



**ERA**

**Energy Resources of Australia Ltd**

ABN 71 008 550 865

## **CONFLICTS OF INTEREST AND RELATED PARTY TRANSACTIONS POLICY AND INDEPENDENT BOARD COMMITTEE CHARTER**

### **1. INTRODUCTION**

#### **1.1 Purpose of Policy**

The Board recognises that almost by definition Related Party Proposals (defined in section 2 below) involve conflicts of interest, because the Related Party may be in a position to influence the decision of whether the benefit is provided to them (or another person), and the terms of its provision. Related Party Proposals raise a number of potential legal issues for the Company and its Directors, including as follows:

- (a) a Director who is, or is connected with, the relevant Related Party may have an interest or duty that conflicts or may conflict with his or her duties to the Company in relation to the Related Party Proposal (**conflicted Director**). A conflicted Director could breach his or her duties owed to the Company if he or she fails to separately consider and act in the best interests of the Company, as distinct from the interests of the Related Party;
- (b) a conflicted Director may have a material personal interest in the Related Party Proposal for the purpose of section 195 of the Corporations Act and may thereby be prohibited from being present at board meetings while matters concerning the Related Party Proposal are being considered and from voting on such matters;
- (c) if the Related Party Proposal involves the Company (or a controlled entity) giving a financial benefit to a Related Party, this could contravene Chapter 2E of the Corporations Act. Subject to certain exceptions, Chapter 2E prohibits public companies from giving financial benefits to a related party of the public company without shareholder approval;
- (d) if the Related Party Proposal involves the Company (or a controlled entity) acquiring or disposing of a substantial asset, or issue equity securities, from or to a Related Party, prior shareholder approval may be required for the transaction under the ASX Listing Rules (e.g., ASX Listing Rule 10.1 or 10.11);
- (e) in the context of a transaction or proposal affecting or potentially affecting the control of the Company, the Takeovers Panel may declare unacceptable circumstances to exist if a Director associated with a person proposing a control transaction in relation to the Company is in a position to influence, or appears to be in a position to influence, the Company's consideration of the transaction (see *Takeovers Panel's Guidance Note 19: Insider Participation in Control Transactions*).

The purpose of this Policy is to outline a process for identification, review, approval and disclosure of Related Party Proposals, with a view to ensuring that all decisions of the Board are made in the best interests of the Company as well as ensuring compliance with the law.

The Board adopted this Policy on 5 May 2020.

## 1.2 Application

Compliance with the law and the requirements set out in this Policy is the responsibility of all Directors, officers, employees and consultants of the Company.

Any guidance provided in or under this Policy does not affect individual responsibility.

## 2. WHAT IS A RELATED PARTY PROPOSAL?

### 2.1 Meaning of "Related Party"

For the purposes of this Policy, a broad definition of **Related Party** applies.

Each Director is a Related Party. In addition, "Related Party" includes:

- (a) any corporation, trust, partnership, joint venture or other entity in which a Director has a material interest;
- (b) any entity of which a Director is a director, officer or employee, including any related body corporate of such an entity;
- (c) any person who is a related party of the Company within the meaning of section 228 of the Corporations Act (see Schedule 1); and
- (d) any entity which the Board determines is a Related Party.

For so long as Rio Tinto has a controlling interest in the Company, Rio Tinto will be taken to be a Related Party for the purpose of this document, as will any Director who is or was in preceding 6 months a director, officer or employee of Rio Tinto. (References to Rio Tinto include each member of the Rio Tinto Group.)

### 2.2 Meaning of "Related Party Proposal"

For the purpose of this Policy a **Related Party Proposal** is any transaction, proposal or other matter:

- (a) in which a Related Party has or may have interests, or may benefit, other than as shareholder in common with other shareholders, or
- (b) where the interests of ERA and a Related Party conflict or may appear to conflict.

This includes any transaction to which a Related Party is or is proposed as a party, and any transaction through which the Company provides or would provide a benefit (whether financial or otherwise, and whether directly or indirectly) to a Related Party.

