

CONFLICT OF INTEREST POLICY: DIRECTORS

Conflicts and Material Personal Interests

1. Under the Act and at law directors have a duty to:
 - i. Avoid conflicts of interest
 - ii. Disclose certain related party transactions
 - iii. Disclose material personal interests and other conflicts.
2. This policy aims to assist directors in fulfilling their duties in this regard.
3. Directors have a duty to avoid a conflict of interest with their statutory and fiduciary duties to the Company.
4. Some common conflicts a director may have include:
 - i. A conflict with a duty as an employee of another organisation
 - ii. A conflict with a duty as a director of another organisation
 - iii. A conflict as a beneficiary.
5. Some conflicts relate to a material personal interest that a director has in a matter.
6. A material personal interest is an interest of a Director in any matter that may reasonably be expected to affect the Director's independent judgment in the best interests of the Company in relation to the matter.
7. An interest or association will be considered to give rise to a 'material' conflict if it has a reasonable possibility of influencing, or as reasonably being seen to influence, the decision or actions of the relevant individual. An interest need not be financial in order to be considered material. Any interest that has the capacity to influence a Director's decision making would be considered material. In order for the interest to be considered material it must be of some substance or significance, and not merely a slight or low value interest. To be considered 'personal', the interest must relate to the director, either directly or indirectly.
8. A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest: section 191.
9. A Director must notify the Board through the Chair as soon as practicable after a material personal interest arises and must not be present at any Board meeting while any matter which relates to their conflict of interest is being considered nor vote on the matter. If a Director is uncertain whether a conflict if a material personal interest the Director should notify the Chair as described directly above and whether the conflict is a material personal interest should be determined by a majority of non-conflicted Directors and the determination must be minuted.

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10. Subject to section 195 of the Act:
 - i. a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;
 - ii. the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - iii. the Director may retain any benefits accruing to the Director under the transaction; and
 - iv. the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.
 11. If the interest is required to be disclosed under section 191 of the Act, the Director may retain any benefits accruing to the Director under the transaction, only if the interest is disclosed before the transaction is entered into.
 12. Material personal interests and conflicts will be placed on the agenda as a standing item for all formal meetings where financial or operational decisions are being made.
 13. All material personal interests or conflicts disclosed to meetings of the Board or the Company must be minuted.
 14. If a Director becomes aware of a material personal interest or other conflict before the next such formal meeting at which they will be present, it is his/her responsibility to declare this interest to the Chair as soon as practicable: section 191.

Material Personal Interest Declaration

15. A Director is not disqualified by reason only of being a Director of the Company from:
 - i. holding any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
 - ii. being a member of any corporation (including the Company) or partnership, other than the Company's auditor; or
 - iii. being a creditor of any corporation (including the ISAL) or partnership; or
 - iv. entering into any agreement with the ISAL: clause 10.2.
16. However, a person is not eligible to serve as a Director if the person is also an Officer of any of the following and the Company has not received prior written consent of the Department of Employment and Workplace Relations (whatever its name may be from time to time) for that individual to be a Director:
 - i. a Commonwealth, State, Territory or local government agency or body (including government business enterprises);
 - ii. a Registered Training Organisation;
 - iii. a Group Training Organisation;

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- iv. an Employment Service Provider; or
 - v. AASN Provider: clause 4.2.
17. Upon appointment, a Director must complete a material personal interest declaration.
 18. A Director must subsequently complete a material personal interest declaration:
 - i. at their first Director's meeting; and
 - ii. as soon as possible after a material personal interest arises; and
 - iii. at the end of each financial year thereafter for the duration of their appointment.
 19. The Chair will maintain custody of material personal interest declarations.
 20. All conflicts of interest will also be recorded in the Board's Conflict of Interest Register, which will be held by the Company Secretary and which must document the following:
 - i. the name of the relevant individual or organisation;
 - ii. details of their role in relation to the Jobs and Skills Council;
 - iii. a record and description of any declared interests or associations, including details of how this interest or association relates to any actual or potential activities of the Company;
 - iv. the date of disclosure;
 - v. an assessment of the integrity risks posed by the declared interest or association; and
 - vi. any steps taken to mitigate, manage or remove the conflict (if any), including identifying any follow up actions required.
 21. The Company must provide to the Department notice of a declared conflict of interest immediately if the conflict presents a serious risk to the integrity of the decisions or actions of the Company or the Jobs and Skills Council Program and detail steps taken by the Company to mitigate or remove the conflict.
 22. The Company must provide to the Department the Conflict of Interest Register and the Gifts, Benefits and Hospitality Register on a biannual basis and as soon as reasonably practicable following a request by the Department.

