



Prime Super

Conflicts Management Policy

Prime Super Pty Ltd

Conflicts Management Policy

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1 Glossary

AFSL	Australian Financial Services Licence
beneficiaries	A reference to 'beneficiaries' is a reference to 'beneficiaries of an RSE within the RSE licensee's business operations'.
Board	The Board of Directors of Prime Super.
CA	Corporations Act 2001 (Cth) and Regulations.
conflict	is defined in Section 5.1 of this Policy.
Conflicts Management Framework	The Trustee's conflicts management framework as required by SPS 521, of which this policy forms a part.
Conflicted	A person is conflicted in relation to an issue from the time they report an actual or potential conflict of interests until the time the issue is declared to be either not a conflict or no longer exists.
Directors	The Directors of Prime Super from time to time.
Prime Super	Prime Super Pty Limited.
Fit and Proper	Refers to the Trustee's processes and policies for meeting the fit and proper standards under the SIS Act and SPS 520.
Fund	Prime Super
Officer	A Director, secretary and any person who (among other things) makes, or participates in making, decisions affecting Prime Super.
Register of Interests and Duties	means the Register of Interests and Duties maintained by the Trustee as required under SPS 521, a copy of which is located in Appendix A of the Conflicts Management Framework.
relevant duty	Refers to any duty owed by the Trustee, or a responsible person of the Trustee, to beneficiaries or to any other person that the Trustee has determined to be relevant in accordance with paragraph 16 of SPS 521. ¹
relevant interest	of the Trustee, an associate of the Trustee or a responsible person of the Trustee refers to any interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the Trustee, the

¹ See paragraph 6(a) of SPS 521.

	associate or the responsible person that the Trustee has determined to be to be relevant in accordance with paragraph 16 of SPS 521. ²
Relevant Law	Any Act, Regulation, government policy, trust deed or common law principle, as the context requires.
responsible person	Has the meaning given in SPS 520, as set out in Section 1.4 of the Conflicts Management Framework.
RSE licensee's business operations	includes all activities as an RSE licensee (including the activities of each RSE of which it is the licensee), and all other activities of the RSE licensee to the extent that they are relevant to, or may impact on, its activities as an RSE licensee.
SIS Act	<i>Superannuation Industry (Supervision) Act 1993 (Cth)</i> and Regulations.
SPS 520	APRA's <i>Prudential Standard SPS 520 – Fit and Proper</i>
SPS 521	APRA's <i>Prudential Standard SPS 521 – Conflicts of Interest</i>
Trustee	Prime Super acting in its capacity as trustee.
WOC	A company in which all the shares were purchased by Prime Super using Fund monies.

2 About this Policy

Prime Super is responsible for the efficient and prudent management of the Fund.

Maintaining a Conflicts Management Policy helps the Trustee meet its requirements as an AFSL holder and RSE licensee, under:

- sections 52(2)(d) and 52A(2)(d) of the SIS Act;
- section 912(1)(aa) of the CA;
- ASIC Regulatory Guide 181;
- APRA's *Prudential Standard SPS 521 – Conflicts of Interest*;
- APRA's *Prudential Practice Guide SPG 521 – Conflicts of Interest*;
- Prime Super's Constitution, Risk Management Framework and other governance documents of Prime Super and the Fund; and
- the general prudential requirements of the SIS Act.

3 Effect of this Policy

The Directors must use reasonable care and due diligence to cause Prime Super to:

- efficiently and prudently operate the Fund; and
- prudentially manage the Fund.

This Policy is intended to assist the Directors in discharging these duties.

² See paragraph 6(b) of SPS 521.

Deliberate failure to comply with this document by a responsible person can have severe consequences for the responsible person.

Deliberate failure to comply with this policy by an employee is considered a breach of the employment contract.

4 Using this Policy

This Policy sets out procedures to identify and deal with potential and actual conflicts of interests that may arise in relation to Prime Super, its responsible persons and employees.

5 General Information on Conflicts of Interests

5.1 Meaning of ‘conflict’

For the purpose of this policy, a reference to a ‘conflict’ is a reference to a conflict:³

- (a) between the duties owed by the Trustee, or a responsible person of the Trustee, to beneficiaries and the duties owed by them to any other person;
- (b) between the interests of beneficiaries and the duties owed by the Trustee, or a responsible person of the Trustee, to any other person;
- (c) between an interest of the Trustee, an associate of the Trustee or a responsible person or an employee of the Trustee, and the Trustee’s duties to beneficiaries; and
- (d) between an interest of the Trustee, an associate of the Trustee or a responsible person or an employee of the Trustee and the interests of beneficiaries.

5.2 When can a ‘conflict’ arise?

Prime Super owes fiduciary and statutory duties to members of the Fund such that it, and its Directors, must act in the ‘best interests’ of the Fund members (as a whole) at all times.

A conflict of interest can arise whenever Prime Super or its responsible person or employee is acting in relation to the Fund and does not, or is unable to, strictly adhere to their duty to act in the interests of members with undivided loyalty.

A conflict of interest can be ‘personal’ or ‘business related’. A business conflict of interest refers to matters of an organisational or business structure relating to Prime Super that can lead to the interests of Prime Super being inconsistent with those of the Fund members.

³ Refer to paragraph 7 of SPS 521.

A personal conflict of interest refers to situations where the interests of an employee or responsible person are placed ahead of the interests of Prime Super and/or the members.

Each responsible person and employee should read Section 9 below which outlines the procedure in relation to the acceptance of gifts, benefits, emoluments, hospitality and other interests by a responsible person or employee.

5.3 How do you know if you have a 'material' conflict?

In *ASIC v Citigroup* [2007], Jacobson J stated that managing a conflict of interests requires more than a raft of written policies and procedures – it requires a thorough understanding of the procedures by all employees and a willingness and ability to apply them to a host of possible conflicts.

A conflict of interests is not always obvious or consequential, but this makes them no less important. Prime Super has formulated the following test as a general guide to help people assess whether a conflict of interests may exist in any particular situation.

If, while contemplating a particular issue, you answer “yes” to one or more of the statements below, a potential conflict of interests exists that must be examined more closely by raising it with:

- other Directors (in the case of a Director);
- other Committee Members (in the case of a Committee Member); or
- the General Counsel - Legal and Compliance or, if no person is appointed at the time, a Director (for an employee).

