

Procedure 2.02 - Disclosure and Conflicts of Interest

1. Application

Policy 2- Compliance and this Procedure applies to all NQBP Personnel.

2. Application

Conflict of interest issues frequently arise in connection with the operations of many organisations, including government owned corporations such as NQBP. Therefore, in this sense, there is nothing unusual or necessarily wrong with a conflict of interest issue arising within a particular organisation.

However, the key issue is how the relevant organisation then manages and deals with these conflict of interest issues.

Definition of Conflict of Interest

A conflict of interest is a conflict between the official duties and responsibilities and the private interests of a Relevant Person, in which the Relevant Person has a private or personal interest, which then improperly influences or may appear to improperly influence the performance of their official duties and responsibilities.¹

The key question is whether the Relevant Person is in a situation where their private interests might improperly influence the way they do their job.

Actual, perceived or potential conflicts of interest

An **actual** conflict of interest is where there is a direct conflict between:

- the private interests of a Relevant Person; and
- the performance of their NQBP based duties and responsibilities.

A **perceived** conflict of interest is where it might be perceived or appears to others that a Relevant Person's private or personal interests could improperly influence the performance of their official duties and responsibilities, whether or not this is in fact the case. A situation that looks like, or appears to give rise to, a conflict of interest may be enough to undermine public confidence in NQBP, even if in fact there is no conflict or it has already been resolved.

A **potential** conflict of interest arises when a Relevant Person has private or personal interests that could in the future interfere with the performance of their official duties and responsibilities.

Financial and non-financial and direct and indirect interests

Interests may be financial or non-financial and be either direct or indirect.

¹ See s.10 of the Integrity Act and the Conflict of Interest Guidelines produced by the former Crime and Misconduct Commission.

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An interest may be categorised as a **financial** interest if a financial or monetary based interest could be generated from the performance by the Relevant Person of their official duties and responsibilities. For example, a financial interest will arise if a Relevant Person is involved in approving a supply contract to a family business in which they are one of the proprietors or where a Relevant Person receives a gift, money, hospitality or travel from an existing supplier to NQBP.

An interest will be categorised as a **non-financial** interest if an interest, other than a financial or monetary interest, arises for the Relevant Person during the performance or discharge of their official duties and responsibilities. For example, a non-financial interest may arise if a Relevant Person is an active member of a community group which then seeks sponsorship from NQBP and the Relevant Person would normally be involved in approving the grant of sponsorships.

Interests may also be direct or indirect.

A **direct** interest is where a Relevant Person has a direct interest in that they personally have the relevant interest. For example, a direct interest would arise where a Relevant Person is a half owner of a business that is entering into a contract with NQBP.

An **indirect** interest is where a Relevant Person does not personally have a direct interest but the Relevant Person's family, close friends or associates have a direct interest. For example, an indirect interest will include circumstances where a Relevant Person has a close relative or close friend who is a part owner of a business that is entering into a contract with NQBP.

Relevant Examples

The following are examples of actual, perceived and potential conflicts of interest:

- An actual conflict of interest could arise where a Relevant Person is in a position to approve the award of a contract in favour of a company where that person (or a close relative or close friend of that person) has a substantial or significant shareholding in the relevant company;
- An actual conflict of interest could arise where a Relevant Person accepts a gift from a supplier or customer of NQBP where the contract with that supplier or customer is to about to expire and negotiations are currently underway to extend that contract;
- An actual conflict of interest could arise where NQBP property and/or facilities are being used by a Relevant Person in order to gain a personal benefit (using NQBP's systems and resources for a private business venture);
- A perceived conflict of interest could arise where a Relevant Person undertakes paid work for an entity other than NQBP, which may then lead to the perception that such work is interfering with the performance of their duties with NQBP.
- A perceived conflict of interest may arise where a Relevant Person is an office bearer or an active member of a community organisation which has a purpose that may interact with, or be relevant to, NQBP;
- A potential conflict of interest may arise where Relevant Person has private business interests in the form of a partnership, shareholding, board membership or investment, where the relevant business could in the future, interact with any of the companies within the NQBP group;
- A potential conflict of interest may arise where a Relevant Person awards a contract to a contractor where the Relevant Person is considering or is looking to pursue employment with the contractor on ceasing employment with NQBP.