Related Party Transactions

23. Under the Act, members of a public company must approve the giving by the company of a financial benefit to a related party of the company: section 208.
24. An entity that controls a company is a related party of the public company.
25. The following persons are also related parties of a public company:
 - i. directors of the public company;
 - ii. directors (if any) of an entity that controls the public company;
 - iii. spouses of the persons referred to in paragraphs (i) and (ii).

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26. The following relatives of persons referred to in 26(i), 26(ii) and 26(iii) directly above are also related parties of the public company:
- i. parents;
 - ii. children.
27. Giving a financial benefit includes the following:
- i. giving a financial benefit indirectly, for example, through one (1) or more interposed entities;
 - ii. giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force;
 - iii. giving a financial benefit that does not involve paying money (for example by conferring a financial advantage).
28. The following are examples of giving a financial benefit to a related party:
- i. giving or providing the related party finance or property;
 - ii. buying an asset from or selling an asset to the related party;
 - iii. leasing an asset from or to the related party;
 - iv. supplying services to or receiving services from the related party;
 - v. issuing securities or granting an option to the related party;
 - vi. taking up or releasing an obligation of the related party.
29. The Act creates an exception to the general rule that payments by public companies to related parties, including by definition Directors of public companies, must be approved by the company's members.
30. The exception is available where the benefit is remuneration to a related party as an officer (including Directors) or employee of the Company, where to give the payment would be reasonable given:
- i. the circumstances of the public company or entity giving the remuneration; and
 - ii. the related party's circumstances (including the responsibilities of the officer or employee concerned): section 211.
31. Directors may only be engaged to provide goods or services to or on behalf of the Company if:
- i. that Director is for bona fide reasons considered by the Board and agreed to be a suitable person to provide, such goods or services;
 - ii. bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
 - iii. the goods or services are provided on arm's-length terms;
 - iv. the provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and
 - v. the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

32. If the Company proposes to enter into any related party transactions involving the use of the funds under the Grant Agreement the Company must obtain the Department's prior written and fully informed consent before entering into such an arrangement and provide the Department with all material facts concerning the transaction including:
- i. the terms of the transaction;
 - ii. information to assess whether those terms are arm's length terms;
 - iii. the business purpose of the transaction.

See Directors' Remuneration Policy

Gifts and Hospitality

33. The Company permits Directors to accept hospitality or gifts in limited circumstances only.
34. An individual must decline a gift if there is a reasonable belief that it is being provided in order to secure a particular benefit, or to influence the Company or Board decision making around a particular issue, or where it could be perceived by a reasonable person that the giving of the gift may have this effect on Company or Board decision making.
35. In considering whether to accept or reject hospitality or a gift to the value of \$50 or more, the individual must consult with the Company Secretary and Chair.
36. All hospitality or gifts to the value of \$50 or more must be declared to the Company Secretary and entered onto the Gifts, Benefits and Hospitality Register which documents:
- a) who the recipient of the gift, benefit or hospitality is;
 - b) who provided the gift, benefit or hospitality;
 - c) a description of the gift, benefit or hospitality and its value;
 - d) the circumstances in which the gift, benefit or hospitality was provided;
 - e) an assessment of whether the nature and/or circumstance in which the gift, benefit or hospitality was provided could give rise to an actual or perceived conflict of interest.