A conflict will be “material” if it could reasonably be expected to affect a person’s judgment when acting on behalf of Prime Super.

Using the word “associate” in its broadest sense - does a course of action or situation that might result in any form of benefit to you or an associate have the potential to:

- Reduce the Trustee’s ability to act efficiently, honestly and fairly towards members?
- Compromise the quality of services provided to members?
- Make a member or a regulator ask: “why weren’t we told” should they find out?
- Adversely affect the responsible management of risks?
- Cost members or Prime Super more than they would otherwise have had to pay for the same result?
- Increase operational costs above what is reasonably necessary for the good management of the Trustee and/or Fund?

- Cause the Trustee to breach a duty owed to a member(s)?
- Cause a Director to breach a duty owed to the Trustee or a member(s)?
- Breach a policy of the Trustee?
- Cause a contractual dispute?
- Create a private profit or advantage in any way from information obtained in managing the Fund?

6 More information on Conflict of Interests

6.1 Why declare a conflict?

There are many forms of fiduciary duty, the highest level of fiduciary duty is that owed by a trustee to a beneficiary.

Generally, the obligation imposed on the Trustee and its Officers is to avoid situations where there is a ***real and sensible possibility*** that a conflict will arise between their fiduciary duties to beneficiaries and personal interests or duties to other entities. Where a conflict cannot be avoided it must be managed to negate its effect.

The only reliable way of negating a conflict of interests is to obtain ***fully informed consent***. Some authorities suggest fully informed consent must come from all the beneficiaries of the Trust. In practical terms for the Fund, it is impossible to ever achieve fully informed consent from members of the Fund. Therefore, in those circumstances, if the conflict cannot be avoided, the Trustee takes the view that the Board must take steps to manage the conflict.

This means declaring a conflict of interests is to the advantage of any person who is conflicted because it affords them the greatest possible protection.

Where a conflict has already been disclosed and circumstances have changed the nature or degree of conflict, re-disclosure is necessary.

Since it can be difficult to determine whether a “real and sensible possibility” exists, only the Board is empowered to make an evaluation. The questions at section 5.3 are intended to help each person covered by this Policy form a view on whether an issue should be raised, but cannot be relied on as a definitive guide to whether a real and sensible possibility exists. A person who suspects the existence of a potential conflict should declare it so it can be either found not to be a conflict or, if it is a conflict and cannot be avoided, steps taken to manage the conflict.

6.2 The extent of obligations

Directors also owe fiduciary duties, and employees owe duties, to Prime Super itself. Because fiduciary duties are complex and Prime Super engages in no other business than acting as Trustee of the Fund, duties to Prime Super and the members will generally overlap in most circumstances.

However, should a Director or an employee identify an event or course of action that may harm Prime Super's interests but not those of the Fund or members, they should also note they are subject to this Policy.

Each Director and employee should be familiar with not only fiduciary duties but also the relevant general and statutory law governing the area of conflicts in relation to both directors of companies generally and, in particular, trustee corporations, AFSL holders and RSE licensees. An overview of the relevant law relating to conflicts is provided in 6.3 below.

6.3 Fiduciary duties and other legal obligations

Fiduciary duties arise from many sources and are generally found where:

- one party is vulnerable to the actions of another;
- the vulnerable party is relying on the other to do or not do something; and
- the stronger party induced or encouraged reliance or agreed to look after the interests of the vulnerable party.

(a) In Equity

In Equity, fiduciary duties are obligations of utmost good faith, requiring honesty and 'undivided loyalty' at all times. A fiduciary must not promote their own interests or those of a third party over the interests of members. Breach of fiduciary duties can result in civil action, loss of position and considerable expense. Specific fiduciary duties to be aware of are:

- to act only in the interests of the beneficiaries (members);
- to act for a proper purpose and not for an ulterior motive;
- not to obtain an unauthorised benefit from your role;
- not to abuse a position of trust and confidence; and
- not to place yourself in a position where your interests or duties to Prime Super and the members conflict with your own interests and duties.

(b) Corporations Act

Each Officer owes duties to Prime Super, including to:

- act with the degree of care and diligence that a reasonable person in the relevant circumstances would exercise;
- disclose to Prime Super information of which they are aware and which is material to the corporation;
- act in good faith in the best interests of Prime Super and for a proper purpose; and

- avoid situations where there is a ***real and sensible possibility*** that their personal interests or other duties may conflict with their duties as an officer of the corporation, specifically the duties:
 - (1) not to make profits out of their position without full disclosure to, and approval of, shareholders;
 - (2) not to be involved in a decision concerning a transaction where they have conflicting duties to another party without full disclosure and approval by the parties;
 - (3) not to disclose without proper permission information which comes into their possession and which is confidential or special to Prime Super; and
 - (4) not to use such confidential or special information to advantage themselves or another person or entity.

(c) Prime Super's Constitution

Clause 5.5 of Prime Super's Constitution provides guidelines for Directors in managing potential conflicts. Under clause 5.5, certain interests or duties of Directors that could conflict with their duties to Prime Super do not:

- disqualify them from contracting with Prime Super;
- prevent them from voting in respect of a transaction;
- enable the shareholders to avoid the relevant transaction; or
- render Directors liable to account to Prime Super for any personal profit made out of that transaction.

These concessions ***do not*** relieve Directors of their fiduciary duties as Directors of Prime Super and are subservient to any conflicting Equitable Principles or legislation.

Directors must still disclose actual and potential conflicts despite the wording of the Constitution.

(d) SIS Act

(i) Trustee Covenants

Section 52(2)(d) of the SIS Act imposes an obligation on the Trustee where there is a conflict between the duties of the Trustee to the members, or the interests of the members, and the duties of the Trustee to any other person or the interests of the Trustee or an associate of the Trustee:

- (i) to give priority to the duties to and interests of the members over the duties to and interests of other persons; and
- (ii) to ensure that the duties to the members are met despite the conflict; and

- (iii) to ensure that the interests of the members are not adversely affected by the conflict; and
- (iv) to comply with the prudential standards in relation to conflicts.

