

Board Policy

Conflict of Interest

SUP 76

POLICY DESCRIPTION

This policy outlines the Board's commitment to managing and disclosing conflicts of interest.

The Board and Office are committed to maintaining appropriate arrangements to manage conflicts of interest. The Board and Office are committed to meeting their obligations under State Government legislation and using their best endeavours to comply with the Commonwealth legislation that applies to complying superannuation schemes.

In providing general guidance on the management of conflicts of interest, it would not generally be anticipated that being a member of a scheme would normally constitute a significant conflict of interest that would require exclusion from the decision making process, where the decision being made is to apply to all members of the scheme equally. Nevertheless, the independent determination of the impact of a disclosed conflict of interest and how it is to be managed, must be considered on a case by case basis.

LEGISLATIVE REFERENCE

Public Sector (Honesty and Accountability) Act 1995 Section 8 states:

- (1) *A corporate agency member who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the agency or the governing body of the agency—*
- (a) *must, as soon as reasonably practicable, disclose in writing to the agency or the governing body of the agency full and accurate details of the interest; and*
 - (b) *must not take part in any discussion by the agency or the governing body of the agency relating to that matter; and*
 - (c) *must not vote in relation to that matter; and*
 - (d) *must be absent from the meeting room when any such discussion or voting is taking place.*
- Penalty: Division 4 fine.*
- (2) *If a corporate agency member makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—*
- (a) *the contract is not liable to be avoided by the agency; and*
 - (b) *the corporate agency member is not liable to account to the agency for profits*

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- (3) If a corporate agency member fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the agency or by the relevant Minister.*
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.*
- (5) Where a corporate agency member has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a corporate agency member of the agency, the corporate agency member must, as soon as reasonably practicable, disclose in writing to the agency or the governing body of the agency full and accurate details of the interest or office.

*Penalty: Division 4 fine.**
- (6) A disclosure under this section must be recorded in the minutes of the agency or the governing body of the agency and reported to the relevant Minister.*
- (7) If, in the opinion of the relevant Minister, a particular interest or office of a corporate agency member is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the corporate agency member, the Minister may require the corporate agency member either to divest himself or herself of the interest or office or to resign from the agency or governing body of the agency (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the corporate agency member from the agency or governing body of the agency).*
- (8) Without limiting the effect of this section, a corporate agency member will be taken to have an interest in a matter for the purposes of this section if an associate of the corporate agency member has an interest in the matter.*
- (9) This section does not apply in relation to a matter in which a corporate agency member has an interest while the corporate agency member remains unaware that he or she has an interest in the matter, but in any proceedings against the corporate agency member the burden will lie on the corporate agency member to prove that he or she was not, at the material time, aware of his or her interest.*
- (10) A corporate agency member who is an employee of the agency or an employee employed or assigned to assist the agency will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member is such an employee.*

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Public Sector (Honesty and Accountability) Act 1995 contains the following relevant definitions:

corporate agency member means—

- (a) a member of a public sector agency that is a body corporate; or
- (b) a member of the governing body of a public sector agency that is a body corporate.

associate means—

- (i) the other person is a relative of the person or of the person's spouse or domestic partner;
or
- (ii) the other person—
 - (A) is a body corporate; and
 - (B) the person or a relative of the person or of the person's spouse or domestic partner has, or two or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or
- (iii) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in subparagraph (ii) is a beneficiary; or
- (iv) the person is declared by the regulations to be an associate of the other person.

Code of Ethics for the South Australian Public Sector states:

- *Public sector employees will avoid actual or potential conflicts of interest.*
- *Public sector employees will ensure their personal or financial interests do not influence or interfere with the performance of their role. They will ensure the interests of family members, friends or associates, as defined in the Public Sector (Honesty and Accountability) Act 1995, do not influence the performance by them of their duties and/or their role as a public sector employee.*
- *Employees will disclose in writing to their chief executive or agency head any actual or potential conflicts of interest at the earliest available opportunity and comply with any lawful and reasonable direction issued by a person with authority to issue such direction to resolve the conflict or potential conflict, including written direction by a relevant authority pursuant to the Public Sector (Honesty and Accountability) Act 1995.*

APRA Prudential Standard: 'SPS 521 - Conflicts of Interest', which applies to Registrable Superannuation Entities states:

- *This Prudential Standard establishes requirements for the identification, avoidance and management of conflicts of duty and interest by an RSE licensee. These requirements are essential to ensure that an RSE licensee and its responsible persons meet legislative obligations in Part 6 of the Superannuation Industry (Supervision) Act 1993.*
- *The Board of an RSE licensee is ultimately responsible for having a conflicts management framework that is appropriate to the size, business mix and complexity of the RSE*

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licensee's business operations and which applies to the entirety of its business operations. The conflicts management framework must be approved by the Board.

- *The key requirements of this Prudential Standard are that an RSE licensee must also:*
 - *develop, implement and review a conflicts management policy that is approved by the Board;*
 - *identify all relevant duties and relevant interests; and*
 - *develop registers of relevant duties and relevant interests.*

The Prudential Standard defines a relevant interest as any interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, directly or indirectly held that is determined to be relevant.

A relevant duty or an interest is one that might reasonably be considered to have the potential to have a significant impact on the capacity of the responsible person to act in a manner that is consistent with the best interests of beneficiaries.

The relevant code of conduct is the Code of Ethics for the SA Public Sector issued by the Commissioner for Public Employment.

