



## **Board of Directors' Disclosure of Personal Interest Policy and Policy for Handling Conflicts of Interest (November 2015)**

### **RELEVANT LEGISLATION**

[Corporations Act 2001](#)

### **PURPOSE**

Board members (henceforth referred to as Director(s)) must ensure that they comply with their legal obligations to disclose any material personal interest, including those interests of immediate family members, that they have in a matter that relates to the affairs of the Australasian Evaluation Society Ltd (AES)

The law requires that Directors do not allow a conflict of interest to compromise or unduly influence the role of an independent Director of the AES, or to unduly influence their decisions as an independent Director.

Sections 191 to 196 of the Corporations Act 2001 impose requirements on Directors of companies to disclose material personal interests in matters relating to the affairs of their companies. A Director may give standing notice about a matter which could become a source of potential conflict even if it is not a matter relating to your organisation's affairs at the time notice is given.

Under section 195, if you are a Director of a board of a company limited by guarantee (like the AES), and you have a material personal interest in a matter being considered at a meeting of your board, you may be asked to leave the meeting while that matter is being considered and you cannot vote on the matter. It is an offence to breach this section.

In addition, section 180 of the Corporations Act 2001 requires Directors and officers of corporations to exercise powers and discharge duties with the level of care and skill which a reasonable person would apply in the situation. Subsection 180(2) specifies what the requirements of care and skill include when making business judgements – including a requirement that the Director or officer must not have a material personal interest in the subject matter of the judgement.

This policy sets out the procedures that Directors (Board members) of the Australasian Evaluation Society Ltd (AES) agree they will follow:

- to disclose interests that they have; and
- to act should a conflict of interest occur.

This policy will be reviewed annually, or more frequently if changes to legal or regulatory requirements dictate. Each Director is responsible for ensuring that they comply with this policy.

## **DEFINITION**

A conflict of interest arises where a prospective or existing Director has an interest which conflicts (or might conflict, or might be perceived to conflict) with the interests of the AES. The key question to ask when considering whether an interest might conflict is:

*Does the matter create an incentive (or could it reasonably be perceived to create an incentive) for the Director to act in a way that may not be in the best interests of the AES, its members, volunteers, or other stakeholders?*

A conflict may take a number of forms. It may be financial or non-financial. It may be direct or indirect. It may be professional or family related. For example, a conflict of interest may arise from:

- Other directorships or other employment;
- Interests in business enterprises or professional practices providing services to the AES;
- Share ownership in major suppliers of the AES;
- Beneficial interests in trusts;
- Existing professional or personal associations with the AES (subject to the exemption below);
- Professional or personal associations with other groups or organisations; or
- Family relationships.

### **Exemption:**

It is not considered to be a conflict of interest when a Director receives a service or benefit from the AES, provided that such service or benefit is delivered in the same manner, under the same circumstances, and on the same terms as it would be delivered to any other member of the AES.

See Appendix; What is a conflict of interest?

## **DISCLOSURE OF INTERESTS**

### **Guiding Principle**

A Director should disclose to all other Directors:

- any material interest that they have in a matter which relates to the affairs of the AES; and
- any other interest, circumstance, relationship or other matter which the Director believes is appropriate to disclose in order to avoid an actual conflict of interest or the perception of a conflict of interest.

The disclosure should be made either:

- as soon as practicable after the Director becomes aware of the interest, circumstances, relationship or other matter, or
- in the Standing Notice of Disclosure of Interests (see procedure below).

Details of the disclosure must be recorded in the minutes of the meeting at which the disclosure is made or the first meeting following the disclosure.

## **Procedure - Standing Notice of Disclosure of Interest**

Each Director must complete a Standing Notice of Disclosure of Interests when they sign their Declaration to act as a Responsible Person. Any disclosures will be recorded in the minutes of the first meeting that the Director attends.

Directors must disclose any changes to the Standing Notice of Disclosure of Interests as soon as practicable. Such changes will be recorded in the minutes of the meeting at which Directors are advised of the change.

A Standing Notice of Disclosure of Interests for each Director will be distributed to all Directors at least annually and will be tabled at a meeting of Directors and recorded in the minutes of that meeting.

## **Procedure for Handling Conflict of Interest**

A Director who has:

- a material personal interest in a matter which is to be considered at a meeting of Directors; or
- any other interest which the Director believes is appropriate to disclose in order to avoid an actual conflict of interest or the perception of a conflict of interest in relation to such a matter:
  - a) may not be present during that part of the meeting while the matter is being considered nor vote on the matter unless Directors who do not have such an interest in the matter agree that the interest should not disqualify such a Director from being present while the matter is being considered or from voting on the matter.

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

## **Appendix: What is a conflict of interest?**

Imagine A undertakes to do something for or on behalf of her organisation, B Inc. If A has a personal interest in decisions she will make or transactions she will enter into on behalf of B Inc, and that personal interest means she might get a significant value from the decision or transaction, then that is a conflict of interest. Even if the unauthorised benefit is not received, the conflict is still there and should have been avoided.

The conflict might be direct and immediate or it might be indirect or depend on other factors. For example A might persuade B Inc to use a particular supplier, C Pty Ltd – but A, or someone close to A, might have a relationship with C Pty Ltd (e.g holding shares, being a director, being employed by C Pty Ltd) and therefore stands to benefit if B Inc uses that supplier rather than another.

The benefit might be an actual, possible or future financial gain; or it might be an actual, possible or future lessening of A's own liability (e.g. a debt A owes).

The most difficult thing is identifying that something is a conflict of interest. The conflict may not be intentional, but it is still real and must be avoided.

Source

QUT Wiki, *Conflict of interest policy*, November 2011, Brisbane, viewed 19 October 2015, <https://wiki.qut.edu.au/display/CPNS/Conflict+of+interest+policy>.

<b>Version</b>	<b>Approved By</b>	<b>Approval Date</b>	<b>Effective Date</b>	<b>Sections Modified</b>
1	AES Board	22 Nov 2015	22 Nov 2015	First draft
2				

**For AES Directors, this policy replaces the *AES Conflict of Interest Policy & Declaration* (Revised 20 September 2009).**