Section 52A(2)(e) of the SIS Act imposes an obligation on each Director of the Trustee where there is a conflict between the duties of the Director to the members, or the interests of the members, and the duties of the Director to any other person or the interests of the Director, the Trustee or an associate of the Director or the Trustee:

- (i) to give priority to the duties to and interests of the members over the duties to and interests of other persons; and
- (ii) to ensure that the duties to the members are met despite the conflict; and
- (iii) to ensure that the interests of the members are not adversely affected by the conflict; and
- (iv) to comply with the prudential standards in relation to conflicts.

(e) RSE Licensee

The SIS Act requires the Trustee, as a holder of a RSE licence, to satisfy the fit and proper standard. This means that the Trustee must possess relevant attributes that enable the Trustee to properly discharge the duties and responsibilities of the Trustee in a prudent manner.

These attributes include, but are not limited to:

- ***the propriety limb***: which each responsible person must satisfy individually which means character, competence, diligence, experience, honesty, integrity and judgment; and
- ***the fitness limb***: which the responsible persons of the Trustee must satisfy collectively which means educational or technical qualifications, knowledge and skills relevant to the duties and responsibilities of the Trustee.

The propriety limb requires the Trustee to consider whether a responsible person:

- has a conflict of interest which may influence the Trustee's or the responsible person's ability to carry out his or her role and functions with the degree of probity and independence required or with regard to the duty of care to members; or
- has failed to deal appropriately with such conflicts.

For further details, see the Prime Super 'Fit and Proper Practice Note'.

(f) Trust Deed

Provisions in the Prime Super Trust Deed are relevant to the management of potential conflicts.

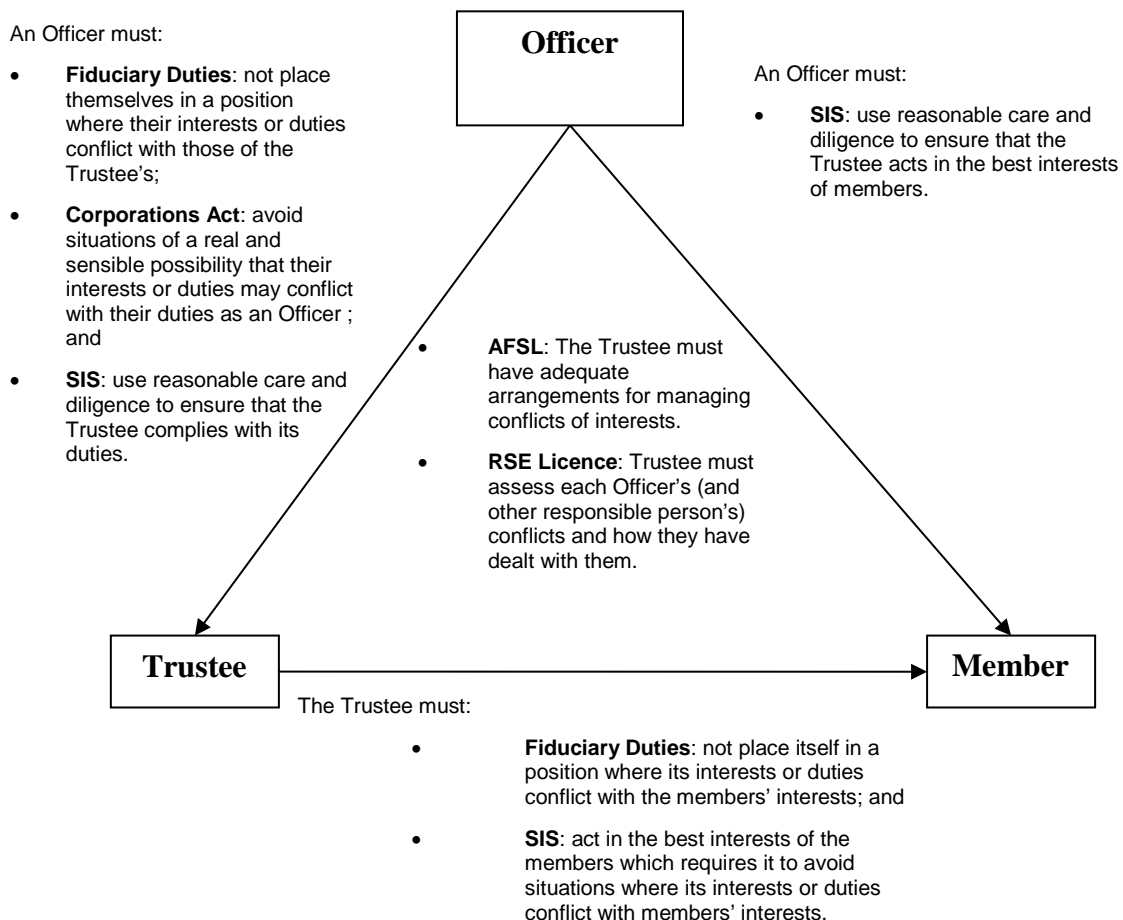
In particular, clause 9.4 permits the Trustee to exercise all the powers and discretions contained within the Trust Deed, or otherwise conferred by the Law, notwithstanding that a Director or a shareholder of the Trustee may have a direct or personal interest, or may benefit, as a result of the exercise of such power or discretion. This and other relevant sections are subservient to any conflicting Equitable Principle or legislation. Directors must still disclose actual and potential conflicts.

(g) Australian Financial Services Licensee

The CA also requires the Trustee, as a holder of an AFSL, to have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities of the licensee or a representative of the licensee in the provision of financial services as part of the Trustee's financial services business.

(h) Diagram of legal requirements

The legal requirements outlined above in relation to conflicts of interest are shown in the diagram below:



7 Disclosure of a Conflict of Interest

If a Director or employee has an actual or potential conflict of interest, they must disclose their conflicting interest or duty as set out in section 7.1. This applies from the time that the person is appointed and on an ongoing basis while they are a Director or employee.