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Key risk areas for NQBP

Having regard to the location, business, the relevant industry sector and the operations of NQBP, the key risk areas in terms of conflicts of interest for NQBP include the following:

- The holding or acquisition of shareholdings by a Relevant Person or a Relevant Person's family/close friends in companies which NQBP has an existing or contemplated commercial and / or contractual relationship. To address this particular conflict of interest situation, NQBP has developed a specific policy titled "Trading (Securities) Policy". Please refer to this policy for further information in relation to these conflict of interest situations;
- Personal and professional relationships between a Relevant Person and persons with whom NQBP has an existing or contemplated commercial and / or contractual relationships;
- NQBP Board Members holding Board memberships on entities which have an existing relationship or contemplated contractual relationship with NQBP; and
- Affiliations, close friendships or other relationships with persons who are senior members of organisations who receive NQBP sponsorship, grants or other types of supportive and funding such as community groups.

Disclosure of interests

A key component of the mechanisms adopted by NQBP to deal with and manage conflicts of interest consists of NQBP's disclosure requirements and the maintenance of the Register of Interests.

Any material interest of a Relevant Person that may lead to an actual, perceived or potential conflict of interest, must be disclosed in accordance with the requirements set out in this policy. These disclosures will then be considered and a determination made as to the appropriate action that should be taken to manage the conflict to avoid compromising NQBP's position.

If a Relevant Person has any uncertainty as to whether a particular interest is material and should be disclosed, then the Relevant Person has as a duty to disclose the interest so that a determination can then be made on its materiality and potential impact on NQBP.

Early disclosure of an interest is essential, so that the matter can be assessed and managed up front and mitigation measures put in place. Issues relating to the materiality of the relevant conflict of interest will need to be assessed on a case by case basis.

Guidance as to how to determine whether an interest is a material interest is set out in Appendix 1.

As part of the process for requiring Relevant Persons to disclose all material interests, the Company Secretary has developed a standard Disclosure of Interest form which is available on NQBP's intranet.

Set out below are the disclosure requirements and procedures in so far as they apply to Directors, the Chief Executive Officer, Senior Executives and other employees of NQBP.

Directors

Directors must make:

- A general disclosure of all relevant direct and indirect material interests eg directorships, shareholdings and/or property ownership; and

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- Individual specific disclosures of direct or indirect material interests at the time when a particular matter is being considered by the Board of a relevant company within the NQBP group.

Directors will be required to make a disclosure of all material interests upon appointment. It is the duty of each Director to also make ongoing disclosures of material interests during their term in office.

A decision on the appropriate steps to be taken will be made by the Chairman of the Board where a disclosure of interest is made by a Director. Where a disclosure of an interest is made by the Chairman of the Board, a decision on the appropriate steps to be taken will be made by the Chairman of the Audit and Financial Risk Management Committee. In both cases, this decision will then be referred to the Board for confirmation. The decision must include an assessment as to whether there is a conflict of interest, whether that interest is material and the planned action or method of addressing the conflict. Minutes of the Board meetings must document any decisions made in respect of the conflict and the associated action items.

The procedures set out in the Corporations Act will be followed by Directors in relation to material personal interests (see attached extract of relevant statutory provisions in Appendix 2). Directors may not vote on a matter, or take part in discussions on a matter (including not being present while the matter is being considered at the Board meeting) where required to do so by the Corporations Act.

If information (including a Board paper on a particular matter) is about to be provided to a Director who is perceived to have a material interest in the relevant matter, the Company Secretary must request the Chairman to determine whether or not to provide such information (or the Chairman of the Audit and Financial Risk Management Committee where the matter relates to the Chairman of the Board). The guiding principle is that such information should not be provided to a Director, where that Director has, or is perceived to have, a material conflict of interest.

