

# Directors' and Executives' Conflict of Interest Procedure

## Creation, Review and Approval

|       |                |                  |           |
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### 1. Purpose

The purpose of this Procedure is to:

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

### 2. Scope

This Procedure applies to Officers of Sunwater and is to be read in conjunction with Sunwater's constitution. In addition, Officers must comply with the provisions of the *Corporations Act 2001* (Cth) in relation to conflicts of interest.

The requirements set out in Sunwater's constitution and the Corporations Act in relation to conflicts of interest are in Attachment B.

Sunwater's Executives also have obligations under Sunwater's general Conflict of Interest Procedure, which is applicable to all Sunwater employees.

### 3. Definitions and Abbreviations

| Term                        | Description   |
|-----------------------------|---|
| Associate                   | Includes: <ul style="list-style-type: none"><li>• a close relative, friend or co-worker of an Officer, or</li><li>• an entity in which the Officer or their close relative, friend or co-worker is a director or officer or has a material personal interest, whether direct or indirect and whether legal or beneficial.</li></ul>                           |
| Board                       | Means the board of directors of Sunwater Limited.   |
| Close relative              | Includes the Officer's spouse (being a husband, wife, de facto spouse or partner) and in relation to the Officer or their spouse: <ul style="list-style-type: none"><li>• a child or a grandchild</li><li>• parent, step-parent or grandparent</li><li>• brother, step-brother, sister or step-sister, or</li><li>• an aunt, uncle or first cousin.</li></ul> |
| Conflict Manager            | Means the following: <ul style="list-style-type: none"><li>• Chair, in relation to Directors and CEO</li><li>• Chair of the Audit &amp; Risk Committee, in relation to the Chair, and</li><li>• CEO, in relation to Executives.</li></ul>   |
| direct or indirect interest | Any personal interest, financial or otherwise, that might raise a conflict between the Officer's personal interests and the duty to act in the best interests of Sunwater.  |
| ELT                         | Means Sunwater's Executive Leadership Team.   |
| material personal interest  | Means something of real substance to the relevant matter and capable of influencing the Officer's vote.   |
| Executive                   | A member of the ELT, the Company Secretary and other senior managers identified from time to time.  |
| Officer                     | Has the meaning given in section 9 of the Corporations Act 2001, and in the case of Sunwater includes its Directors and Executives (together 'Officers').   |
| personal interest           | Any personal, professional, business or other interests or duties of an Officer or that of an Associate.  |

### 4. Roles and Responsibilities

Responsibilities are contained within the body of this Procedure

### 5. Related Legislation and Documents

#### Legislation and Guidelines

- [Corporations Act 2001 \(Cth\)](#)
- [Government Owned Corporations Act 1993 \(Qld\)](#)
- [Queensland Government's Corporate Governance Guidelines for Government Owned Corporations \(Version 2.0\)](#)
- [Queensland Integrity Commissioner \(QIC\) 'Identifying, Disclosing and Managing Personal Interests: Developing an Interests Management Framework to Guide Practice for Multi-Member Decision-Making Bodies' \(October 2019\)](#)
- [QIC 'Identifying, Disclosing, and Managing Personal Interests: A Guide for Multi-Member Decision-Making Bodies' \(13 November 2019\)](#)
- [QIC 'Meeting Aid – Conflicts of Interest', Multi-Member Decision-Making Bodies \(13 November 2019\)](#)
- [QIC 'Meeting Aid – Duty on Duty Conflicts', Multi-Member Decision-Making Bodies \(13 November 2019\)](#)
- [QIC 'Flowchart – Navigating and Resolving Conflict of Interest Issues', Multi-Member Decision-Making Bodies \(13 November 2019\)](#)

#### Related Sunwater Documents

- [Sunwater Constitution](#)
- [Directors' Code of Conduct](#)
- [Sunwater Code of Conduct](#)
- [Sunwater Conflict of Interest Procedure](#)
- [Director's and Executive's Conflict of Interest Process Workflow](#)
- [Director's and Executive's Conflict of Interest Assessment Strategy](#)

### 6. Policy Statement

Officers have a responsibility to put their duty as an Officer of Sunwater above their own personal interests and that of any organisation or group that they represent when carrying out their duties as an Officer of Sunwater.

