



12 December 2019

Conflicts Management Policy

for

NESS Super Pty Ltd

ABN 28 003 156 812

RSE Licence No. L0000161

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as Trustee for

NESS Super

ABN 79 229 227 691

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Conflicts Management Policy

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Contents

1.	Introduction.....	1
1.1	Background.....	1
1.2	Objectives.....	1
1.3	Scope	2
1.4	Risk.....	3
1.5	Insurance	3
1.6	Awareness and Understanding	3
1.7	Breaches	4
2.	Conflicts Management Framework	5
3.	Conflicts Management Culture.....	6
2.	Conflicts Management Stakeholders.....	7
2.1	The Board	7
2.2	Audit Risk & Compliance Committee and CEO.....	7
2.3	AROCC Manager	7
2.4	Other Responsible Persons	8
3.	Outsourcing Arrangements.....	9
4.	Defining a Conflict	10
4.1	Relevant Conflict.....	10
4.2	Definition of ‘Relevant Duty’	10
4.3	Definition of ‘Relevant Interest’	12
5.	Identifying and Notifying a Conflict.....	14
6.	Responding to a Conflict	15
6.1	Assessing and Evaluating a Conflict.....	15
6.2	Deciding Upon and Implementing a Response to a Conflict.....	15
6.3	Responding to a Conflict of Relevant Duty.....	16
6.4	Responding to a Conflict of Relevant Interest.....	16
6.5	Escalation of the Conflicts Management Process	17
7.	Disclosing and Recording Conflicts	18
7.1	Declarations.....	18
7.2	Related Party Transactions.....	18
7.3	Register of Relevant Duties	18
7.4	Register of Relevant Interests	19
7.5	Register of Gifts and Benefits	19
7.6	Additional Disclosure.....	20
8.	Evaluation of Conflicts Management and Disclosure	21
9.	Review Process.....	22
9.1	Comprehensive Review	22
9.2	Annual Review.....	22

1. Introduction

1.1 Background

1.1.1 This document sets out the conflicts management policy of NESS Super Pty Ltd (**the Trustee**), the trustee of NESS Super (**the Fund**), and records its approach to ensuring that the Trustee meets the requirements relating to conflicts management as set out in:

- a. Sections 52 and 52A of the *Superannuation Industry (Supervision) Act 1993* (**the SIS Act**) and Regulations (as amended).
- b. The *Corporations Act 2001* and Regulations (as amended).
- c. *APRA Prudential Standard SPS 521 – Conflicts of Interest (July 2013)* (**SPS 521**).
- d. *APRA Prudential Practice Guide SPG 521 – Conflicts of Interest (July 2013)* (**SPG 521**).
- e. *ASIC Regulatory Guide 181 – Licensing: Managing Conflicts of Interest (August 2004)* (**RG 181**).

1.1.2 This document should be read in conjunction with the Trustee's **Fit and Proper Policy, Governance Policy, Insurance Management Framework, Outsourcing Policy, Register of Material Risks and Retention of Records Guidelines**.

1.2 Objectives

1.2.1 This Conflicts Management Policy documents the arrangements in place for managing situations giving rise to actual and potential conflicts of relevant interests and conflicts of relevant duties (together “**conflicts**”) for Responsible Persons¹ and employees of the Trustee as well as conflicts that might arise in relation to the Trustee itself.

1.2.2 The interests of the Fund's beneficiaries must take precedence over the interests of other persons or entities.

1.2.3 This Policy is intended to ensure that where an actual, perceived or potential conflict arises which cannot be avoided:

¹ In accordance with **APRA Prudential Standard SPS 520 – Fit and Proper (Paragraph 10)**, a “Responsible Person” of the Trustee is:

- A Director of the Trustee.
- A Senior Manager of the Trustee (as defined in Paragraph 15).
- An Approved Auditor (within the meaning of s.10(1) of the SIS Act) who is appointed to conduct an audit of the Fund.
- An Actuary appointed by the Trustee to perform an actuarial function under the SIS Act, the SIS Regulations, the APRA Prudential Standards, or the Financial Sector (Collection of Data) Act 2001.
- A secretary of the Trustee.
- A person who performs activities for a connected entity of the Trustee where those activities could materially affect the whole, or a substantial part, of the Trustee's business operations, or its financial standing, either directly or indirectly.
- Any other person determined by APRA, in writing, to play a significant role in the management or control of the Trustee, or whose activities may materially impact on the interests, or reasonable expectations, of beneficiaries, or the financial position of the Trustee or the Fund.

- a. The duties to, and interests of, beneficiaries receive priority over any duties to, and interests of, other persons.
- b. The duties to beneficiaries are met despite the conflict.
- c. The interests of beneficiaries are not adversely affected by the conflict.²

1.3 Scope

1.3.1 This Conflicts Management Policy sets out the Trustee's controls and process for:

- a. Identifying and monitoring actual and potential³ conflicts.
- b. Assessing and evaluating those conflicts.
- c. Deciding upon and implementing a response to those conflicts.
- d. Managing those conflicts in accordance with the requirements to give priority to the duties to, and interests of, beneficiaries⁴.
- e. Maintaining a record of all identified conflicts and the action taken to avoid or manage them.
- f. Developing and maintaining the required registers.