7.1 Opportunities for Disclosure

For this purpose, a person has the following opportunities to disclose an interest:

On Appointment to the Board	<p>When a person is appointed to the Board, they must submit a standing notice (see 7.2 below) of the nature and extent of a material personal interest or an interest that may result in a conflict of interest. Examples of such interests are:</p> <ul style="list-style-type: none">• material shareholding or directorship of a company, interest in a trust, interest in an asset or business undertaking in which the Director is involved or has an interest that may result in a conflict of interest or duty;• interest in the Trustee or a related body corporate of the Trustee;• employment or offices held; or• connection to any stakeholder group.
Annually	<p>A Director can, at any time, submit a standing notice of the nature and extent of an interest. Each Director should complete a standing notice at least annually.</p>
At the Time a Matter is Being Considered (at Board meetings)	<p>At the commencement of each Board meeting, the Chairman should request each Director (including the Chairman) to affirm that at that time he or she is not aware of having a material personal interest or conflict of interest with any matter on the agenda. The Directors' responses should be noted in the Board minutes (see section 7.3 below).</p>

7.2 Standing Disclosure

Standing disclosure refers to where a Director has a general concern about an office or interest that may cause a conflict in the future or that would be material to the Trustee.

The CA enables directors of a company to give a general or 'standing' notice to the other directors about a material personal interest or an office that could give rise to a conflict of interests or duties. It is the Trustee's policy that all Officers be able to give such a standing notice. The notice:

- (a) must state the nature and extent of the relevant interest or role; and
- (b) either:
 - (1) be tabled at a meeting of directors; or
 - (2) be provided in writing to **each** director and the relevant Officer must take all steps to ensure that it is brought up and read at the next meeting of directors after it is given.

The standing notice of each Officer is tabled at each Board meeting and recorded in the minutes. An Officer must disclose any change to their standing notice as soon as practicable and that change must be recorded in the minutes of the relevant meeting.

7.3 Specific Disclosure

Specific Disclosure relates to where a responsible person or an employee has a specific concern relevant to a proposal or activity being considered by the Trustee.

The responsible person or employee must disclose a conflict or potential conflict as soon as practicable as outlined below.

(a) Board Conflicts

The Directors have resolved that actual or potential Conflicts of Interests at the Board decision-making level are to be handled by:

- Having a standing agenda item for disclosure of conflicts of interests at each Board meeting;
- Requiring Directors to disclose conflicts of interests in accordance with prudential obligations and sections 191 and 192 CA; and
- Evaluation systems established under the Fit and Proper Practice Note.

Where a Director becomes aware of, or anticipates, an actual or potential conflict of interests, he or she is required to disclose it in a full and timely fashion to the other Board members. Failure to do so may be grounds for other Directors to conclude the Director is not Fit or Proper.

A conflicted Director is required to abstain from the decision-making process relevant to the conflict, unless other Directors unanimously decide this is not necessary.

Should a conflict of interests be such that the Directors are unable to form a quorum after excluding conflicted Directors, the Board may establish a special purpose committee composed of Directors who are not conflicted to consider the issues and make recommendations to the Board or act as provided at section 8(b)(1) below.

(b) Conflicts within Committees of the Board

The Directors have resolved that actual or potential Conflicts of Interests at Committee level will be handled by:

- Having a standing agenda item for disclosure of conflicts of interests at each Committee meeting;
- Requiring Committee Members to disclose conflicts of interests; and
- Evaluation systems established under the Fit and Proper Practice Note.

Where a Committee Member becomes aware of, or anticipates, an actual or potential conflict of interests he or she is required to disclose the conflict in a full and timely fashion to other Committee Members to be recorded in committee minutes. Failure to do so may be grounds for the Directors to conclude the person is not Fit or Proper.

A conflicted Committee Member is required to abstain from the recommendation forming process relevant to the conflict. The actual or potential conflict and recommended means of managing or avoiding it must be reported to the Directors, who will determine the appropriate course of action.

Should a Conflict of Interests be so material that Committee Members are unable to form a quorum after excluding conflicted Members, the Board will consider the future composition and mandate of the Committee.

(c) Conflicts of Responsible Persons

All responsible persons are required to disclose to the Trustee any actual or potential conflicts of which they are aware. All responsible persons will be required to complete and sign the Responsible Person's Disclosure of Interests/Duties Checklist in the form of Appendix 3:

- prior to their appointment as a responsible person; and
- thereafter on an annual basis.

This requirement is in addition to the standing notice to be provided by all Officers in accordance with Section 7.2 above.

Upon receiving the responsible person's response to the checklist, there might be circumstances where the Board believes it would be prudent to undertake further investigation into the responsible person's disclosure. These circumstances will vary and will depend on the situation. Any investigations undertaken by the Trustee should be conducted on an independent basis where appropriate.

As part of the process of conducting independent legal sign-off on the Fund's PDS, the Trustee's legal advisers will verify the disclosure of each Officer and responsible person through publicly available registers and websites (eg. ASIC) on an annual basis, or more frequently if appropriate.

(d) Conflicts within the Secretariat

All employees within the Secretariat are representatives in terms of the Corporations Act. Where a representative becomes aware of, or anticipates, an actual or potential conflict of interests, he or she must immediately raise it with the General Counsel - Legal and Compliance (or, if no one is acting in that role, a Director) who will report it to the Board at its next meeting along with recommendations for managing the conflict.

Unless a conflict of interests is so fundamental as to undermine an employee's duty of fidelity to the employer, existence of a conflict of interests will normally have little or no effect on an employee's status or career prospects. However, failure by an employee to report an actual or potential conflict of interests is inconsistent with an employee's duty of fidelity to the employer.

7.4 How much detail has to be reported?

The Trustee considers that no disclosure has been made unless all the material details and circumstances, as they are known, have been disclosed. Withholding information and wilful blindness will tend to indicate a breach of the Fit and Proper standard. In some cases, the appropriate level of disclosure (as to which see below) may be affected by confidentiality obligations you owe to other parties or companies.

The following principles may be used as a guide to indicate adequate disclosure:

- The amount of detail required will depend upon the nature of the potentially conflicting interest or duty and the context in which the issue arises. It is acceptable to make an initial disclosure and provide full disclosure at the earliest opportunity.
- Disclosure must be sufficient for the Board to understand the scope for conflict, including the nature of a potential benefit or profit to another party.
- Suggesting a conflict may exist without providing adequate detail is not disclosure.
- Casual or general discussion regarding a potential conflict is not disclosure. Disclosure must be specific, complete and appropriately made.
- Disclosure can be made in writing or verbal, but must be made as soon as practicable after a potential for conflict becomes apparent.
- General discussion of a potential conflict outside Board meetings is not disclosure.
- Disclosure can be made to a committee of the Board, but the matter must be properly recorded by the committee and then considered and decided by the Board.
- Non-attendance at a meeting without disclosure is not sufficient to avoid or manage a conflict.