Where information (including a Board paper on a particular matter) is not provided to a Director because the Director is considered to have a material interest in that relevant matter, the Company Secretary must advise the relevant Director of the general nature of excluded material. The interested Director may then discuss the issue with the Chairman and/or with the Board as a whole. Ultimately, the question may only be resolved between the Director and the Board as a whole.

The templates for all Board and Committee papers are to include a specific section on Conflicts of Interest, the purpose of which is to address conflict issues in relation to the matters covered by the relevant paper.

In addition, there will be a standing agenda item on conflicts of interest at all Board and Committee meetings, which will be dealt with at the start of each meeting.

NQBP will also provide information on its disclosure of interest procedures to incoming Directors as part of their induction process as well as through ongoing training.

Chief Executive

The Chief Executive (**CEO**) must make to the Board:

- A general disclosure of all relevant direct and indirect material interests eg Directorships, shareholdings and/or property ownership; and
- Individual specific disclosures of direct or indirect material interests at the time when a particular matter is being considered by NQBP or any company in the NQBP group.

The CEO will also be required to make a disclosure of material interests upon appointment. It is the duty of the CEO to also make ongoing disclosures of material interests during the term of their employment.

A decision on the appropriate steps to be taken will be made by the Chairman of the Board where a disclosure of interest is made by the CEO. The decision must include an assessment as to whether there is a conflict of interest, whether that interest is material and the planned action of the method of addressing the conflict. This decision will then be

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referred to the Board for confirmation. Minutes of the Board meetings must document any decisions made in request of the conflict and the associated action items.

In addition, it is not appropriate for an officer of NQBP to be in a position to authorise actions which may provide benefits to themselves, for example, financial benefits. In relation to the CEO, it is appropriate for the Chairman to make decisions pertaining to the CEO. Where under a particular policy, NQBP allows the CEO a discretion over employees, the Chairman will be the appropriate person to exercise that discretion under any policy in relation to the CEO. Unless otherwise stated in the specific policy, the Chairman will have the same powers of discretion over the CEO under a particular policy as the CEO has over employees. Depending on the nature of the matter, the Chairman may decide to refer such a matter to the Board for approval.

Senior Executives

Senior Executives must make to the CEO:

- A general disclosure of direct and indirect material interests eg directorships, shareholdings and/or property ownership; and
- Individual specific disclosures of direct or indirect material interests at the time when a particular matter is being considered by NQBP or any company in the NQBP group.

Senior Executives will also be required to make a disclosure of material interests upon appointment. It is the duty of each Senior Executive to also make ongoing disclosures of material interests during the term of their employment.

A decision on the appropriate steps to be taken will be made by the CEO where a disclosure of interest is made by a Senior Executive. The CEO may seek advice from the Company Secretary or other advisors in relation to the matter. The decision must include an assessment as to whether there is a conflict of interest, whether that interest is material, as well as the planned action or method of addressing the conflict. The decision of the CEO, including any decisions made and the associated action items, must be documented in the Register of Interests (see below).

Employees other than Chief or Senior Executives

Employees and Contractors (other than the CEO and Senior Executives) must make to the CEO:

- A general disclosure of direct and indirect material interests eg directorships, shareholdings and/or property ownership; and
- Individual specific disclosures of direct or indirect material interests at the time when a particular matter is being considered by NQBP or any company in the NQBP group.

Employees and other persons identified in item 1 above (other than Directors, the CEO and Senior Executives) will be required to make a disclosure of material interests upon appointment. It is the duty of each such person to also make ongoing disclosures of material interests during the term of their employment or engagement.

A decision on the appropriate steps to be taken is made by the CEO where a disclosure of material interests is made by such persons. The CEO may seek advice from the Company Secretary or other advisors in relation to the matter. The decision must include an assessment as to whether there is a conflict of interest, whether the interest is material, as well as the planned action or method of addressing the conflict. The decision of the CEO, including any decisions made and the associated action items, must be documented in the Register of Interests (see below).