1.3.2 This Conflicts Management Policy assists the Trustee to ensure that:

- a. The quality of financial services provided by it and on its behalf is not compromised by conflicts.
- b. The Trustee and its Responsible Persons and employees comply with their obligations to provide financial services efficiently, honestly and fairly.
- c. The Trustee and its Responsible Persons and employees meet their fiduciary and statutory⁵ obligations to beneficiaries to act fairly in dealing with all classes of beneficiaries (and with all beneficiaries within a class) and not give beneficiaries of one class (or within a class) an unfair advantage.

² Paraphrase of the Conflict of Interest Covenant, as contained in **Superannuation Industry (Supervision) Act 1993 s.52(2)(d)**.

³ The Trustee is required to identify and monitor all 'potential' and actual conflicts. The Trustee defines a 'potential conflict' with reference to the general law position, where the Trustee has a primary duty to avoid putting itself in a position where there is an actual conflict or a *'real sensible possibility of a conflict'*. See **Boardman v Phipps [1967] 2 AC 46**.

⁴ For the purposes of **APRA Prudential Standard SPS 521 – Conflicts of Interest**, a reference to "beneficiaries" is a reference to *"beneficiaries of an RSE within the RSE Licensee's business operations"*. In addition, a reference to "business operations" includes *"all activities as an RSE Licensee (including the activities of each Fund of which it is the RSE 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"*.

⁵ See, in particular, **Superannuation Industry (Supervision) Act 1993 s.52A(2)**:

(d) where there is a conflict between the duties of the director to the beneficiaries, or the interests of the beneficiaries, and the duties of the director to any other person or the interests of the director, the corporate trustee or an associate of the director or corporate trustee:

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

1.4 Risk

- 1.4.1 The Trustee has identified the risks associated with failing to properly manage conflicts to include:
- a. The risk that a conflict held by a Responsible Person interferes with their professional judgement and decision making, or with the manner in which they carry out their duties.
 - b. The risk that the Trustee or its Responsible Persons fail to give priority to the duties to and interests of beneficiaries over the duties to and interests of other persons.
- 1.4.2 For more information, see the Trustee's **Register of Material Risks**, which has been developed in line with the requirements contained in *APRA Prudential Standard SPS 220 – Risk Management (July 2013)*.

1.5 Insurance

- 1.5.1 The Trustee's **Insurance Management Framework** documents the Trustee's policy with respect to making insured benefits available to beneficiaries. Conflicts related to making insured benefits available to beneficiaries may arise in relation to:
- a. The assessment of claims;
 - b. The selection of the Insurer and the Claims Administrator;
 - c. The types and levels of insurance cover provided to beneficiaries, and the conditions related to the provision of cover; and
 - d. The monitoring of the Insurer and the Claims Administrator.
- 1.5.2 The Trustee is aware that such conflicts may arise, and will ensure that if such conflicts are identified, they will be managed and/or mitigated, and monitored, in line with the processes and procedures outlined in this Conflicts Management Policy.
- 1.5.3 For more information, see the Trustee's **Insurance Management Framework**, which has been developed in line with *APRA Prudential Standard SPS 250 – Insurance in Superannuation (July 2013)*.

1.6 Awareness and Understanding

- 1.6.1 The Trustee appreciates the importance of ensuring that all Responsible Persons and employees have a sound awareness and understanding of this Conflicts Management Policy and accompanying Registers.
- 1.6.2 The Trustee will ensure that annual training regarding its Conflict Management Framework is provided to all Directors and staff. Training will cover how the Trustee manages conflicts through its Conflicts Management Framework. This training will typically be provided as part of the annual Strategy Day in June. However, where a new Director or staff member, training regarding the Trustee's Conflicts Management Framework will be conducted as part of the induction program.
- 1.6.3 The Trustee will ensure that all new Responsible Persons and employees receive a copy of this Conflicts Management Policy at the time of their appointment.
- 1.6.4 On an ongoing basis, the Trustee ensures that this Conflicts Management Policy is available to all Responsible Persons and employees via the intranet or on request from the CEO.

1.6.5 If changes are made to the Conflicts Management Policy, the Trustee will ensure that these changes are communicated to all Responsible Persons and employees, and that a copy of the revised Policy is made available.

1.7 Breaches

1.7.1 Failure by a Responsible Person or an employee of the Trustee to disclose a personal conflict is considered a serious disciplinary matter and corrective action will be determined by the Board.

1.7.2 Failure by the Board to address an identified conflict in accordance with the procedures outlined in this Policy may be reported to APRA by the Trustee's internal or external auditors.

