

1. Purpose

The purpose of this policy is to:

- assist SunWater Directors and Executives to understand and identify the types of interests that might pose a conflict
- detail the responsibilities of Directors and Executives in dealing with conflicts of interest, and
- detail procedures for managing and monitoring Directors' and Executives' conflicts of interest.

2. Applicability

This policy applies to all Directors and Executives of SunWater.

3. Background

Directors and Executives have a fiduciary duty to act in the best interests of SunWater and put their duty as directors above their own private interests when carrying out their official duties.

SunWater's constitution further provides that each Director must comply with relevant provisions of the *Corporations Act 2001* regarding conflicts of interest. These constitutional and legislative provisions are replicated in **Attachment A**.

Conflicts of interest arise when Directors' or Executives' interests (or the interests of their family, friends or other organisations in which they are involved) will or could inappropriately influence the Director or Executive in their decision-making for SunWater.

Conflicts of interest should be carefully managed because they have the potential to:

- damage the reputation of SunWater
- inhibit good decision-making by the Board and Executive Leadership Team (ELT) particularly if Directors' or Executives' interests mean that the Board or ELT doesn't feel that it can freely discuss issues
- result in Board and ELT decisions which are open to challenge, and/or
- expose Directors and Executives to liability for breach of their duties as officers of the SunWater.

SunWater acknowledges that Directors and Executives cannot at all times completely avoid conflicts of interest. However, it is how those conflicts are managed that is important.

Conflicts of interests might be described as:

- actual conflicts of interest, that is, where a person has a conflict between their official duty to act in the best interests of SunWater and their own personal, professional, business or other interests or duties
- potential conflicts of interest, that is, where it can be reasonably expected that a Director or Executive may in the future have a conflict between their official duty to act in the best interests of SunWater and their own personal, professional, business or other interests or duties, and
- perceived conflicts of interest, that is, where it appears to a reasonable third person that a Directors or Executive has an actual or potential conflict whether or not this is in fact the case.

Conflicts might arise from direct or indirect interests and may relate to financial and non-financial matters.

Examples of situations that might constitute a conflict of interest include the following:

- where a Director or Executive stands to gain financially from any business dealings, products or services provided by SunWater
- where a Director or Executive whether directly or indirectly is in any way interested in a contract or proposed contract with SunWater
- where the Director or Executive is a supplier or service provider to SunWater
- where hospitality or other gifts are provided to a Director or Executive by an actual or potential supplier to SunWater

- where a Director or Executive uses confidential information received by them in their capacity as a director for their personal benefit, and
- where a close relative or friend of a Director or Executive benefits from that person's position on SunWater Board or ELT.

4. Policy statement

Directors and Executives have a responsibility to put their duty as a Director and Officers of SunWater above their own private interests and that of any organisation or group that they represent when carrying out their duties as a SunWater Director or Executive.

SunWater is committed to ensuring that all Directors' and Executives' conflicts of interest and duty are:

- identified and recorded, and
- where they cannot be avoided, managed in an appropriate and transparent manner.

Directors and Executives are required to take personal responsibility for identifying and managing conflicts of interest and duty.

5. Procedures

The Board and ELT will comply with the following procedures with respect to Directors' and Executives' conflicts of interest.

Register of Interests

A Register of Interests will be kept by the Company Secretary comprising all declarations of interest made by Directors and Executives. The register must be open for inspection by any Director.

The Company Secretary will keep the Board and ELT informed of all entries to the register. The Company Secretary, Directors and Executives must treat all personal information contained in the register as confidential and must not disclose information in the register except to the extent necessary to implement this policy.

Declarations of Interests

Within one month of appointment, each Director or Executive is required to complete a Directors' and Executive Conflicts of Interest Disclosure Form (**Attachment B**) declaring the fact, nature, character and extent of any conflicts. The Company Secretary will, on an annual basis, request each Director and Executive to review and update their disclosure form. Directors and Executives are responsible for updating their disclosure form at other times in order to comply with this policy.