*Example: The following are examples of the Company providing a benefit to a Related Party:*

- (a) giving or providing the Related Party with finance or property;*
- (b) buying an asset from or selling an asset to the Related Party;*
- (c) leasing an asset from or to the Related Party;*
- (d) supplying services to or receiving services from the Related Party;*
- (e) issuing securities or granting an option to the Related Party; and*
- (f) taking up or releasing an obligation of the Related Party.*

It also includes any a takeover bid or potential bid for the Company by, or other control transaction involving, a Related Party.

### **3. DISCLOSURE OF CONFLICTS**

#### **3.1 Duties owed to Company**

Each Director expects that each other Director will at all times comply with their duties to the Company. Every Director owes statutory and fiduciary duties to the Company. These duties include:

- (a) a duty to act honestly and in good faith in the best interests of the Company;
- (b) a duty to keep information obtained because they are a director of the Company confidential, and not to disclose such information to anyone else except in the proper performance of their duties as a director or otherwise with the consent of the Board;
- (c) a duty not to improperly use his or her position as a director of the Company, or information obtained because he or she is a director of the Company, to:
  - (i) gain an advantage for himself or herself, or someone else; or
  - (ii) cause detriment to the Company; and
- (d) a duty to exercise the degree of care and diligence that a reasonable person would exercise if they were in the Director's position.

#### **3.2 Disclosure of conflicts required**

Any Director who has an interest or duty that conflicts, or may be perceived to conflict, with his or her duties to the Company in relation to any matter concerning the Company's affairs must disclose the relevant conflicting interest or duty to the other Directors as soon as practicable after the Director becomes aware of the matters giving rise to the conflict (see Section 4 below).<sup>1</sup>

In the context of a Related Party Proposal (whether actual or proposed), the disclosures of a Director should include:

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<sup>1</sup> Rule 9.2 of the Company's Constitution requires each Director to comply with section 191 of the Corporations Act and any relevant general law principles in relation to disclosure of the Director's interests.

- (a) any material interest in the Related Party Proposal, or any other personal or other extraneous interest in the Related Party as a result of which there is a real or sensible possibility of conflict between that interest and the Director's duty to act in the best interests of the Company assessed on an objective (not subjective) basis;

*Example:* A conflict may arise where the Director is a party to the transaction, or has a material shareholding in the Related Party, or where the Director has an employment relationship with the Related Party and the Related Party Proposal may affect their employment with and/or remuneration from the Related Party.

- (b) any duty owed to a third party where the discharge of the duty to the third party would or may appear to be in conflict with the proper exercise of the Director's duty owed to the Company in relation to the Related Party Proposal (or vice versa).

*Example:* A conflict may arise where a Director is:

- (a) unable to act in the best interests of both the Company and a Related Party (e.g., where the transaction has the potential to benefit, say, the Related Party to the detriment of the Company, or vice versa); or
- (b) aware of information which is confidential to the Related Party and is material to matters concerning the Company, and the director's duty to the Related Party prevents disclosure of the information to the Company (e.g., the Company is considering acquiring an asset and a Director has confidential information from the Related Party about the true value or worth of the asset).

## 4. DISCLOSURE NOTICES

### 4.1 Notice requirements

Disclosure notices given by Directors must include the nature and extent of the interest of the Director and its relation to the affairs of the Company, as well as anything else required by the Company's Constitution or the law.

A Director may give the other Directors a "standing notice" of their interests. 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.

A Director may give their disclosure notice to:

- (a) the other Directors at a Board meeting;
- (b) the other Directors individually (with a copy to the Company Secretary); or
- (c) the Company Secretary for circulation to the other Directors.

If a new Director is appointed, the new Director must promptly be given copies of all standing notices given by the other Directors in order for those standing notices to continue to have effect.<sup>2</sup>

#### **4.2 Minutes to record disclosures**

Disclosure notices are also to be tabled at the next Board meeting after they are given.

Disclosures made by a Director are to be recorded in the minutes of the Board meeting at which (or next occurring after) the disclosure is made.