2. Conflicts Management Framework

- 2.1 The Trustee is committed to maintaining an effective conflicts management framework at all times which:
- a. Provides reasonable assurance that all relevant potential and actual conflicts that may result in the Trustee acting improperly to the detriment of its beneficiaries, are being clearly identified and disclosed, then assessed and either avoided or prudently managed, in a timely manner and having regard to the size, business mix and complexity of its business operations; and
 - b. Mitigates and manages the risk that the Trustee may be perceived to have acted improperly, which may affect the reputation of its business operations.
- 2.2 For the purposes of SPS 521, the Trustee's 'conflicts management framework' is defined as *"the totality of systems, structures, policies, processes and controls within the Trustee's business operations that identify, assess, mitigate, manage and monitor all conflicts"*.⁶
- 2.3 In turn, for the purposes of SPS 521, the Trustee's 'business operations' are defined as including *"all activities it undertakes as a Registrable Superannuation Entity (RSE) Licensee, and all other activities it undertakes to the extent that they are relevant to, or may impact on, its activities as an RSE Licensee"*.⁷
- 2.4 The Trustee's conflicts management framework comprises of:
- a. A **Conflicts Management Policy**;
 - b. A **Register of Relevant Duties**;
 - c. A **Register of Relevant Interests**;
 - d. A **Register of Gifts and Benefits**;
 - e. Clearly defined roles, responsibilities and resources for the oversight of conflicts management within the Trustee's business operations; and
 - f. A review process to ensure that the conflicts management framework remains effective.

⁶ See **APRA Prudential Standard SPS 521 – Conflicts of Interest (Paragraph 9)**.

⁷ See **APRA Prudential Standard SPS 521 – Conflicts of Interest (Footnote 3)**.

3. Conflicts Management Culture

- 3.1. The Trustee understands that a strong conflicts management culture is essential for the effective management of conflicts throughout its business operations, and will be a reflection of its corporate values and the attitudes and behaviours of individuals within its business operations.
- 3.2. The Trustee's conflicts management culture may be demonstrated through:
- a. **Openness** – the requirement to disclose all actual, perceived or potential conflicts of relevant duties and relevant interests is well understood, accepted and followed throughout the Trustee's business operations.
 - b. **Transparency** – a summary of the Trustee's Conflicts Management Framework, as well as the Trustee's Register of Relevant Interests and Register of Relevant Duties, will be made publicly available on the Fund's website.⁸
 - c. **Recruitment and professional development** – there are procedures in place which require the initial disclosure of actual, perceived or potential conflicts of relevant duties and relevant interests upon appointment/employment/engagement, as well as ongoing disclosure of all actual, perceived or potential conflicts of relevant duties and relevant interests through the term of appointment/employment/engagement.
 - d. **Policies that encourage and support whistleblowing** – for more information, see the Whistleblower Protection Provisions contained in the Trustee's **Fit and Proper Policy**.

⁸ In accordance with the requirements of **Regulation 2.38** of the **Superannuation Industry (Supervision) Regulations 1994**

2. Conflicts Management Stakeholders

2.1 The Board

- 2.1.1 The Board is ultimately responsible for ensuring that the Trustee has developed, and is maintaining, a conflicts management framework that is appropriate to the size, business mix and complexity of its business operations, and which applies to the entirety of its business operations.
- 2.1.2 The Fund predominately operates through an outsourced model. The main area where a potential conflict may arise is in relation to the management and selection of outsourced providers by the Board or the Secretariat. For example, where a sponsor has an interest in the provider.
- 2.1.3 The Board is charged with overall responsibility for:
- Identifying all actual and potential conflicts in the Trustee's business operations;
 - Taking all reasonably practicable actions to ensure that all identified conflicts are avoided or prudently managed, including agreeing on the conflict management methodology and overseeing governance of the conflicts management framework; and
 - Instilling a strong culture of conflict identification and management throughout the Trustee.
- 2.1.4 As part of meeting this responsibility, the Board will take all reasonable steps to ensure that all Responsible Persons and employees of the Trustee clearly understand:
- The importance of identifying all actual and potential conflicts;
 - The circumstances that might give rise to a conflict;
 - The content and purpose of this conflicts management framework; and
 - Their obligations, where applicable, as a Responsible Person and/or employee of the Trustee.

2.2 Audit Risk & Compliance Committee and CEO

- 2.2.1 The ongoing implementation and maintenance of the conflicts management framework is overseen by the Audit Risk & Compliance Committee, and is undertaken by the CEO, with assistance from the Audit Risk Operations Claims & Compliance Manager (AROCC Manager).
- 2.2.2 Maintaining the conflicts management framework includes:
- Ensuring that there are appropriate procedures in place so that all relevant business units are fully aware of, and comply with, the Trustee's conflicts management framework.
 - Maintaining a comprehensive, up-to-date **Register of Relevant Interests, Register of Relevant Duties** and **Register of Gifts and Benefits** and keeping these Registers under regular review.
 - Implementing procedures that require incoming Responsible Persons and employees of the Trustee to disclose all relevant duties and relevant interests prior to the person taking up the appointment.