Sunwater is committed to ensuring that all Officers' conflicts of interest are:

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

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

### 7. Procedure

#### Background

Officers have a fiduciary duty to act in the best interests of Sunwater and put their duty as an Officer of Sunwater above their own personal interests when carrying out their official duties.

Conflicts of interest arise when an Officer's personal interests (or the interests of an Associate) are inconsistent with, or diverge from, the Officer's duties to Sunwater.

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

- damage the reputation of Sunwater
- compromise the public and shareholding Ministers' interests

- inhibit good decision-making by the Board or ELT (as the case may be) particularly if it feels it cannot freely discuss issues because of Officers' personal interests
- result in Board and ELT decisions which are open to challenge
- expose Officers to liability for breach of their duties to Sunwater, and/or
- expose Sunwater and/or its representatives to liability to compensate parties adversely affected by the conflict and, in extreme cases, fines and/or imprisonment.

Sunwater acknowledges that Officers cannot at all times completely avoid conflicts of interest. However, it is how those conflicts are managed that is important.

### What is a conflict of interest?

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 interests
- **potential** conflicts of interest, that is, where it can be reasonably expected that an Officer may in the future have a conflict between their official duty to act in the best interests of Sunwater and their personal interests, and
- **perceived** conflicts of interest, that is, where it could be perceived or appears that an Officer's personal interests could improperly influence the performance of their duties, 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. They can also arise from avoiding personal disadvantage as well as gaining personal advantage, whether financial or otherwise.

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

- where an Officer or an Associate, stands to gain financially from any business dealings, products or services provided by Sunwater
- where an Officer, whether directly or indirectly, is in any way interested in a contract or proposed contract with Sunwater
- where an Officer or an Associate is a supplier or service provider to Sunwater
- where hospitality or other gifts are provided to an Officer or an Associate by an actual or potential supplier to Sunwater
- positions on the board or committees of other organisations which are likely to give rise to a conflict between the duty owed to Sunwater and the duty owed to the other organisation
- where an Officer uses confidential information received by them in their capacity as an officer of Sunwater for their personal benefit or for that of an Associate, and
- where an Associate benefits from the Officer's position on the Sunwater Board or ELT.

The question of whether a conflict exists is an objective one. That is, would a reasonable, fair-minded member of the community consider that the Officer might be motivated by their personal interest rather than their duties and responsibilities to Sunwater?

### Process

Sections 191-195 of the Corporations Act contain detailed provisions requiring the disclosure and management of material personal interests. To a large extent, these provisions are reflected in rules 6.3-6.5 of the Sunwater Constitution and this Procedure. Further details are provided in Attachment B.

Officers will comply with the following procedures with respect to Officers' conflicts of interest.

### Register of Interests

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

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The Company Secretary will keep the Board and ELT informed of all entries to the register. The Company Secretary and Officers 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 Procedure.

### Declarations of Interests

Within one month of appointment and prior to first Board or Executive Leadership meeting, each Officer is required to complete a Directors' and Executives' Conflicts of Interest Disclosure Form (Attachment A) declaring the fact, nature, character, and extent of any conflicts. The Company Secretary will, on an annual basis or other trigger (eg change in machinery of government), request each Officer to review and update their disclosure form and/or the register of interests. Officers are responsible for updating their disclosure form and/or the register of interests at other times in order to comply with this Procedure.

Where an Officer has a 'material personal interest' in an issue arising in the course of their duties, they must immediately inform the Conflict Manager and Company Secretary of the interest in writing and must not deal with the issue except under the Conflict Manager's written direction.

If the conflicted Officer objects to the written direction, the matter should be discussed and determined by the Board or ELT (as the case may be) absent the conflicted Officer.

### Standing Agenda Item

'Declarations of interests and conflicts' will be a standard agenda item at the beginning of each Board, Committee and ELT meeting. Officers 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, an Officer becomes aware of a conflict then they are to declare the conflict at that time.

The Conflict Manager must (and in the case of the Board, with the assistance of the Company Secretary) continually review upcoming matters for consideration by the Board or ELT (as the case may be) and the Register of Interests to assess whether a conflict constitutes a material personal interest. If the Conflict Manager is in doubt, they should refer the matter to the non-conflicted Officers for their consideration and decision. The conflicted Officer should be advised of the assessment outcome.