7.5 Where previous disclosure is not sufficient

If a person has previously disclosed an interest or office that he or she holds, the person will need to consider on an ongoing basis whether further disclosure is required to ensure that the Trustee and the Board understand the nature of any conflict the person may have on a particular transaction or proposal.

7.6 Open Discussion

When any matter is being discussed by the Board, any Director may query another Director as to whether they consider they have a possible material personal interest or conflict of interest with the matter under discussion.

This matter should then be discussed and considered by the Board and if the Board (other than the Director who is being queried) considers that there may be a possibility that the Director has a material personal interest or a conflict of interest, then disclosure must be made and the Director treated as if they have a material personal interest or a conflict of interest.

If a Director is uncertain as to whether he or she has or may have a material personal interest or conflict of interest, he or she must disclose this at the Board meeting at which the matter is being discussed or with the Chairman.

8 Reported actual or potential Conflicts of Interests

Only the Board may determine how a report of an actual or potential Conflict of Interests is to be acted upon. The general processes used by the Trustee in considering actual or potential Conflicts of Interests are summarised below.

(a) Assess the actual or potential conflict

To determine whether a reported conflict is an actual Conflict of Interests, the Board must assess the conflict reported in relation to the Trustee's duty to act in the best interests of the Fund members or Prime Super (as the case may be) and the position of the person who may be conflicted.

Of critical importance in deliberations will be whether a ***real and sensible possibility*** of a conflict of interests arises. A hypothetical or unrealistic conflict scenario will not require action other than monitoring to ensure it does not become real and sensible.

The Board will assess the actual or potential conflict reported against each of the following duties of the Trustee:

- To act in good faith in the best interests of Prime Super and Fund members;
- To act for a proper purpose;

- Not to do anything that might prevent or hinder Prime Super properly performing or exercising the functions and powers of a trustee; and
- To avoid situations where there is likely to be a real and sensible possibility of a Conflict of Interests.

Should the Board conclude the conflict reported is **not** inconsistent with any of these duties, it may conclude no real and sensible possibility of a conflict exists.

The Board will assess the actual or potential conflict in terms of magnitude by considering the following issues:

- Is a personal benefit of any size, directly or indirectly (for example, through a spouse or partner), likely to accrue to any identifiable party as a result?
- Is a shareholder, creditor or beneficiary (either directly or indirectly) likely to lose a benefit, right or entitlement, however small, as a result?
- Is the same Director or office holder involved on both sides of an actual or potential transaction?

Should the Board conclude the answer to each question is unequivocally “no”, it may conclude no real and sensible possibility of a conflict exists.

Should the Board be unable to conclude the answer to each question is unequivocally “no”, it will conclude that a real and sensible possibility of a conflict exists and determine steps to either avoid or manage the conflict.

(b) Avoiding conflicts

The preferred way of dealing with a Conflict of Interests is to find a way of avoiding it.

The Board may decide to avoid a conflict by taking appropriate action in the circumstances including, but not limited to, the following:

- Not entering into an arrangement which may or will give rise to a conflict;
- Not dealing with a third party that may or will give rise to a conflict;
- A Director or relevant member of the Secretariat relinquishing their relevant interest or duty which gives rise to a conflict;
- A Director removing themselves from the Board of another entity;
- A Director removing themselves from the Board of Prime Super; and/or
- A Director excluding themselves from the discussion and decision making process on the conflicted matter.

(c) Managing conflicts

(i) Materiality

If a conflicted person is unable to quickly and completely end the conflict, the Directors will need to manage the conflict, including considering whether that person can continue to act in the area or capacity of conflict. In making its decision the Directors will have regard to the materiality of the conflict.

Essentially, a conflict will be “material” if it could reasonably be expected to affect a person’s judgement when acting on behalf of Prime Super.

Materiality depends on all of the relevant circumstances, including the size of the conflict influenced by:

- shareholding;
- interest;
- office held;
- monetary amount;
- debts; and
- special rights enjoyed.

The Trustee will make an assessment on materiality based on the above factors in their totality. Note that monetary impact is only *one* factor that is relevant in determining the materiality of a conflict, and must be considered in light of all other relevant factors. Refer to Section 9 below for dollar amounts set by the Trustee as an indication of materiality in respect of gifts, benefits, emoluments, hospitality and other interests.

The determination of materiality necessarily requires the exercise of subjective judgement, but in all cases judgement will be exercised in light of whether the conflict could reasonably be expected to affect the person’s conduct or judgement in the course of his or her duties.

(ii) Ways to manage a conflict

In managing a conflict, the Directors must at all times give priority to the duties, and interests of, beneficiaries as required under sections 52(2)(d) and 52A(2)(d) of the SIS Act. The obligations of the Trustee and Directors under these sections are further explained in Section 6.3(d) of this Policy.

Possible ways of managing a conflict:

(1) For Directors

Directors, acting in any capacity, may be excluded from voting or acting on an issue in which they are conflicted or from being present while the issue is being considered.

While Prime Super’s Constitution allows Directors to be present at meetings and vote on matters where they have certain types of interests, this is subservient to the relevant law and may be inconsistent with Fit and Proper requirements under the SIS Act. A conflicted Director will often jeopardise his or her interests by continuing to act, even where Prime Super’s Constitution allows them to do so. The standard that applies is not whether continuing to act where conflicted is technically valid, but whether it is consistent with the ethical and propriety standards required of a trustee director.

A Director who insists on a strict right to continue to act where other Directors believe he or she should not, may be in breach of the SIS Act Fit and Proper requirements.

Where multiple Directors are affected by the same conflict and it is impossible to establish a quorum, the Directors will need to consider the appointment of an alternate Director(s) who do(es) not have a potentially conflicting interest.

Alternate Directors:

- Must be approved by a majority of the other Directors;
- May be appointed for any period considered appropriate;
- Can exercise any directorial powers;
- Do not operate as the agent of the Director temporarily displaced;
- Incur the same liabilities as other Directors;
- Are subject to the same prudential and eligibility criteria as other Directors;
- May have their appointment terminated at any time, even where a set period has not expired.