2.3 AROCC Manager

- 2.3.1 The Trustee has employed the AROCC Manager to oversee the compliance and risk management functions of NESS Super.

2.3.2 The AROCC Manager manages and maintains the Trustee's risk management framework on a day-to-day basis. This role includes maintaining a comprehensive, up-to-date list of all material risks, including risks associated with failing to disclose and/or properly manage conflicts, and risks associated with disclosed conflicts, applicable to the Trustee and the Fund (see the **Register of Material Risks**) and keeping it under review in light of marketplace, regulatory and other developments.

2.4 Other Responsible Persons

2.4.1 The Trustee has appointed other Responsible Persons including the Business Development Manager, RSE Auditor, and External Superannuation Consultant.

2.4.2 While these Responsible Persons do not have direct responsibilities for the oversight of the Trustee's Conflicts Management Framework with the Trustee's business operations, they all have an obligation to comply with the Framework, including disclosing any relevant duties or interests to the Trustee in a timely and comprehensive manner.

2.4.3 The RSE Auditor will, according to its audit plan, review the Trustee's Conflicts Management Framework.

3. Outsourcing Arrangements

- 3.1 The Trustee is committed to undertaking regular and thorough enquiries in order to identify all conflicts arising from its relationships, or the relationships of a Responsible Person or employee, with existing or prospective service providers or advisors, including those relationships that have the potential to affect a service provider's performance in respect of the obligations undertaken in relation to the Trustee's business operations.
- 3.2 Conflicts that might arise through outsourcing arrangements (see the Trustee's **Outsourcing Policy**, which has been developed in line with *APRA Prudential Standard SPS 231 – Outsourcing (July 2013)*), will be addressed in accordance with the notification, response, disclosure and reporting procedures outlined in this Policy.
- 3.3 The risks that might arise through recognised conflicts associated with outsourcing arrangements will be identified, monitored, managed and mitigated in accordance with the Trustee's risk management framework, and in particular, the Trustee's **Risk Management Strategy**, which has been developed in line with *APRA Prudential Standard SPS 220 – Risk Management (July 2013)*.

4. Defining a Conflict

4.1 Relevant Conflict

4.1.1 The Trustee considers a 'relevant conflict' to be a conflict between:

- a. The *relevant duties* owed by the Trustee, or a Responsible Person or employee of the Trustee, to beneficiaries, and the duties owed by the Trustee, or a Responsible Person or employee of the Trustee, to any other person.
- b. A *relevant interest* of the Trustee, an associate of the Trustee⁹, or a Responsible Person or employee of the Trustee, and the duties owed by the Trustee, or a Responsible Person or employee of the Trustee, to beneficiaries.
- c. A *relevant interest* of the Trustee, an associate of the Trustee, or a Responsible Person or employee of the Trustee, and the interests of beneficiaries.
- d. The interests of beneficiaries and the duties owed by the Trustee, or a Responsible Person or employee of the Trustee, to any other person.

4.1.2 To further explain, a relevant conflict is one that has the potential to impact the ability of the Trustee, or a Responsible Person or employee of the Trustee, from performing its/their duties by placing it/them in a position where it/they may deliberately or inadvertently act in the interests of another person over those interests held by the Fund's beneficiaries.

4.1.3 In addition, a relevant conflict may also be held by a person or a firm undertaking a material activity for, or otherwise advising, the Trustee, which could affect the nature or quality of the advice given or the services provided to the Trustee.

4.1.4 In some cases, conflicts may arise between different classes or types of beneficiaries. This Policy requires that all beneficiaries be treated equitably.

4.1.5 Conflicts are not limited to financial matters. In particular, care must be taken to protect confidential information, including information which may be the subject of a relevant conflict.

4.2 Definition of 'Relevant Duty'

4.2.1 The Trustee considers a 'relevant duty' to be any duty owed by the Trustee, or a Responsible Person or employee of the Trustee, to beneficiaries or any other person.

4.2.2 In turn, the Trustee considers 'a conflict of a relevant duty' to be any situation that might reasonably be considered to have the potential to have a significant impact on the capacity of the Trustee, or a Responsible Person or employee of the Trustee, to act in a manner that is consistent with the best interests of beneficiaries.

⁹ The term 'associate' is defined in **Superannuation Industry (Supervision) Act 1993 s.12**, which makes reference to the relevant definitions contained in **Corporations Act 2001 ss.10-17**. APRA expects that the definition of 'associate' will appear in the amendments to the SIS Regulations which will be consulted on by Treasury in due course.

4.2.3 Examples of situations where a conflict of duty may arise for the Trustee include:

- a. Where the remuneration structure adopted by the Trustee in relation to a Responsible Person or employee skews the individual's risk appetite towards higher but unsustainable short term outcomes that may be unfavourable to the longer term interests of beneficiaries.
- b. Where a related party is engaged to provide a service to the Fund without the Trustee conducting appropriate due diligence on the third party to ensure that their engagement is in the best interests of beneficiaries.