A review of Board/Committee papers to the Directors' and Executives' Disclosures will be undertaken prior to each Board/Committee meeting to identify any conflict of interest risk or emerging risk for the Chair's and Board's consideration.

### Receipt of Board Papers

In some circumstances, an Officer should not receive particular material, such as a relevant Board or ELT paper, owing to that Officer's conflict of interest. The Officer may request, or the Conflict Manager may determine that the Company Secretary not provide the relevant material to the Officer.

The Company Secretary should consult the Conflict Manager as to which material the conflicted Officer should receive. If the conflicted Officer objects to the withholding of information, the matter should be discussed and determined by the Board or ELT (as the case may be) absent the conflicted Officer.

### Participation in Discussion and Decision-Making

#### Where there is no conflict

In circumstances where a potential or perceived conflict of interest is determined to not be a conflict this will be recorded in the Board/Committee papers and/or the Board/Committee minutes.

### **Conflict is not a material personal interest**

Where an Officer has identified a conflict of interest in relation to a matter, and that conflict is not a material personal interest, the concerned Officer may be counted in a quorum at a meeting that considers, and may vote on, any matter in which that Officer has an interest.

### **Conflict is a material personal interest**

An Officer who has a material personal interest in a matter that is being considered at a Board or ELT meeting:

- must not be counted in a quorum (if relevant)
- must not vote on the matter, and
- must not be present while the matter is being considered at the meeting.

However, the Officer may be present and vote if the Officers who do not have a material personal interest have passed a resolution that they are satisfied that the interest should not disqualify the Officer from voting or being present.

### **Minutes**

Where an Officer has declared a conflict of interest, the following matters should be recorded in the relevant minutes:

- the nature and extent of the personal interest
- the relation of the interest to the affairs of the company
- whether a conflict of interest exists and why, and
- the Board's or ELT's decision as to how the conflict is to be managed and the reasons for that decision, along with any arising action items.

The minutes should also record whenever an Officer enters or exits the meeting room as a result of a conflict at the point in proceedings where the Officer exited and entered the meeting room.

### **Consider Position**

If an Officer is unwilling or unable to manage a material personal interest that affects him/her, and that conflict, in the view of the Board or ELT (as the case may be), interferes with the effectiveness of their performance of their duties as an officer, then the Conflict Manager may request the Officer to consider whether their ongoing position with Sunwater is sustainable. In the case of the ELT, the Board should be notified. In the case of the Board, the non-conflicted Officers may consider notifying the shareholding Ministers.

### **Seek Advice**

If an Officer is concerned that they might have a conflict of interest, they are encouraged to assume that a conflict exists and seek advice from the Conflict Manager as to the most appropriate manner for handling the situation.

The Conflict Manager 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.

An Officer may seek appropriate independent personal advice regarding a conflict. If previously approved by the Conflict Manager, this advice can be provided at Sunwater's expense.

### **Undeclared Conflicts**

Where the Company Secretary or an Officer believes that another Officer has an undeclared conflict of interest or duty, they should notify the Conflict Manager. The Conflict Manager must then discuss the matter with the relevant Officer and determine how the matter is to be managed. If the Conflict



Manager considers it necessary, he/she will put the issue to the non-conflicted Officers for determination.

### **Engagement of former Sunwater Directors**

Sunwater must not engage a former Director of the Board in any capacity unless it has received the prior approval of the Board.

## **8. Non-compliance**

If conflicts of interest are not managed appropriately, this creates the risk of decisions being made and transactions being entered into which are not in the best interests of Sunwater or its stakeholders.

Sunwater may take disciplinary action against any representative involved in a contravention of this Procedure, which action may lead to a termination of employment and/or the matter being referred to an independent regulator for review, such as the Crime and Corruption Commission or Australian Securities and Investments Commission. In the case of the Board, the non-conflicted Officers may consider notifying the shareholding Ministers.

## **9. Reporting**

Sunwater's shareholding Ministers are to be fully appraised upon their request, in a timely manner, of actual conflicts of interest arising with respect to Officers.