The ongoing management of a conflict will be evaluated at each Board meeting when the subject matter of the conflict is discussed. The Board will consider whether the conflict is being effectively managed and whether any further or alternative action is required.

(2) For employees

Employees may be excluded by the Board from participating in activities where they are or may be conflicted.

9 Accepting gifts, benefits, hospitality and other interests

(a) Overriding principle

From time to time, responsible persons and Secretariat staff may be offered gifts, benefits, emoluments, hospitality or any other interest (collectively referred to as “**Gifts**”). In this section, the Trustee has determined a dollar amount above which a Gift will be determined as material.

It is necessary to keep in mind that monetary impact is only one factor that is relevant in determining the materiality of a conflict, and the entire circumstances must be taken into account. In determining whether a Gift is material, the overriding test **at all times** is whether the Gift has the ability to materially influence the behaviour of a responsible person to act in a manner that is inconsistent with the best interests of beneficiaries (paragraph 16, SPS 521). If the answer is ‘yes’, the Gift is deemed to be material and must be disclosed to the Board, regardless of its dollar value.

Any material Gift must be recorded on the Fund's Register of Gifts, Benefits, Hospitality and other Interests (refer to Appendix B of the Conflicts Management Framework).

(b) Dollar Limits

In setting a monetary value as an indication of materiality, Gifts in excess of the following values will be considered material and may not be accepted without approval of the Board.

gifts	\$250
benefits	\$250
emoluments	\$250 or no minimum amount if it falls within paragraph (c) below.
hospitality	\$250
other interests	\$250

(c) Emoluments

If a responsible person receives emoluments:

- from an organisation, entity or business which is in direct or indirect competition with Prime Super, its associates or any of its service providers; or
- as fees for service in respect of a matter which could be perceived as an actual or potential conflict; or
- which is associated in any way with a matter that could be perceived as an actual or potential conflict,

the emolument will be deemed material and the responsible person **MUST** disclose the emolument to the Board, regardless of the amount.

Any emolument that does not fall within the above categories will be considered material if it exceeds the dollar value specified in paragraph (b) above and must be disclosed to the Board.

(d) Recurring Gifts

A responsible person that receives recurring Gifts from the same recipient must disclose these to the Board. The value of the gifts will not be a relevant factor as the recurrent nature of the Gifts will be considered material.

(e) Other benefits

Invitations to attend luncheons, dinners, and sporting and cultural events in Australia, which may include an invitation to a partner, may be accepted. Behaviour at such events will reflect the integrity and professionalism of the Board at all times. Where possible, opportunities to promote the Fund should be taken.

Commissions (soft or hard), trailer fees, and “kick-backs” of any type may not be accepted in any circumstances. Acceptance of these is sufficient to question the recipient’s fitness and propriety under the Fit & Proper Practice Note.

10 Recording Disclosure of Conflicts of Interests

It is critical that the following records of the disclosure of an actual or potential Conflict of Interest be prepared and kept:

- (a) **Minutes of meeting:** details of the disclosure, and the action taken to avoid or manage the conflict, must be recorded in the minutes of the meeting at which the disclosure is made or the meeting held following the disclosure; and
- (b) **Other records:** the General Counsel - Legal and Compliance (or, if none, the Company Secretary) must record each disclosure of relevant interest or relevant duty in the Register of Duties and Interests. The Register is readily available to any new or existing Officer at every Board meeting and upon request by any responsible person.

The Register of Duties and Interests must note:

- The date the disclosure was first reported;
- The nature of the disclosure;
- Measures in place to deal with the conflict reported; and
- Any other information thought material by the Board from time to time.

11 Conflicts of Interest Training

Conflict of Interests training must be provided to all employees whose roles are more likely to involve potential or actual conflicts of interest.

This training provides awareness and understanding of conflicts of interest in accordance with this Policy and existing internal controls. Directors must also receive preliminary and ongoing training in relation to their responsibilities under this Policy.

An annual training plan is prepared for each individual Director and employee and this is set out in the Training and Personal Development Review.

12 Consequences of failing to manage a conflict in breach of this Policy

The consequences of a breach of duty by a Director or an employee will vary depending on the legal source of the obligation. Since many of the general law (or equitable) duties and statutory duties overlap, one set of circumstances can result in a number of different breaches.

For a breach of the fiduciary duty to avoid a conflict, the party to whom the duty is owed can claim a wide range of remedies, including (re)payment of any benefit received by the fiduciary as a result of the breach (although it is not necessary that the fiduciary receive a benefit for a breach to be established).

In some cases, such as where a Director or an employee misuses information received as a result of holding office, the Director or the employee will have committed both a breach of their fiduciary duties and their obligations under the CA.

The penalties that may be imposed on a Director or an employee for a breach of duty under the CA include:⁴

- if the breach is serious or prejudices Prime Super's interests or its ability to pay creditors, pecuniary penalties of up to \$200,000;
- if damage results from the breach, an order to pay compensation (including any profits made) to the party that suffered the damage;
- if the person acted intentionally, recklessly or dishonestly in breaching certain provisions⁵, criminal penalties, including imprisonment for up to 5 years; and
- if a Director fails to disclose a material personal interest, imprisonment for up to 3 months and/or a fine.⁶

Accordingly, it is important that all Directors and employees comply with their obligations in relation to conflicts of interests as outlined by this Policy. In addition to the above penalties from an external body, breaches of this Policy will be viewed seriously and may lead to disciplinary action being taken against the relevant Director. In serious cases, such an action may include dismissal. Any person who becomes aware of a violation of this Policy should immediately report the violation to the General Counsel - Legal and Compliance (or, if none, to a Director).

13 Monitoring, Reporting and Review

As part of Prime Super's ongoing compliance program, compliance with, and the effectiveness of, the conflicts management framework (including this Policy) must be reviewed at least annually, and the results reported to the Board. The review process is discussed in further detail in Section 6 of the Conflicts Management Framework.

⁴ For pecuniary penalties and compensation orders, see sections 1317G and 1317H of the CA.

⁵ Criminal offences are established under section 184 of the CA where Officers commit breaches of sections 181, 182 or 183 (these are the duties to act in the best interests of the company and for a proper purpose and not to misuse position or information) and such breaches are intentional, reckless or dishonest.

⁶ See section 191(1) of the CA.