4.2.4 Examples of situations where a conflict of duty may arise for a Responsible Person or employee include:

- a. Where the Responsible Person or employee has a financial interest in a service provider being considered for use by, or used by, the Trustee, where that financial interest is in the form of shares, options, investments, partnerships or any other form of financial interest.
- b. Where the Responsible Person or employee has a non-financial interest in a service provider being considered for use by, or used by, the Trustee, where that non-financial interest is in the form of directorships, management/advisory roles, positions on board committees or any other form of non-financial interest.
- c. Where the Responsible Person or employee has a financial or non-financial interest in a service provider operating in the same market as the Trustee, potentially in competition with the Trustee.
- d. Where the Responsible Person's or employee's other commercial interests conflict with his or her duties as a Responsible Person or employee of the Trustee by, for example, affecting the nature or quality of the advice given or the service provided to the Trustee.

4.2.5 A Responsible Person or employee who is also a beneficiary of the Fund is deemed to have an inherent conflict of duty. The Trustee will be particularly alert to situations which could result in a conflict between a Responsible Person's or employees' personal interest in the Fund, and his or her relevant duties to the Trustee. For example, where a change in the investment process is being considered for a particular class of beneficiaries and a Director is a member of the Fund and may be personally affected by the decision of the Trustee, this will be considered to be a conflict of a relevant duty which must be acknowledged.

4.2.6 A Director will be assumed to have an interest in any issue to the extent that the issue affects the members of the sponsoring organisation that has nominated/appointed them as a Director, and will not be required to separately declare a conflict of relevant duty.

4.2.7 The Trustee will ensure, however, that such Directors are aware of the strong possibility of a conflict of duty arising in relation to acting in the best interests of beneficiaries and acting in the best interests of the nominating or appointing body, and understand the need to disclose and manage any such actual or perceived conflicts.

4.3 Definition of 'Relevant Interest'

- 4.3.1 The Trustee considers a 'relevant interest' of the Trustee, an associate of the Trustee, or a Responsible Person or employee of the Trustee, to refer to any interest, gift, emolument¹⁰ or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the Trustee, the associate of the Trustee, or the Responsible Person or employee of the Trustee¹¹, that the Trustee has determined to be relevant, subject to the exclusion of business meetings outlined in 4.3.2 and the minimum thresholds outlined in 4.3.3 and 4.3.4 below.
- 4.3.2 The Trustee does not consider a 'business meeting' where catering is provided by a service provider to be a relevant interest for recording on either the **Register of Relevant Interest** or **Register of Gifts and Benefits**. A business meeting is defined as a meeting where the primary objective of the meeting is for the advancement of NESS Super and the interests of its members. It does not include a meeting where the primary component of the meeting is a sporting event, entertainment or excessive food and drink expenditure.
- 4.3.3 The Trustee has determined that a single interest of greater than \$250 will be considered to be relevant for the purpose of this Policy. A single interest of greater than \$250 is considered by the Trustee to be more likely to have a significant impact on the capacity of the Trustee, an associate of the Trustee, or a Responsible Person or employee of the Trustee holding the interest, to act in a manner that is consistent with the best interests of beneficiaries. A single interest of greater than \$250 will be automatically required to be reported on the **Register of Relevant Interest**.
- 4.3.4 The Trustee has also determined that situations where multiple interests, gifts, emoluments or benefits are received by the Trustee, an associate of the Trustee, or a Responsible Person or employee of the Trustee, from the same entity, the total value of which exceeds \$500 within a twelve month period, will be determined to be relevant for the purpose of this Policy. The receipt of multiple gifts from a single entity are considered by the Trustee to be more likely to have a significant impact on the capacity of the Trustee, an associate of the Trustee, or a Responsible Person or employee, to act in a manner that is consistent with the best interests of beneficiaries.
- 4.3.5 For the reasons outlined in Section 4.3.3, all interests, gifts, emoluments or benefits, whether pecuniary or non-pecuniary, received by the Trustee, an associate of the Trustee, or a Responsible Person or employee of the Trustee, from a third party in connection with Trustee or Fund matters, are required to be declared initially on the **Register of Gifts and Benefits**.
- 4.3.6 The AROCC Manager will be responsible in identifying where the cumulative sum of entries into the **Register of Gifts and Benefits** received by a Responsible Person in a 12 month period from any one

¹⁰ The Trustee has determined that gift includes entertainment. "Emolument" is compensation received by virtue of holding an office or having employment (usually in the form of wages or fees).

service provider has exceeded \$500 and therefore is required to be reported on the **Register of Relevant Interests**.

- 4.3.7 The Trustee will determine relevancy from time to time in accordance with general industry standards. Changes to the definition of relevant interest will be communicated to all affected persons as and when appropriate.