### **5. PROCESS FOR BOARD CONSIDERATION OF RELATED PARTY PROPOSALS**

#### **5.1 Restrictions on presence of conflicted Directors at meetings**

Generally speaking, the Company is entitled to the benefit of each Director's skills, expertise and knowledge. However, participation in a Board meeting (or a meeting of a committee of the Board) by a Director who, in relation to a matter, is conflicted may not be appropriate, and may be prohibited by law or the Company's Constitution.

In particular, by virtue of section 195 of the Corporations Act, a Director who has a material personal interest in a matter must not be present at a meeting of the Directors (including a meeting of a committee of Directors) while the matter is being considered at the meeting or vote on the matter, unless:

- (a) Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Company; and
  - (ii) states that those directors are satisfied that the interest should not disqualify the director from voting or being present; or
- (b) they are so entitled under a declaration or order made by ASIC under section 196 of the Corporations Act.<sup>3</sup>

A Director who has identified a matter on a Board (or committee) agenda where he or she has a material personal interest is responsible for ensuring that:

- (a) proper notice of the interest is given (see Section 4 above); and
- (b) he or she is not present while the matter is considered at the meeting and does not vote on the matter.

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<sup>2</sup> Standing notice may be given under section 192 of the Corporations Act. A standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a person who was not a director of the company at the time when the notice was given is appointed as a director of the company.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

<sup>3</sup> Rule 9.3 of the Company's Constitution also requires each Director to comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest.

If the non-conflicted Directors decide that the conflicted Director should not receive Board/Committee papers relevant to the matter in which the Director has the conflict (e.g., where the non-conflicted Directors consider that the disclosure of the detail concerning the matter to the conflicted Director may be detrimental to the interests of the Company, or the conflicted Director requests that he or she not be provided with papers relevant to the matter), the conflicted Director:

- (a) will be informed by the Chairman (or, if the Chairman is the conflicted Director, a non-conflicted Director) that papers relevant to the matter will not be provided; and
- (b) accordingly will not be provided such Board/Committee papers.

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, the Director should consider whether he or she should resign from the Board. It is expected that the conflicted Director will seek appropriate legal advice in circumstances of significant or irreconcilable conflict.

## **5.2 Independent Board Committee (IBC)**

The Board has established a committee comprising the independent Directors (**IBC**) to exercise any and all powers, authorities and discretions of the Board with respect to Related Party Proposals (excluding Pre-approved Transactions (see section 7 below)).

The members of the IBC are the non-executive Directors who are regarded as "independent". The IBC will not include any Director who is a director, officer or employee of Rio Tinto (at least for so long as Rio Tinto is a Related Party).

The IBC's charter is set out in Schedule 2 to this Policy.

For the avoidance of doubt, it is noted that any transaction or proposal:

- (a) in which, in the opinion of the Chairman of the IBC, Rio Tinto has or may have interests other than its interest as shareholder in common with other shareholders; or
- (b) where, in the opinion of the Chairman of the IBC, a conflict of interests exists or may arise between ERA and Rio Tinto,

is a Related Party Proposal within the remit of the IBC.

## **5.3 IBC to establish processes**

As soon as the IBC becomes aware of any Related Party Proposal, it will convene a meeting and establish appropriate processes and protocols in relation to the Proposal.

These processes and protocols may seek to:

- (a) include rules concerning information disclosure and access, confidentiality and related matters to the relevant Related Party (including any Director who is a Related Party in relation to the relevant Related Party Proposal);

- (b) ensure that the IBC has appropriate independent advice;
- (c) preclude influence by the relevant Related Party (including any Director who is a Related Party in relation to the relevant Related Party Proposal) in relation to the Company's consideration of the Related Party Proposal; and
- (d) ensure that shareholders' best interests are advanced in the face of any proposal involving a Related Party, including through the IBC's approach or attitude to potential competing proposal and the proper ongoing conduct of the company's business.