POLICY

The Board and Office must comply with the *Public Sector (Honesty and Accountability) Act 1995*, the *Independent Commission Against Corruption Act 2012* and the Code of Ethics for the South Australian Public Sector in relation to conflicts of interest. The Board and Office must use its best endeavours to comply with APRA Prudential Standard SPS 521 which requires Boards of registrable superannuation entities (RSE) to have an appropriate conflicts management framework in place for the Board and for all employees.

This policy also adopts:

- Department of Treasury and Finance Conflict of Interest Policy
- Department of Treasury and Finance Conflict of Interest Procedure
- Department of Treasury and Finance Conflict of Interest Guideline
- Department of Treasury and Finance Gifts and Benefits Policy
- Department of Treasury and Finance Gifts and Benefits Procedure
- Department of Treasury and Finance Gifts and Benefits Guideline

All employees and contractors will comply with any DTF policies in relation to accepting, declaring and/or recording the receipt of gifts or benefits. However, to provide clarity, all employees and contractors disclosing conflicts of interest (other than gifts or benefits) must follow the reporting requirements as outlined in this policy.

If a conflict is not declared or managed appropriately, it can undermine the integrity of Super SA and the public sector as a whole and may constitute misconduct.

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Conflict of interest defined

A conflict of interest is a situation where a personal or pecuniary interest has the potential to inappropriately affect or influence public duties. There are three types of conflicts (actual, potential or perceived) that involve either a personal and/or pecuniary interest. A conflict of interest can also exist due to a financial interest, outside work activities (paid or unpaid) or a conflict of duty (e.g. membership of another public or private organisation). For further guidance, see Conflict of Interest Guidelines.

Responsibility of Board members

Board members must advise the Board Support Officer of any direct or indirect personal or pecuniary interests held. The Board Support Officer will maintain a register of all interests and will update the register, as required.

Conflict of Interest is to be a standing agenda item for all Board and Committee meetings.

Where another interest or another office held may represent a conflict with the duties of the Board member, this must be recorded in the minutes of the next Board or Committee Meeting and the Minister must be advised of these details.

Board members must disclose any actual or potential conflicts of interest in relation to any matter of business under consideration.

Board members must not vote in relation to any matter where a conflict of interest exists and must leave the meeting while such matters are being discussed or decided. As noted above, membership of a scheme will generally not constitute a conflict of interest where the decision being made will apply to all scheme members generally.

Responsibility of all Super SA employees and contractors

Employees and contractors are required to take reasonable steps to avoid actual, potential and perceived conflicts of interest.

Employees and contractors are never to be involved solely in any transaction (including processing and authorisation of transactions) that relate to an interest held by themselves (i.e. their own account), a family member, friend, associate or any other person where there could be an actual, potential or perceived conflict of interest. This includes accessing and viewing of all such accounts on all administration systems (including own accounts) or other information held in relation to these accounts, including accessing or viewing these physical member files. Note this does not preclude any employee or contractor from viewing their own account via the member portal. It is noted that loading bulk contribution batches which may include the employee or contractor, family members, and friends or associates will generally not give rise to a conflict of interest.

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To ensure that all employees and contractors are aware of this requirement, as part of the induction process, all employees and contractors are required to sign a 'Conflict of Interest Declaration Form', indicating that they have read this policy and in particular read, understood and will comply with the access restrictions as outlined above and to disclose any conflicts of interest. In addition, all employees and contractors are required to complete a 'Conflict of Interest Declaration Form' on an annual basis regardless of whether a conflict of interest exists.

In the instance that any conflict of interest is identified during the course of employment, the employee or contractor should immediately disclose this to their Group Leader, Manager or Director who will report this to the Governance and Risk team as soon as possible. Immediately thereafter the employee or contractor should complete a new 'Conflict of Interest Declaration Form' outlining all the details of any new and existing conflicts of interest and then hand to their Group Leader, Manager or Director who will assess and develop an appropriate management plan to mitigate or remove the conflict of interest.

Employees must obtain written permission from the Chief Executive before engaging in any outside employment or remunerative activity if they are currently in full time employment with the public sector. Employees should also obtain permission to undertake voluntary or unpaid activities where there is an actual or potential conflict of interest between such activity and their duties or role with Super SA.

Employees must complete a 'Conflict of Interest Declaration Form' advising the Chief Executive of any other employment, positions or interests held that have the potential to influence or interfere with the performance of their role. Additionally, employees are required to complete this form advising the Chief Executive of any Board or Committee positions held (e.g. positions held on school boards or advisory committees).

Employees and contractors who are involved with projects or procurement of products and services must declare any actual or potential conflict of interest by completing a 'Conflict of Interest Declaration Form'. This declaration will be independently assessed, and where deemed necessary, the employee or contractor must not be involved in any decisions relating to the conflict of interest. An additional 'Confidentiality Deed Poll of Undertaking and Conflict of Interest Disclosure Form' is required to be completed by all employees and contractors who are appointed to a tender evaluation panel and these forms are maintained by the Procurement team.

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Management of declared conflicts of interest

Whenever a 'Conflict of Interest Declaration Form' is completed, it should be forwarded to the Governance and Risk team to add to the 'Conflicts of Interest' register, reported to the Board annually.

The register will be maintained online on the Super SA network at the following G:\drive location:

G:\Governance Board and Corporate Support\Audit Risk Compliance\Conflicts of Interest\COI - Declaration form\Conflict of Interest Register

To maintain confidentiality, access to the register will be limited to the Governance and Risk team.

For all disclosed conflicts of interest, the employee's management plan will be reviewed at least annually.

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