Register of Interests

A Register of Interests will be maintained by the Company Secretary, which records disclosures of interests by Directors, employees and Contractors of NQBP, as well as the associated action items. The Register is to be regularly updated.

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In relation to Directors, the CEO and Senior Executives, details of any changes in the Register are to be notified to the Board at each Board meeting in a summary format. On a quarterly basis, the Register of Interests for Directors, the CEO and Senior Executives is to be provided in full to the Board.

In addition, the entire Register of Interests is to be reviewed by the People and Culture Committee at least annually, who will then report to the Board on the outcome of that review.

Culture of Compliance

NQBP's primary mechanisms for managing conflicts of interest consists of developing and maintaining an organisational culture that is aware of conflict of interest issues and which fosters an environment where Relevant Persons are comfortable in discussing conflict of interest issues and making, at an early stage, appropriate disclosures of relevant interests. The development and maintenance of such a culture within NQBP will be facilitated by training and awareness programs, the adoption of mitigation strategies and by the proper and appropriate management of conflict of interest issues in a transparent, accountable and practical manner.

NQBP will encourage an ongoing culture of compliance in the management of conflicts by several mechanisms, including induction training, annual training, regular audits on the management of conflict of interest issues and the personal commitment of the CEO and Senior Executives in relation to compliance with this policy.

The effectiveness of the strategies outlined in this policy to manage conflicts of interest will also be monitored on a regular basis, both in terms of compliance and outcome. Annual training for NQBP staff will incorporate mechanisms to help staff assess their knowledge levels on this topic. Where appropriate, an independent external party may be engaged to review this policy together with declarations of conflicts of interest and/or any breaches of this policy or associated actions.

The People and Culture Committee is the appropriate Committee to assist the Board in relation to this issue. It is part of the Charter of this Committee to evaluate and/or audit NQBP's handling of conflict of interest issues, with audits to occur on at least an annual basis.

Communication with shareholding Ministers and stakeholders

The Board will keep shareholding Ministers apprised, in a timely manner, of actual conflicts of interest of a material nature that may arise with respect to Directors, the CEO, Senior Executives and employees and where the Board considers that the nature of the conflict has a high level of significance or sensitivity.

This policy will be made available to stakeholders of NQBP via its external website.

Breach of Policy

A breach of this policy and a failure to properly disclose a material conflict of interest can have serious consequences including:

- Disciplinary action;
- A referral of the matter to the Crime and Misconduct Commission. If the Crime and Misconduct Commission then considers that the circumstances could give rise to official misconduct, a range of actions may be undertaken including an investigation by the Crime and Misconduct Commissioner or by NQBP and the imposition of penalties and sanctions; and
- Potential criminal sanctions under s.92A of the Criminal Code.

In addition to these actions, if this policy is breached, NQBP may give further consideration as to whether the particular matter should be referred to relevant independent regulators for review (e.g. ASIC, ACCC), depending on the nature and severity of the breach.

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Other Related Policies

NQBP also has in place a Code of Conduct, Trading (Securities) Policy and an Acceptance of Gifts Policy.

3. Compliance Policy, Procedure, Standard and Legislative Framework

NQBP is a Government Owned Corporation and port authority and is required to comply with its own policies, prescribed applicable legislation and State Government policies and procedures. This procedure should be read in conjunction with:

- a. Guideline 2.02 - Disclosure and Conflicts of Interest
- b. Guideline 2.05 - Trading (Securities)
- c. Policy 2 – Compliance
- d. Procedure 2.01 - Compliance
- e. Standard 2.01 - Code of Conduct
- f. Standard 2.02 - Integrity Framework – Corrupt Conduct and Public Interest Disclosures
- g. Conflict of Interest Guidelines: ICAC and CMC 2004
- h. *Corporations Act 2001* (Cth)
- i. *Government Owned Corporations Act 1993* (Qld)
- j. Government Owned Corporations Release of Information Arrangements 3.0
- k. *Integrity Act 2010* (Qld);

4. Policy Review Date

This policy should be reviewed by 31 October 2019.