#### **5.4 Special Board committee may be established to deal with other matters where appropriate**

In the unlikely event that, having regard to the Related Party Proposal, members of the IBC are conflicted Directors in relation to the Proposal, the Board will consider whether or not to establish a special *ad hoc* committee of Directors, consisting of any or all of the non-conflicted Directors, to exercise powers, authorities or discretions of the Board with respect to the Related Party Proposal.

References in Section 6 below to the IBC are to be construed as references to the relevant committee or the Board, as the case may require.

### **6. REVIEW, APPROVAL AND RATIFICATION OF RELATED PARTY PROPOSALS**

#### **6.1 Overarching requirements for approval of Related Party Proposals**

The IBC will not approve a Related Party Proposal unless satisfied that the relevant Related Party Proposal is in the best interests of the Company.

#### **6.2 Assistance from management and independent advisers**

The IBC may require the Chief Executive and other members of the Company's management team to provide it with all material facts pertaining to the Related Party Proposal including the terms of the transaction, information to assess whether those terms are arm's length terms and the business purpose of the transaction.

The IBC may engage its own independent advisers and instruct them to liaise with the management and to assist the IBC with the assessment of any information provided by the Chief Executive and/or management. The Board considers it to be in the Company's interests to seek to preclude influence of the Chief Executive and management in relation to the Company's consideration of the Related Party Proposal, where the Chief Executive is conflicted in relation to the Proposal (e.g., if the Chief Executive owes a duty to a third party which is or may appear to be in conflict with the proper exercise of the Chief Executive's duty owed to the Company in relation to the Related Party Proposal).

#### **6.3 Arm's length transactions**

The IBC will generally wish to be satisfied that any financial benefits to be provided to the relevant Related Party are on terms that would be reasonable in the circumstances if the Company and the Related Party concerned were dealing at arm's length (or are less favourable to the Related Party than such terms). Factors to be taken into

consideration in determining whether a transaction is an arm's length transaction is set out at Schedule 3 to this Policy. This checklist not exhaustive.

#### **6.4 Independent expert report may be obtained**

The IBC may require that an independent expert's report be commissioned in respect of a Related Party Proposal requiring prior shareholder approval (and will do so where required by law or the Listing Rules). The independent expert will be selected and engaged by the non-conflicted Directors only (with the assistance of management and/or the IBC's independent advisers if the non-conflicted Directors think this is appropriate in the circumstances).

#### **6.5 Reporting to the Board**

The IBC will report to the Board as, and to the extent that, it considers appropriate, subject to any processes and protocols developed by the IBC.

It is acknowledged that, in the context of a Related Party Proposal, the nature of the reports provided by the IBC to the Board may be limited with a view to seeking to preclude influence of the relevant Related Party or Parties in relation to the Company's consideration of the Related Party Proposal.

### **7. PRE-APPROVED TRANSACTIONS**

#### **7.1 List of Pre-approved Transactions**

The requirements in Sections 3.2, 5 and 6 do not apply in relation to the following kinds of Related Party Proposals, unless the specific Related Party Proposal would require prior shareholder approval by law or under the Company's Constitution or the Listing Rules:

- (a) payment of remuneration to the Directors in accordance with the Company's Constitution, as approved by the Board;
- (b) payment or reimbursement of reasonable expenses incurred by a Director:
  - (i) in attending meetings of the Company, the Board or a committee of the Board;
  - (ii) on the business of the Company; or
  - (iii) in carrying out duties as a Director,(provided the expenses so incurred are consistent with the Company's Board approved expenses policy);
- (c) entry into and payment of premiums on a contract of insurance in respect of a Director, as approved by the Board;
- (d) a transaction that constitutes a Related Party Proposal merely because a Director is also an officer of a wholly owned subsidiary of the Company which is a party to the transaction;



- (e) provision of a benefit to a Related Party in their capacity as a shareholder of the Company where providing the benefit does not discriminate unfairly against other shareholders of the Company; and
- (f) provision of a benefit in accordance with a Court Order.

