



## DIRECTOR'S CONFLICTS POLICY

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### 1. PURPOSE

A Director has a duty at general law to avoid situations that involve a conflict between his or her duty to the Company and:

- the Director's personal interests; or
- a separate duty owed to a third party (e.g. another company of which he or she is a director or officer).

In addition, section 191 of the *Corporations Act 2001* (Cth) (**Corporations Act**) requires a director of a company who has 'material personal interest' in a matter relating to the affairs of the company to disclose that interest.

Section 195 of the Corporations Act prohibits a director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting from:

- (a) being present while the matter is being considered; or
- (b) voting on the matter,

unless the directors (without a material personal interest) resolve otherwise in the absence of the director.

Under ERA's constitution each Director must comply with section 191 and section 195 of the Corporations Act and any general law principles in relation to the disclosure of the Director's interest. The Constitution also provides that, subject to complying with section 195, a director may be counted in a quorum that considers, and may vote on, any matter in which that Director has an interest.

This policy sets out the procedures to be followed in circumstances where a Director has, or where there is the real or sensible possibility that the Director may have:

- (a) a material personal interest;
- (b) a conflict between the duties which he or she may owe to another entity and his or her duties as a director of the Company; or
- (c) an interest which is not considered by the Director to be a material personal interest, but is disclosed to other directors under Section 192 of the Act,

in a matter or transaction to be considered by the Board.

## 2. SCOPE

This Policy applies to all Directors of the Company.

## 3. WHEN WILL A CONFLICT OF DUTIES ARISE

For a conflict of duties to arise for a Director:

- (a) that Director must owe a duty to a third party (e.g. as a director, officer or employee of a shareholder) involved in a proposed transaction with the Company; and
- (b) the discharge of a duty to the Company is inconsistent with a duty owed to the third party.

A Director may not necessarily have a conflict of duties simply because he or she is a director, officer or employee of a shareholder in the Company.

If any Director believes he or she does have a conflict of duties, he or she should follow the procedures outlined in sections 5 and 6 of this policy.

## 4. WHEN WILL A CONFLICT OF INTEREST ARISE

While Directors may not have a conflict of duties in a matter considered by the Board involving, or related to, a third party, their participation in the Board's consideration in the matter may give rise to a conflict between their duties to the Company as a director and their personal interests. This could also give rise to a 'material personal interest' in the matter.

'Material personal interest' is not defined in the Corporations Act. Whether a Director's interest in a matter is 'material' will depend on whether the interest could reasonably be considered to have a real capacity or propensity to influence the Director's decisions in respect of the matter.

Examples of a conflict of interest / material personal interest could include where:

- (a) the Director has an employment relationship (current or anticipated) with a third party and the outcome of the matter considered by the Board may influence their employment with the third party; or
- (b) the Director has a shareholding in the third party and it is possible that a proposal being considered by the Board could have a significant impact on the price of the third party's shares (and the value of the Director's shares) .

Some interests will not preclude a Director from participating in the Board's consideration of a matter. For example, an interest that arises because the

Director is a member of the Company and is held in common with the other members of the Company (see section 191(2) of the Corporations Act).

## 5. DISCLOSURE OF INTERESTS

A Director must disclose to all Directors and the Company Secretary:

- (a) all other directorships held by the Director;
- (b) any 'material personal interest' in a matter being considered by the Board;
- (c) any other interests or relationship that he or she considers could reasonably relate to the affairs of the Company; and
- (d) any other interest or relationship that he or she believes is appropriate to disclose in order to avoid the perception of a conflict of interest.

The disclosure must be made as soon as practicable after the Director becomes aware of the interest or the need to make a disclosure. Details of the disclosure will be recorded in the minutes of the meeting at which the disclosure is made.

A Director who has an interest in a matter may give the other Directors a 'standing notice' of the interest in the matter. A standing notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given. A Director must disclose any change to the nature and extent of an interest previously disclosed in a standing notice if the interest materially increases above that previously disclosed. This must be done as soon as practicable. The changes will be recorded in the minutes of the meeting at which the changes are advised to the other Directors.

If a new Director is appointed, that Director must be given copies of any current standing notices given by the other Directors in order for those standing notices to continue to have effect.

Where a Director is uncertain as to whether an interest should be disclosed in accordance with this Policy, the Director should consult the Chair of the Board or Company Secretary.