5. Definitions

Contractors: means contractors or consultants engaged by NQBP under a personal services consultancy agreement or other similar arrangement.

Corporations Act: means the *Corporations Act 2001* (Cth).

Integrity Act: means the *Integrity Act 2009* (Qld).

NQBP: means North Queensland Bulk Ports Corporation Limited ACN 136 880 128.

NQBP Employee: means employees and Contractors of NQBP but does not include NQBP directors.

NQBP Personnel: means NQBP officers (for example NQBP directors) and NQBP Employees.

Relevant Person: means and includes the NQBP Chief Executive Officer, Senior Executives, employees, Contractors and Directors of NQBP.

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APPENDIX 1

Materiality Guidelines

Introduction

The issue of whether an interest will constitute a "material interest" in a specific conflict situation will depend on the actual facts and circumstances. Accordingly, there is no definitive test that can be applied to determine the materiality of a potential conflict of interest. However, set out below are some high level principles and examples which are designed to assist in the determination whether a particular conflict of interest is a material conflict of interest.²

Principles and examples

For a conflict of interest to be considered to be a material conflict of interest, the Relevant Person should have, or should reasonably have, a realistic expectation that they (or a family or other associate) stand to benefit or suffer a loss, whether directly or indirectly.

In applying this test, it should be noted that:

- It is not essential to be able to specifically identify or quantify the benefit or loss that might directly or indirectly be attributable to the Relevant Person;
- Money or another type of financial benefit does not have to "change hands", as the benefit in question could be an increase in the value of relevant shares or property;
- When assessing whether there is a conflict of interest of a material nature, consideration should be given to:
 - How would the Relevant Person's colleagues react if they become aware of the relevant facts or the non-disclosure of the potential conflict of interest; and
 - Would the Relevant Person be comfortable if the relevant facts/or the non-disclosure of the conflict of interest was then disclosed to the world at large e.g. by publication in the media?

Given the consequences that can arise from an undisclosed conflict of interest, if there is any doubt whether a conflict of interest is material, the appropriate approach is to disclose the relevant interest and for the Relevant Person to then seek further advice on that issue.

The table below provides examples of material conflicts of interest.

| Material Conflicts of Interest |
|---|
| A Relevant Person owns shares in a family business which is tendering for a contract with NQBP. |
| A Relevant Person's spouse owns a company which is tendering for a contract with NQBP again. |
| A Relevant Person has a second job with a company which is tendering for a contract with NQBP. |
| A Relevant Person owns property adjacent to a block of land which is the subject of an application by NQBP for redevelopment. |
| A Relevant Person's spouse or child is an applicant for a job with NQBP. |

² These principles and examples are published by the former Crime and Misconduct Commission in the Guidelines and Toolkits concerning the management and identification of conflicts of interest.

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APPENDIX 2

Relevant Corporations Act provisions

(Non-exhaustive) extracts from the Corporations Act relating to disclosure of interests, are reproduced below:

CORPORATIONS ACT - SECTION 191 - Material personal interest--director's duty to disclose

- (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.
- (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

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- (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.
- (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.
- (4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (5) This section does not apply to a proprietary company that has only 1 director.

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CORPORATIONS ACT 2001 - SECT 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.

CORPORATIONS ACT 2001 - SECT 195 - Restrictions on voting--directors of public companies only

- (1) 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:
 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter.
- (1A) Subsection (1) does not apply if:
 - (a) subsection (2) or (3) allows the director to be present; or
 - (b) the interest does not need to be disclosed under section 191.
- (1B) An offence based on subsection (1) is an offence of strict liability.
- (2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
 - (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
 - (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.
- (3) The director may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.
- (4) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.
- (5) A contravention by a director of:
 - (a) this section; or
 - (b) a condition attached to a declaration or order made by ASIC under section 196;does not affect the validity of any resolution.

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| Approval | This procedure requires subject matter expert approval except where substantive changes may impact on the rights and obligations of directors. | | | Date Approved | 01/08/2018 |