5. Identifying and Notifying a Conflict

- 5.1 Each Responsible Person and employee of the Trustee must advise the Trustee as soon as he or she becomes aware of any actual, perceived or potential conflict. If there is doubt as to whether a conflict exists, it should be disclosed. If the Responsible Person or employee of the Trustee believes that it could reasonably be perceived that he or she has a conflict, the perceived conflict should also be disclosed to the Trustee to promote timely resolution.
- 5.2 Disclosure must include details of the nature and extent of the conflict and the relation of the conflict to the affairs of the Trustee or Fund.
- 5.3 All Responsible Persons, other than the CEO and the Board Chairman, can advise either the CEO or the Board Chairman of an actual, perceived or potential conflict.
- 5.4 The CEO must advise the Board Chairman of an actual, perceived or potential conflict.
- 5.5 The Board Chairman must advise the CEO of an actual, perceived or potential conflict.
- 5.6 The person to whom the perceived, potential or actual conflict is disclosed must refer it to the Trustee Board to assess the potential impact of the conflict upon the Trustee and/or the Fund. This applies to both conflicts of duties and interests.
- 5.7 If a Responsible Person or employee of the Trustee believes that another Responsible Person or employee of the Trustee has, or may have, a conflict which has not been disclosed, the first Responsible Person or employee of the Trustee must bring the matter to the attention of the CEO or the Board Chairman and provide an explanation why he or she holds that belief.
- 5.8 Each Responsible Person and employee must declare, as part of the **Statutory Declaration** completed annually, that either he or she has not had any conflicts in the previous reporting period, or that all conflicts have been disclosed in line with these procedures.
- 5.9 Verbal declarations are also made at the commencement of each of the Trustee's regular Board and Committee meetings, at which time each Responsible Person present (and any attending employee) is asked to confirm that their individual circumstances have not changed.

6. Responding to a Conflict

6.1 Assessing and Evaluating a Conflict

6.1.1 On becoming aware of an actual, perceived or potential conflict, the Trustee will assess the potential impact of the conflict upon the Trustee and/or the Fund.

6.1.2 The assessment will consider:

- a. The nature of the conflict – is it a conflict with a relevant duty or a conflict with a relevant interest?
- b. The materiality of the conflict – if it is a conflict of a relevant interest, is it material? (See discussion of materiality below.)
- c. The timing of the conflict – is it a one-off occurrence or does it have an ongoing, recurring or cumulative nature?
- d. The effect of the conflict – does it affect the Trustee's or a Responsible Person's or employee's ability to:
 - Give priority to the duties to, and interests of, beneficiaries, over the duties to, and interests of, other persons; or
 - Ensure that the duties to beneficiaries are met despite the conflict; or
 - Ensure that the interests of the beneficiaries are not adversely affected by the conflict.

6.1.3 In accordance with the Trustee's **Fit and Proper Policy**, if the conflict is held by a Responsible Person or employee of the Trustee, the assessment will also consider whether the Responsible Person or employee:

- a. Failed to disclose the conflict.
- b. Inappropriately failed to disqualify himself or herself because of the conflict.
- c. Acted in his or her own interests, or those of a related party, in preference to the interests of the beneficiaries of the Fund.

6.2 Deciding Upon and Implementing a Response to a Conflict

6.2.1 In deciding upon and implementing a response to an identified conflict, the Trustee will ensure that it is able to clearly demonstrate that the actions it has taken, or plans to take, in response to the identified conflict, are prudent and in the best interests of beneficiaries.

6.2.2 The Trustee's response to an identified conflict will always be to:

- a. Give priority to the duties and interests of beneficiaries over the duties and interests of other persons; and
- b. Ensure that the duties to beneficiaries are met despite the conflict; and
- c. Ensure that the interests of beneficiaries are not adversely affected by the conflict.

6.2.3 In addition, in response to an identified conflict, the CEO or the Board Chairman may:

- a. Seek additional relevant information in relation to the conflict.

- b. Refer the conflict to the Audit Risk & Compliance Committee and/or the Board for its consideration.
- c. Seek legal or other external advice to confirm the appropriateness of a particular course of action.

6.2.4 The alternative responses to the identified conflict that will be considered, with reference to the need to meet the priorities outlined in Section 8.2.2 above, include:

- a. **Avoid the conflict**¹² - The Trustee may determine that the conflict is so acute or pervasive that it cannot be managed, or that the conflict is of a kind where the general law requires avoidance.
- b. **Prudently manage the conflict** - The Trustee may set guidelines in relation to materiality or personal authorisation to act.
- c. **Require disclosure of the conflict** - to the Audit Risk & Compliance Committee, to the Trustee Board, or to beneficiaries generally, as appropriate.
- d. If the conflict arises for a Responsible Person or employee of the Trustee, **allocate another Responsible Person or employee of the Trustee to provide the service or conduct the activity**, and/or require the affected Responsible Person or employee of the Trustee to have no involvement in a matter linked to the conflict.
- e. **Take no action** because the conflict is determined to be immaterial.

