclosure of a Relevant Circumstance to be recorded in a Register of Relevant Circumstances – Conflicts of Interest of Board Members (**“Register”**) to be maintained by the Board (under the control of the Company Secretary) and which Register is to be available for inspection at any time on request, and is to be brought to the attention of Board meetings when business of the meeting may impinge or touch upon a Relevant Circumstance.
- f. It is the obligation of each Board Member to ensure that the particulars in the Register with respect to themselves are current, complete and accurate in all material respects.
- g. It is the obligation of the Company Secretary periodically (at least annually) to enquire of the Board Members if there should be any variations to the Register.
- h. Unless there be special reason to the contrary (in the interests of the Group entity and for efficiency of meeting process), as determined by the person presiding at the meeting and with the agreement of all the remaining Board Members not affected by the Relevant Circumstance, the affected Board Member shall absent himself or herself from the Board meeting whilst the meeting considers, deliberates and votes on any relevant matter for which an affected Board Member may be affected by a Relevant Circumstance.
- i. The person presiding at the meeting may request the affected Board Member to address the meeting preliminary to the relevant subject matter being under consideration and to respond to specific queries at the meeting, but the Board Member shall not be under any obligation to so address or respond if the affected Board Member considers it inappropriate to do so.
- j. In particular, each Board Member affected by a Relevant Circumstance may not take part in any deliberations, decisions or voting on a matter at a Board Meeting in which the Relevant Circumstance gives rise to a conflict of interest of the Board Member, subject to any exceptions referred to in section 4 above.

## 6 BOARD COMMITTEE MEETINGS

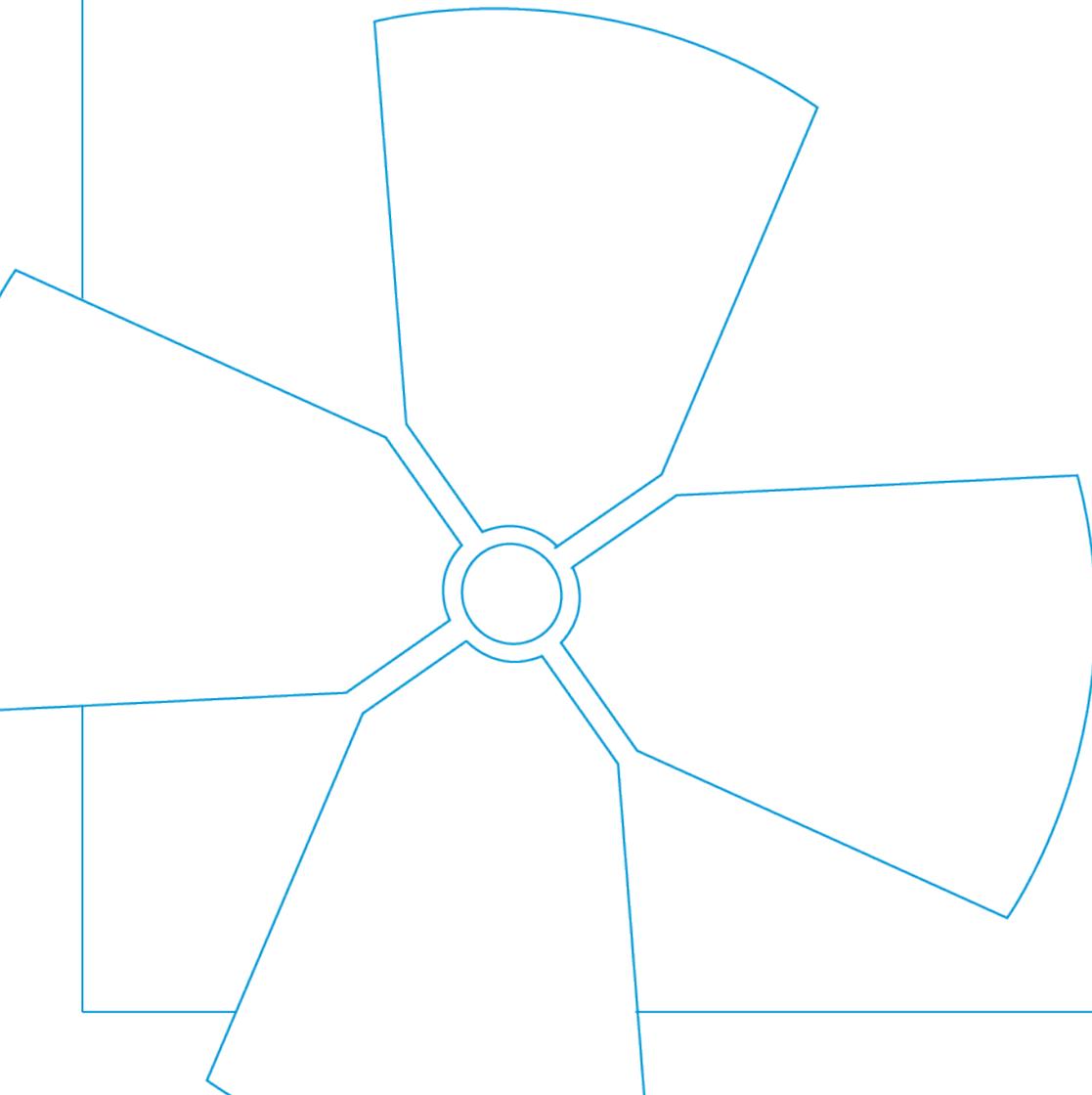
This Conflict of Interest Protocol shall apply in the same manner to Board Committees as it does to the Board itself with such adaptations as are necessary to give effect to the interest of this paragraph.

## 7 ATTACHMENTS

Attachments 1 and 2 to this Conflict of Interest Protocol include procedures and forms to assist giving procedural effect to this Conflict of Interest Protocol.

# **ATTACHMENT 1**

# **NOTICE OF DISCLOSURE/PROSPECTIVE CONFLICTS OF INTEREST**



# **ATTACHMENT 2**

# **REGISTER OF CONFLICTS OF INTEREST (REFER GOVERNANCE CHARTER)**