Where a Director or Executive has a 'Material Personal Interest' in an issue arising in the course of their duties, they must immediately inform the Chairman of the interest in writing and must not deal with the issue except under the Chairman's written direction.

Standing agenda item

"Declarations of interests" will be a standard agenda item at the beginning of each Board, Committee and ELT meeting. Directors and Executives are required to advise of the fact, nature, character and extent of any conflicts of interest or duty regarding agenda items at this point and before discussion of any substantive agenda items. If during the course of discussion on an agenda item, a director becomes aware of a conflict then they are to declare the conflict at that time.

Receipt of board papers

In some circumstances, a Director or Executive should not receive particular material, such as a relevant board paper, owing to that Director's or Executive's conflict of interest. The Director or Executive may request that the Company Secretary not provide the relevant material to him/her.

The Company Secretary should consult the Chairman as to material conflicted Directors or Executive should receive. In the event that the conflicted Director objects to the withholding of information, the matter should be discussed and determined by the Board.

Participation in discussion and decision-making

Where a Director or Executive has identified a conflict of interest in relation to a matter, and that conflict is a direct or indirect financial or personal interest in a matter to be considered, unless the Board (comprised of the non-conflicted directors) otherwise resolves, the affected Director or Executive may not be present or vote on the matter.

Minutes

Where a Director or Executive has declared a conflict of interest, the disclosure and the Board's decision as to how the conflict is managed must be recorded in the Board or Committee minutes along with any arising action items. The minutes should also record whenever a Director or Executive enters or exits the meeting room as a result of a conflict.

Consider position

If a Director or Executive is unwilling or unable to manage a conflict of interest that affects him/her, and that conflict, in the view of the Board, interferes with the effectiveness of their performance of their duties as a Director or Executive, then the Chairman may request the Director or Executive to consider whether their ongoing position with SunWater is sustainable.

Seek advice

If a Director or Executive is concerned that they might have a conflict of interest, they are encouraged to assume that a conflict exists and seek advice from the Chairman as to the most appropriate manner for handling the situation.

The Chairman will consider how the matter is to be handled to protect the interests of SunWater including the arrangement of appropriate independent advice, at SunWater's expense, if considered necessary.

A Director or Executive may seek appropriate independent personal advice regarding a conflict. If previously approved by the Chairman, this advice can be provided at SunWater's expense.

Undeclared conflicts

Where the Company Secretary, Director or Executive believes that another Director or Executive has an undeclared conflict of interest or duty, they should notify the Chairman. The Chairman must then discuss the matter with the relevant Director or Executive and determine how the matter is to be managed. If the Chairman considers it necessary, he/she will put the issue to the Directors for determination.

Application of this policy to the Chairman

In the circumstance where the Chairman has a conflict the Chair of the Audit, Finance and Risk Committee will fulfil the Chairman's role as stated in this policy.

6. Definitions

Term	Meaning
close relative	means the following in relation to the director: <ul style="list-style-type: none"> • spouse (being a husband, wife or de facto spouse) • a child or grandchild of the director or the director's spouse • a parent, step-parent or grandparent of the director or the director's spouse • a brother, step-brother, sister or step-sister of the director or the director's spouse, or • an aunt, uncle or first cousin of the director or the director's spouse.
direct or indirect interest	any private interest, financial or otherwise, that might raise a conflict between the director's private interests and the duty to act in the best interests of SunWater.
material personal interest	means something of real substance to the relevant matter and capable of influencing the director's vote.

Term	Meaning
Executive	A member of the Executive Leadership Team of SunWater, the Company Secretary and other senior managers identified from time to time.

7. Review of policy

This policy will be reviewed by the Board every two years.

ATTACHMENT A – RELEVANT EXTRACTS

SunWater Constitution Extracts

7.4 Disclosure of Interests

Each Director must comply with section 191 and section 192.