6.3 Responding to a Conflict of Relevant Duty

6.3.1 If a conflict is held by a Director (including the Board Chairman), the Trustee Board as a whole may:

- a. Allow the Director to remain in a Board/Committee meeting while the matter is being discussed.
- b. Require the Director to leave a meeting temporarily while the matter is being discussed.
- c. Require the Director to abstain from voting on, or having any involvement in, any matter where there is a conflict.
- d. Take no action because the conflict is considered immaterial and the other Directors are satisfied that the conflict should not disqualify the Director from voting or from being present.

6.4 Responding to a Conflict of Relevant Interest

6.4.1 The solicitation of gifts or benefits from third parties by Responsible Persons or employees of the Trustee in relation to the performance of their relevant duties is strictly forbidden. Any Responsible Person or employee of the Trustee found to be participating in this type of activity may be deemed to have committed serious misconduct and their conduct will be reported to the CEO and/or Board Chairman for determination of an appropriate response.

6.4.2 Under no circumstances should a Responsible Person or employee of the Trustee accept:

¹² For the purposes of **APRA Prudential Standard SPS 521 – Conflicts of Interest**, the Trustee notes that there is nothing in the Standard which authorises a person to manage a conflict if the general law requires the person to avoid it.

- a. A gift or benefit from a third party that could reasonably be perceived as having been provided with the intent of influencing the Responsible Person or employee in carrying out their relevant duties.
 - b. Monetary gifts such as cash, cheques, money orders, cash-equivalents (such as gift vouchers), travellers' cheques, direct deposits and the like.
- 6.4.3 Responsible Persons and employees of the Trustee must not accept any material (>\$500) interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, from a third party in connection with Trustee or Fund matters, without the prior consent of the CEO and/or Board Chairman. Where consent is provided, acceptance of the interest, gift, emolument or benefit must be disclosed for inclusion on the appropriate Register.
- 6.4.4 Responsible Persons and employees of the Trustee may accept non-material (<\$500) interests, gifts, emoluments or benefits, whether pecuniary or non-pecuniary, from a third party in connection with Trustee or Fund matters, without prior consent of the CEO and/or Board Chairman (subject to Section 6.4.5 below).
- 6.4.5 Prior consent of the CEO and/or Board Chairman will be required before accepting any interests, gifts, emoluments or benefits, whether pecuniary or non-pecuniary, from a third party that is participating in a tender to provide services to the Trustee or Fund or has expressed interest/desire in participating in such a tender.
- 6.4.6 In addition to the above requirements, the following points will be considered as relevant:
- a. The relationship of the Trustee to the donor of the gift;
 - b. The primary business of the donor of the gift;
 - c. The likelihood of further contact with the donor of the gift;
 - d. Whether the gift is being accepted as part of a formal exchange of gifts;
 - e. The possible adverse consequences to interests of the Trustee which may result from the acceptance or refusal of a gift; and
 - f. The type of gift or benefit, if any, which in the context of the operations of the Fund and of the Board, can be seen as inconsequential or trivial.
- 6.4.7 All Responsible Persons and employees of the Trustee in attendance at a Board or Committee meeting are expected to disclose any material interests, gifts, emoluments or benefits received from a third party as a consequence of their office.

6.5 Escalation of the Conflicts Management Process

- 6.5.1 If necessary, responsibility for the management of an identified conflict will be escalated to the appropriate Board Committee, or the Full Board, or other alternative action proposed.
- 6.5.2 The appropriate escalation process will be determined on a case-by-case basis, Responsibilities accorded to, or decisions made by, the Board Committees or the Full Board will be appropriately recorded in the minutes.

7. Disclosing and Recording Conflicts

7.1 Declarations

- 7.1.1 On appointment and then annually, each Director and employee of the Trustee is asked to declare, as part of completing the Statutory Declaration, any actual, perceived or potential conflicts that they hold, and confirm that they are willing to comply with the Trustee's Conflicts Management Policy.
- 7.1.2 As part of the due diligence process conducted prior to appointment, and then on an annual basis upon appointment, the Trustee requires each key service provider to declare any actual, perceived or potential conflicts that they hold, and confirm that they are willing to comply with the Trustee's Conflicts Management Policy.
- 7.1.3 The CEO, with the assistance of the AROCC Manager, will record all notified actual, perceived or potential conflicts in the relevant Register.
- 7.1.4 At the commencement of each Trustee Board and Committee meeting, all Responsible Persons and employees of the Trustee in attendance are asked to confirm their ability to act under the "Fit and Proper" requirements. This includes declaring any new actual, perceived or potential conflicts (including, but not only in relation to, the agenda items for the meeting) of which they may be aware and which have not been previously disclosed. Responsible Persons are also asked to disclose any relevant interests or duties which they may have so that these can be recorded on the register (previously disclosed interests or duties do not have to be re-disclosed at each subsequent meeting unless the nature of the duty or interest has changed).
- 7.1.5 Standing disclosed conflicts are taken as read and do not need to be declared at each meeting, unless the nature or materiality of the disclosed conflict has changed.
- 7.1.6 If a new actual, perceived or potential conflict is disclosed at a Trustee Board or Committee meeting, the Board or Committee must give proper consideration to the disclosed conflict.
- 7.1.7 The CEO, with the assistance of the AROCC Manager, will record details of the conflict, its materiality, and the actions taken or planned to be taken to avoid or manage it, will be included in the minutes of the meeting as well as entered into the relevant Register.