Any breaches or potential breaches of this policy must be recorded in the breach register and must be reported to the General Counsel - Legal and Compliance. All breaches or potential breaches will be investigated and a report provided to the Board on measures taken to rectify the breach.

The effectiveness of this Policy (together with the Conflicts Management Framework) will also be reviewed and any appropriate revision will be reissued by the Board.

Appendix 1 Register of Conflicts of Interests identified

1.1 Appointing Investment Managers

Nature of conflict

Where a related party investment manager makes investments on behalf of the Fund, the interests of the related party in negotiating pricing and other terms and conditions associated with the investment management contract may be in conflict with the best interests of the beneficiaries of the Fund.

Assessment

The risk of this conflict is rated as very low. Prime Super appoints unrelated third party investment managers on arm's length commercial terms.

Implemented controls

Prime Super engages the services of an Asset Consultant to provide:

- Monthly performance reporting;
- A quarterly report on investment manager performance, including comparison of performance against objectives;
- Proactive information, research and recommendations; and
- Advice relating to the selection and termination of investments.

The Board considers that the negotiation of contracts on commercial terms, number of fund managers appointed and the regular assessment of fund manager performance is sufficient to ensure Prime Super discharges its duty to act in the best interests of Fund members.

1.2 Appointing material service providers

Nature of conflict

A wish may arise, from time to time, to select service providers on a basis other than objective criteria formulated in the interests of the beneficiaries.

Assessment

The risk of this conflict is rated as low. Prime Super has no related party service providers that might introduce systematic bias when appointing service providers.

Implemented controls

To manage the potential for conflict:

- Prime Super has a Policy in place covering appointment of service providers that requires objective evaluation.
- Though not mandatory, selection of service providers in the past has involved use of third party independent consultants. It is anticipated this practice will continue.
- No Director or employee of the Trustee is known to have a conflict in relation to any service provider.

1.3 Conflict: Dealing with material service providers

Nature of conflict

Frequent contact with service providers is necessary but familiarity may undermine the degree to which they are held accountable in the interests of the beneficiaries.

Assessment

The risk of this conflict is rated as medium. Prime Super has no related party service providers that might introduce systematic bias, but key individuals may develop working relationships that unconsciously reduce practical accountability.

Implemented controls

To manage the potential for conflict:

- Prime Super has a Policy in place covering the Fit & Proper standard.
- Prime Super has processes in place for monitoring, training and supervision of its employees.
- Service provider agreements contain service standards agreed in advance that often trigger fee penalties. Service standards are reported to the Board, not a particular individual.

1.4 Issue: Investments in (and continued funding of) a Wholly Owned Company (WOC)

Nature of issue

As part of Prime Super's investment strategy for the Fund, from time to time, Fund money may be invested (or further investments may be made) in a WOC (and its underlying investments) raising the issue that there may be alternative investments that have the prospect of providing a better return.

Does this constitute a conflict of interest?

No conflict of interest arises by Prime Super investing (or continuing to invest) in a WOC. See section '*WOC Board structure*' below.

However, it gives rise to Prime Super's duties in relation to investment of Fund assets.

The relevant duty for Prime Super (and its Directors) is that it must, like any other investment of the Fund, make decisions, with the care, skill and diligence of an ordinary prudent person, in relation to:

- the initial investment in a WOC;
- the further funding of a WOC; and
- the continuation/termination of the WOC,

that are:

- in accordance with the Fund's investment strategy (eg. having regard to risk, return, liquidity, diversity); and
- solely in the best financial interests of the Fund members and excluding the Directors' personal interests and beliefs.

It follows from the above, that once an investment in a WOC has been made, it must be regularly reviewed to ensure that it continues to be an appropriate investment for the Fund with the Directors acting in accordance with the above principles. To assist

the Directors in the 'investment review' process, periodic independent valuations or appraisals may be necessary if there is no standard market criteria or rates.

Whilst the board structure of the WOC (see next section) may assist the Directors in discharging their duty above, it does not change the above duty.

WOC Board structure

At law, a director of a company owes his or her duties and responsibilities to the company itself rather than any individual shareholder. In effect, this translates to the requirement that the directors are responsible to the shareholders as a whole.

However, where a company has a single shareholder and that shareholder is a trustee, it can be said that the directors of the company are derivatively responsible, ultimately, to the beneficiaries of the trust. Accordingly, a director of a WOC must act in the interests of its shareholder Prime Super and, ultimately, the members of the Fund.

In light of this, if a director of Prime Super is also a director of a WOC, his or her duty ultimately remains the same – consistent with the above principles, to act solely in the best financial interests of the Fund members. For this reason, no conflict of interest arises solely by virtue of being both a director of Prime Super and of a WOC. It follows from the above that a WOC Board can comprise both Prime Super Directors and/or external directors having regard to, amongst other matters, the following factors:

- (a) the costs of retaining external directors;
- (b) if the Board is required to have a director with a specialist skill or experience for the WOC to comply with a legal or professional requirement, a director having that skill or experience; and
- (c) if the investments of the WOC are in 'start up' phase or going through a period of uncertainty or volatility, some or all of the Prime Super Directors may need to be directors of the WOC to ensure appropriate 'hands on' monitoring or review of the investment is undertaken.

The determination of who should be on the Board of a WOC is a case by case decision of the Prime Super Directors having regard to their overarching duties set out above.

1.5 Managing soft dollar arrangements

1.5A Nature of conflict

Soft dollar conflicts include any benefit provided to the Trustee and offers that might induce a Director or employee to use or continue using a particular product or service.

Assessment of risk

The risk of this conflict is real and emanates for promotional activities by actual and potential service providers.

Implemented controls

- Fit and proper assessment procedures.
- Prime Super has a Policy in place covering appointment of service providers that requires objective evaluation.
- Though not mandatory, selection of service providers in the past has involved use of third party independent consultants. It is anticipated this practice will continue.
- Prime Super has processes in place for monitoring, training and supervision of representatives.

1.5B Nature of conflict

APRA has noted equity brokers may rebate commissions to investment managers but those rebates do not always flow back to the benefit of members.

As a consequence, members may incur costs than would otherwise be the case.

Assessment of risk

The risk of this conflict is real and is best considered part of the criteria against which Prime Super selects and assesses prospective and existing investment managers.

The Directors acknowledge their obligation to ensure investment manager relationships are energetically managed in the best interests of members.