## 7.2 Subject to applicable laws

For the avoidance of doubt, a Related Party Proposal is not a Pre-approved Transaction if the transaction require shareholder approval by law or under the Company's Constitution or the Listing Rules.

## 8. DISCLOSURE

All Related Party Proposals must be assessed for disclosure (e.g., under the Listing Rules, or in the Company's Annual Report).

## 9. MINUTES

The IBC must cause minutes of proceedings and resolutions of IBC meetings to be prepared and kept in accordance with the Corporations Act and the Constitution. Minutes of IBC meetings should in any case be prepared promptly after the relevant meeting.

## 10. COMPANY SECRETARY

The Company Secretary may liaise directly with the Chairman and other Directors as appropriate in connection with the administration of this Policy.

## 11. OTHER COMPANY POLICIES

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

## 12. REVIEW OF POLICY AND GUIDANCE

The Board will review this Policy annually.

## 13. DEFINITIONS AND INTERPRETATION

### 13.1 Definitions

The following additional definitions apply in this Policy.

Term	Definition
ASX	ASX Limited ACN 008 624 691 and the exchange operated by it.
Board	The Company's board of directors.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Director	A director of the Company.
IBC	The Independent Board Committee established by the Board, referred to in Section 5.2 above. The IBC's authority is described more particularly in Schedule 3

<b>Term</b>	<b>Definition</b>
<b>Listing Rules</b>	The listing rules of ASX as they apply to the Company from time to time.
<b>Pre-approved Transaction</b>	A transaction to which Section 7.1 applies

## 13.2 Interpretation

Unless the context otherwise requires:

- (a) Words used but not defined in this document but which have a meaning ascribed to them in the Corporations Act or the Listing Rules have the same meaning in this document.
- (b) This Policy must be interpreted:
  - (i) in accordance with its spirit, intention and purpose;
  - (ii) by looking beyond form to substance; and
  - (iii) in a way that best promotes the principles on which this policy is based.

## SCHEDULE 1

### EXTRACT FROM THE CORPORATIONS ACT

#### Section 228 – Related parties

##### *Controlling entities*

- (1) An entity that controls a public company is a related party of the public company.

##### *Directors and their spouses*

- (2) The following persons are related parties of a public company:
- (a) directors of the public company;
  - (b) directors (if any) of an entity that controls the public company;
  - (c) if the public company is controlled by an entity that is not a body corporate, each of the persons making up the controlling entity;
  - (d) spouses of the persons referred to in paragraphs (a), (b) and (c).

##### *Relatives of directors and spouses*

- (3) The following relatives of persons referred to in subsection (2) are related parties of the public company:
- (a) parents;
  - (b) children.

##### *Entities controlled by other related parties*

- (4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.

##### *Related party in previous 6 months*

- (5) An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

##### *Entity has reasonable grounds to believe it will become related party in future*

- (6) An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

##### *Acting in concert with related party*

- (7) An entity is a related party of a public company if the entity acts in concert with a related party of the public company on the understanding that the related party will receive a financial benefit if the public company gives the entity a financial benefit.

## SCHEDULE 2

### INDEPENDENT BOARD COMMITTEE – CHARTER

The Board has established a committee of non-executive directors consisting of the directors of the Company who are considered to be independent of Rio Tinto (the **IBC**).

The IBC has been delegated all of the powers, authorities and discretions of the Board with respect to any transaction or proposal (**Related Party Proposal**):

- in which, in the opinion of the Chairman of the IBC, a Related Party has or may have interests other than its interest as shareholder in common with other shareholders; or
- where, in the opinion of the Chairman of the IBC, the interests of ERA and a Related Party conflict or may appear to conflict,

excluding any transaction or proposal in which a member of the IBC is a conflicted Director.

For the avoidance of doubt, for so long as Rio Tinto has a controlling interest in the Company, Rio Tinto will be taken to be a Related Party for the purpose of this document, as will any Director who is or was in preceding 6 months a director, officer or employee of Rio Tinto. (References to Rio Tinto include each member of the Rio Tinto Group.)