## 6. PROCEDURES FOR HANDLING A CONFLICT

At the commencement of each Board or Committee meeting, Directors are required to disclose existing or perceived conflicts of duties or interest in relation to any matter to be discussed at that meeting.

In circumstances where a Director has disclosed, or the Company has identified in the Board or Committee papers:

- (a) an actual conflict of duties; or

- (b) a material personal interest in a matter which relates to the affairs of the Company,

that Director must consider (including by having regard to the views of the Board) whether he or she has an actual conflict of duties or a material personal interest in the matter to be brought before the Board.

If the Director determines that he or she has an actual conflict of duties or a material personal interest, the Director may not:

- (c) be present at the meeting while the matter is being considered;
- (d) vote on the matter; or
- (e) exert any influence over other Directors,

unless the Directors who do not have such an interest in the matter resolve (in the absence of the Director) that the interest should not disqualify such Director from being present while the matter is being considered or from voting. The resolution should identify the Director, the nature and extent of the Director's interest and its relation to the affairs of the Company.

A Director who has identified an item on a Board or Committee agenda where he or she has a material personal interest is:

- (f) responsible for ensuring that the matter is not dealt with by the Board or Committee in his or her presence without prior consideration of the matter in accordance with this policy; and
- (g) entitled to receive Board (or Committee) papers or other information which relates in any way to the declared or perceived matter which is the subject of the interest, unless the Director requests that he or she not receive any or all of those documents.

The minutes of the meeting will record the decision taken by the Directors who do not have an interest in the matter.

Where a Director has requested not to receive information in accordance with this policy and is excluded from discussion, the Company Secretary will advise the Director concerned in writing of the broad nature of the withheld information and why it has been withheld from him or her. In addition, the Company Secretary will maintain a reporting system by which the Director is kept informed in general terms as to the progress or status of the matter from which he or she has been excluded.

If the nature of any matter or issue which the Chief Executive or any other member of the Board wishes to bring to the attention of the Board is such that the Chief Executive or relevant Director has a concern that the disclosure of any detail concerning the matter or issue to a particular Director may be

detrimental to the best interests of the Company then the Chief Executive, after consultation with the Chair of the Board, may determine that the particular Director has a conflict.

In circumstances where the Chief Executive, in consultation with the Chair of the Board, has determined a Director to have a conflict then, for so long as that conflict remains:

- (a) the Director concerned will be informed by the Chairman of the determination reached;
- (b) the Director concerned will not receive Board (or Committee) papers or other information which relates in any way to the declared or perceived matter which is the subject of the conflict; and
- (c) the Director concerned will be requested to withdraw from any part of a Board (or Committee) meeting for the duration of any discussion on that matter.

Where a Director does not receive Board (or Committee) papers or is excluded from the consideration of a matter or issue, the Director has the right to require the Company to seek an opinion from a Senior Counsel who specialises in directors' duties as to whether it is legal and appropriate for the Company to restrict Board (or Committee) papers or to exclude the Director from the discussion or consideration of the matter or issue concerned.

The Company Secretary shall identify from time to time a panel of three (3) suitable Senior Counsel acceptable to the Board who may be consulted in this regard if required.

Once information withheld from a Director in accordance with this protocol becomes public knowledge or if, in the opinion of the Chief Executive, after consultation with the Chair of the Board, the potential for conflict has passed, the excluded Director shall be entitled, should he or she request this, to a briefing by the Chief Executive as to the current status of the matter and the particulars of any decision of the Board in respect of that matter.

## **7. IRRECONCILABLE CONFLICT**

The Company is entitled to the benefit of each Director's ability, expertise and knowledge.

In circumstances where a Director has a significant or irreconcilable conflict that significantly impedes the Director's ability to discharge his or her responsibilities to the Company, it may be necessary for the Director to resign from the Board. It is expected that the Director will seek appropriate legal advice in circumstances of significant or irreconcilable conflict.



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**8. OTHER POLICIES**

This Policy should be read in conjunction with the other policies of the Company including, without limitation, the Company's Code of Business Conduct and the Company's Share Trading Policy.

**9. REVIEW**

This Policy will be regularly reviewed to ensure that it complies with applicable laws and appropriate governance standards.

*Ends.*