Implemented controls

Failure by investment managers to pass on discounts may be a breach of a fiduciary duty owed by the investment manager (through an investment trust) to Prime Super. Where Prime Super becomes aware an existing investment manager will receive, or is receiving, soft dollar commissions as a result of dealings engaged in on behalf of the Fund, this will be taken into consideration in assessing the value to the Fund's beneficiaries of appointing or maintaining the investment manager.

1.6 Competitor Funds**Nature of conflict**

One Director is also a Director of a competitor fund.

Assessment of risk

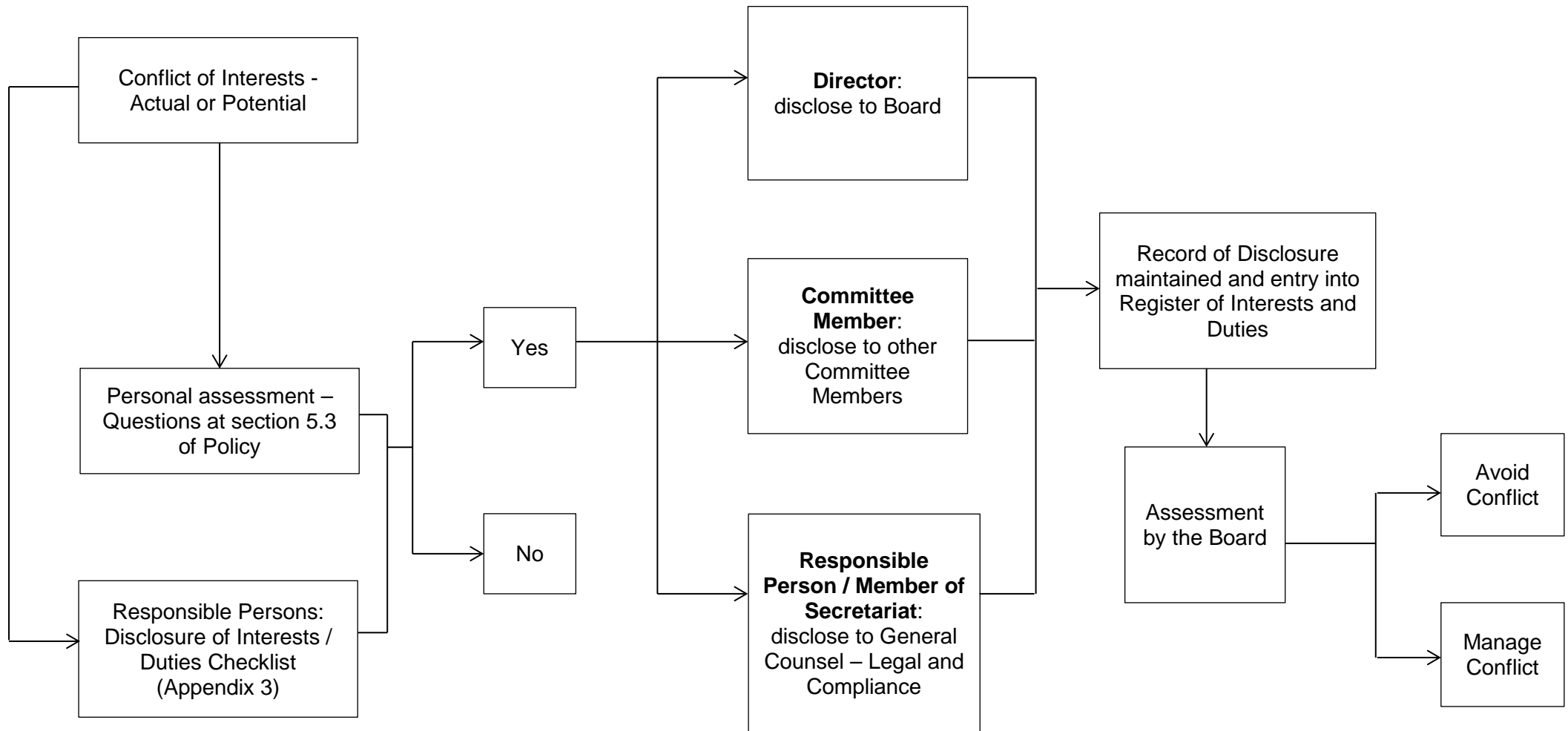
The risk of this conflict is real and is met by preventing the conflicted Director from dealing where the conflict might manifest.

Implemented controls

The Conflicted Director:

- May not vote on matters where the conflict might manifest.
- Is excluded from receipt of materials where the conflict might manifest.
- Is excluded from taking part in board discussions where the conflict might manifest.

Appendix 2 - Conflict of Interests Diagram



Appendix 3

Responsible Person's Disclosure of Interests / Duties Checklist

To facilitate disclosure of duties and interests, each responsible person must answer the following questions. If you answer "yes" to any of the questions below, provide explanatory information on the following page. Full disclosure is absolutely mandatory.

Responsible Person: _____

Position: _____

1.	Have you, or a close relative, received money, gifts, or other compensation from any organisation or person that could be seen to conflict with members' interests? (Examples include fees, gifts, benefits, hospitality, emoluments and other interests)	Yes [] No []
2.	Have you, or a close relative, been employed by an organisation or business that could be seen to conflict with members' interests?	Yes [] No []
3.	Have you, or a close relative, been in a supervisory position (e.g. an officer or director of an organisation or business) that could be seen to conflict with members' interests?	Yes [] No []
4.	Do you, or a close relative, have a current or previous personal, professional or financial relationship or association with another party which could be seen to conflict with members' interests?	Yes [] No []
5.	Are you a member of an association, club or professional organisation or do you have particular ties and affiliations with organisations or individuals which could be seen to conflict with members' interests?	Yes [] No []
6.	Do you, or a close relative, hold shares, investments, or other financial interests in an organisation, fund, institution, or business that could be seen to conflict with members' interests?	Yes [] No []
7.	Are there any other potential conflicts or relevant competing interests that should be known by the Trustee?	Yes [] No []
8.	Have you made any promises or commitments in relation to a matter that could be seen to conflict with members' interests?	Yes [] No []
9.	Has any situation arisen which might have an influence on any future employment opportunities outside your current official duties as a responsible person?	Yes [] No []