Without limiting the generality of the foregoing, the powers, authorities and discretions of the IBC include power, authority and discretion to do any of the following:

- (a) propose, evaluate, negotiate, authorise and approve any Related Party Proposal:
  - (i) in which, in the opinion of the Chairman of the IBC, a Related Party has or may have interests other than its interest as shareholder in common with other shareholders, or
  - (ii) where, in the opinion of the Chairman of the IBC, the interests of ERA and a Related Party conflict or may appear to conflict;
- (b) authorise the issue of any public statements, announcements and media releases in relation to a Related Party Proposal;
- (c) convene shareholder meetings to consider and, if thought fit, approve any Related Party Proposal or any other resolution which IBC considers necessary or desirable for or in connection with a Related Party Proposal;
- (d) authorise or approving any document or thing which the IBC considers necessary or desirable for or in connection with a Related Party Proposal (including its implementation);
- (e) engage any advisers, experts and other persons and resources;
- (f) authorise any person to do anything on behalf of the Company in connection with a Related Party Proposal; and
- (g) do anything which the Company's Conflicts of Interest and Related Party Policy contemplates may be done by the IBC (including restrict access and disclosure of information).

"Pre-approved Transactions" are not Related Party Proposals within the remit of the IBC. The following are Pre-approved Transactions:

- (a) payment of remuneration to the Directors in accordance with the Company's Constitution, as approved by the Board;
- (b) payment or reimbursement of reasonable expenses incurred by a Director:
  - (i) in attending meetings of the Company, the Board or a committee of the Board;
  - (ii) on the business of the Company; or
  - (iii) in carrying out duties as a Director,provided the expenses so incurred are consistent with the Company's Board approved expenses policy;
- (c) entry into and payment of premiums on a contract of insurance in respect of a Director, as approved by the Board;
- (d) a transaction between the Company and any wholly owned subsidiary of the Company, where such transaction constitutes a Related Party Proposal merely because a Director is also an officer of a wholly owned subsidiary of the Company which is a party to the transaction;
- (e) provision of a benefit to a Related Party in their capacity as a shareholder of the Company where providing the benefit does not discriminate unfairly against other shareholders of the Company; and
- (f) provision of a benefit in accordance with a Court Order.

### **IBC meetings and proceedings**

Subject to the following, meetings and proceedings of the IBC are, to the greatest extent possible, to be governed by the provisions of the Company's constitution which regulate meetings and proceedings of the Board (including the passing of written resolutions):

Chairman: The IBC will elect a member to chair its meetings for the time being. If relevant person is not present or willing to chair a meeting of the IBC, the IBC members present must elect another member to chair the meeting.

Quorum: The quorum for a meeting of the IBC will be two members.

Calling meetings: meetings of the IBC may be called on 24 hours' notice or, where the matter is considered urgent by a member, on shorter notice.

Reporting to Board: The IBC will report to the Board as it considers appropriate (subject to any processes and protocols developed by the IBC).

Minutes: The IBC must cause minutes of proceedings and resolutions of IBC meetings, including resolutions passed without a meeting, to be prepared and kept in accordance with the Corporations Act and the Constitution.

### SCHEDULE 3

#### FACTORS FOR DETERMINING WHETHER TRANSACTION IS "ARMS' LENGTH"

1. How do the terms of the overall transaction compare with those of any comparable transactions on an arm's length basis?
2. Are other options available to the Company? (For example, has a process for tender occurred?)
3. Has any expert advice been received by the Company (including any professional or expert advice from appropriately qualified advisers)?
4. Are the terms of the proposed transaction fair to the Company and on the same basis that would apply if the transaction did not involve a Related Party?
5. Are the terms of the proposed transaction on terms that are less favourable to the Related Party than arm's length?
6. Are there business reasons for the Company to enter into the proposed transaction?
7. Will the proposed transaction impair the independence of the relevant Director?
8. What are the implications for the Company's financial position and performance?

If it is not clear that the potential transaction is on arm's length terms, then external independent advice from appropriately qualified advisers may be sought.