## Appendix [1] | Directors and Executives Declaration of Interest Form

I have read the Sunwater *Directors' and Executives' Conflicts of Interest Procedure* (Procedure 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 Procedure, 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 Interest 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:

### Appendix [2] | Legislative and Constitutional Requirements

Set out below is a summary (only) of the requirements regarding the disclosure of personal interests under sections 191-195 of the Corporations Act.

#### Corporations Act 2001

Section 191(1) of the Corporations Act provides that 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, subject to certain exceptions.

The exceptions include:

- the interest is a specified type, such as an interest held in common with other members, or arising in relation to remuneration paid to the director<sup>1</sup>, or
- the director has given a standing notice of the nature and extent of the interest under section 192 of the Act and the notice is still effective in relation to the interest (this section is discussed below).

The notice required under section 191 must give details of:

- the nature and extent of the interest, and
- the relation of the interest to the affairs of the company.

The notice must be given at the board meeting as soon as practicable after the director becomes aware of their interest in the matter, and the details must be recorded in the minutes of the meeting.

While there is no definition of 'material personal interest' in the Corporations Act, the courts have interpreted this phrase to mean something of real substance to the relevant matter and capable of influencing the director's vote. For example, a contract in which a director has a direct financial interest as a supplier to Sunwater is a material personal interest.

In accordance with section 192(1) and s.192 of the Corporations Act, a director of a company who has an interest in a matter may give the other directors standing notice of their interest in the matter. Such notice must give details of the nature and extent of their interest and be given at a directors' meeting or to the other directors individually in writing.

The standing notice must be tabled at the next board meeting if it is given to directors individually.

The nature and extent of the interest disclosed in the standing notice should be recorded in the minutes of the meeting at which the standing notice is given.

Section 195 of the Corporations Act provides that a director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter. However, the director may be present and vote if the directors who do not have a material personal interest have passed a resolution that they are satisfied that the interest should not disqualify the director from voting or being present.

The duties in the Corporations Act which relate to avoidance of conflicts of interest (sections 182 and 183) provide that an 'officer' (which includes a director) or employee must not improperly use their position or information to gain a benefit for themselves or cause a detriment to the company. Breach of these duties are punishable by a fine and, in a serious case involving dishonest or reckless conduct, imprisonment.

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<sup>1</sup> Section 191(2) of the Corporations Act.

### Sunwater Constitution

The Sunwater Constitution contains various provisions regarding directors' interests. These provisions are extracted below.

#### **6.3 Director's interests**

*Subject to complying with:*

- (a) the Act (being the Corporations Act) regarding disclosure of and voting on matters involving Material Personal Interests; and*
- (b) that other relevant laws, including the Crime and Corruption Act 2001 (Qld),*

*a Director may:*

- (c) hold any office or place of profit in the Company, except that of auditor; and*
- (d) hold any office or place of profit in any other company, body corporate, partnership, trust or other entity or arrangement, except that, for so long as the Company is a GOC, a Public Service Officer; and*
- (e) do any of the authorised items above and any other thing approved by the Members:*
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and*
  - (ii) without affecting the validity of any contract or arrangement.*

*A reference to the Company in this rule 6.3 is also a reference to each related body corporate of the Company.*

#### **6.4 Director interested in a matter**

- (a) A Director must not be present, and is not entitled to vote, at a Board meeting when the Board considers a matter in which that director has a Material Personal Interest.*
- (b) The Company may proceed with any transaction that relates to the Director's interest.*
- (c) A Director may retain benefits under the transaction even though the Director has the interest. If the interest is required to be disclosed under section 191, this rule 6.4(c) applies only if the interest has been disclosed before the transaction is entered into.*
- (d) The Company cannot avoid the transaction merely because:*
  - (i) of the existence of the interest;*
  - (ii) a Director fails to disclose the interest;*
  - (iii) a Director is present at, or counted in the quorum for, a Board or Committee meeting that considers or votes in relation to the transactions; or*
  - (iv) a Director consents to a resolution in relation to the transaction under rule 10.8.*

#### **6.5 Register of interests**

- (a) The Company must maintain a register of interest disclosed under section 191 and section 192 (of the Act).*
- (b) If requested by the Shareholding Ministers, the Company must provide them with a copy of the register maintained under rule 6.5(a).*