7.5 Director Interested in a matter

If a Director has an interest (whether that interest is a direct interest or an indirect Interest) in a matter that is required to be disclosed under section 191:

- (a) the Director must not be present, and is not entitled to vote, at a Board meeting that considers the matter;
- (b) if the interest has been disclosed by the Director, the Company may proceed with any transaction to which the Director's interest is relevant;
- (c) if the interest has been disclosed by the Director before the transaction is entered into, the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

7.6 Register of Interests

- (a) The Company must
 - (i) record every declaration of interest made by a Director in the minutes of the meeting at which it is made; and
 - (ii) maintain a register of interests disclosed under section 191 and section 192.
- (b) The Shareholding Ministers may request the Company to provide them with a copy of the register maintained under paragraph (a) and the Company must provide the register as requested by the Shareholding Ministers.

7.7 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

Corporations Act Extract

Division 2 - Disclosure of, and voting on matters involving, material personal interests

191 Material personal interest - director's duty to disclose

Director's duty to notify other directors of material personal interest when conflict arises

- (1) A director of a company 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 unless subsection (2) says otherwise.
- (1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the director of a company has a material personal interest in a matter that relates to the affairs of the company.

Note: For strict liability, see section 6.1 of the Criminal Code.

- (2) The director does not need to give notice of an interest under subsection (1) if:
 - (a) the interest:
 - (i) arises because the director is a member of the company and is held in common with the other members of the company; or
 - (ii) arises in relation to the director's remuneration as a director of the company; or
 - (iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or
 - (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or
 - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or
 - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or
 - (vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or
 - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
 - (b) the company is a proprietary company and the other directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or
 - (c) all the following conditions are satisfied:
 - (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under subsection (1);
 - (ii) if a person who was not a director of the company at the time when the notice under subsection (1) was given is appointed as a director of the company—the notice is given to that person;
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (d) the director has given a standing notice of the nature and extent of the interest under section 192 and the notice is still effective in relation to the interest.

Note: Subparagraph (c)(ii)—the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

- (3) The notice required by subsection (1) must:
- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the company; and
 - (b) be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

Effect of contravention by director

- (4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

Section does not apply to single director proprietary company

- (5) This section does not apply to a proprietary company that has only 1 director.

192 Director may give other directors standing notice about an interest

Power to give notice

- (1) A director of a company who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The 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.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

- (2) The notice under subsection (1) must:
- (a) give details of the nature and extent of the interest; and
 - (b) be given:
 - (i) at a directors' meeting (either orally or in writing); or
 - (ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

Standing notice must be tabled at meeting if given to directors individually

- (3) If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.

Nature and extent of interest must be recorded in minutes

- (4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

Dates of effect and expiry of standing notice

- (5) The 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.

Note: The notice may be given to the person referred to in paragraph (b) by someone other than the director to whose interests it relates (for example, by the secretary).

Effect of material increase in nature or extent of interest

- (6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

Effect of contravention by director

- (7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

193 Interaction of sections 191 and 192 with other laws etc.

Sections 191 and 192 have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and
- (b) any provision in a company's constitution (if any) that restricts a director from:
 - (i) having a material personal interest in a matter; or
 - (ii) holding an office or possessing property;

involving duties or interests that conflict with their duties or interests as a director.

ATTACHMENT B – DIRECTORS' DECLARATION OF INTERESTS FORM

I have read the SunWater *Directors' and Executives' Conflicts of Interest Policy* ('Policy') and relevant legislation as they relate to conflicts of interest and undertake to comply with the requirements of these documents and the spirit in which they are intended.

In accordance with the policy, I have documented below my current directorships as well as my personal, professional, business or other interests, relationships or circumstances which do, or could be reasonably expected to, result in a conflict of interest or duty to SunWater on my part.

Part A: Directorships held

Date commenced	Company	Relationship to SunWater (if any)

Part B: Other interests and/or duties

Date interest arose	Description of nature and extent of the interest or duty	The relation of this interest to SunWater	Matter under consideration to which this declaration relates (if applicable)	Description of any action proposed to resolve or manage the conflict

I hereby declare that the above details are correct to the best of my knowledge, and I make this declaration in good faith. I further request that this declaration be recorded in the Register of Interests.

Declarant's name: _____

Declarant's signature: _____

Date: _____