7.2 Related Party Transactions

- 7.2.1 All related party transactions are recorded in the notes to the Trustee's annual financial statements. These statements are audited by law each year. The audit includes a confirmation that the disclosure of related party transactions is in accordance with the appropriate Australian Accounting Standards.

7.3 Register of Relevant Duties

- 7.3.1 The Register of Relevant Duties records:

- a. All duties owed by the Trustee, and Responsible Persons and employees of the Trustee, to other individuals or entities; and
 - b. All instances where the duties owed by the Trustee, or by Responsible Persons or employees of the Trustee, to other individuals or entities, conflict, or may be seen to conflict, with the relevant duties owed to beneficiaries.
- 7.3.2 At a minimum, all directorships, roles and office positions held by Responsible Persons and employees of the Trustee, in any corporate entity, as well as any material shareholdings¹³ in, or derivation of any financial benefit from, any corporate entity, will be disclosed in this Register.
- 7.3.3 For all actual and potential conflicts of relevant duties identified, the Register includes a description of the nature of the conflict and a summary of the action taken to manage it.
- 7.3.4 The CEO, with the assistance of the AROCC Manager, is responsible for ensuring that the Register remains up-to-date in order to achieve the goal of informing interested stakeholders about potential external influences on decision making within the Trustee's business operations.
- 7.3.5 As a standing agenda item, the Audit Risk & Compliance Committee receives a copy of the Register and a verbal update by the CEO on any additions or changes to the Register since the last meeting.

7.4 Register of Relevant Interests

- 7.4.1 The Register of Relevant Interests records all Relevant Interests which have an individual value of greater than \$250 or when reviewing the Register of Gifts and Benefits, have a cumulative value of greater than \$500 over a 12 month period.
- 7.4.2 The Register includes a description of the nature and value of the interest and a summary of the action taken to avoid or prudently manage any conflict.
- 7.4.3 The CEO, with the assistance of the AROCC Manager, is responsible for ensuring that the Register remains up-to-date in order to achieve the goal of informing stakeholders about potential external influences on decision making within the Trustee's business operations.
- 7.4.4 As a standing agenda item, for each regular meeting of the Full Board, the Board receives a copy of the Register and a verbal update by the CEO on any additions or changes to the Register since the last meeting.

7.5 Register of Gifts and Benefits

- 7.5.1 The Register of Gifts and Benefits records all benefits regardless of value
- 7.5.2 The Register includes a description of the nature and value of the interest and a summary of the action taken to avoid or prudently manage any conflict.

¹³ A material shareholding is considered to be a shareholding which exceeds 10% of the total amount of shares on issue.

- 7.5.3 The CEO, with the assistance of the AROCC Manager, is responsible for ensuring that the Register remains up-to-date in order to achieve the goal of informing stakeholders about potential external influences on decision making within the Trustee's business operations.
- 7.5.4 As a standing agenda item, for each regular meeting of the Full Board, the Board receives a copy of the Register and a verbal update by the CEO/AROCC on any additions or changes to the Register since the last meeting.

7.6 Additional Disclosure

- 7.6.1 Where a conflict of interest has been disclosed on the relevant register on the website, the Trustee may publicly disclose additional information relating that conflict where it believes the additional information will assist with the proper management of the conflict.
- 7.6.2 If this is not practicable (for example, if the conflict arises with only a limited number of beneficiaries) the disclosure will be made in writing, where possible, directly to the parties/beneficiaries concerned.

8. Evaluation of Conflicts Management and Disclosure

- 8.1.1 The management of identified conflicts will be evaluated by the Full Board on a regular basis.
- 8.1.2 As a standing agenda item for each regular meeting of the Full Board, the Directors will receive a copy of the **Register of Relevant Duties, Register of Relevant Interests and Register of Gifts and Benefits**, together with a verbal report from the CEO covering any additions or changes made to either of the Registers since their previous tabling, and the status of notified conflicts.

9. Review Process

9.1 Comprehensive Review

9.1.1 The Audit Risk & Compliance Committee will ensure that the appropriateness, effectiveness and adequacy of the Trustee's conflicts management framework is subject to a comprehensive review at least every three years, which has regard to the size, business mix and complexity of the Trustee's business operations, the extent of any changes to these operations, and any changes to the external environment in which the Trustee operates.

9.1.2 This review will be undertaken by an appropriately qualified and experienced service provider who is operationally independent from those responsible for administering the conflicts management framework

9.1.3 At a minimum, the comprehensive review of the conflicts management framework will consider:

- a. Whether all relevant duties and relevant interests have been identified and are being addressed in accordance with the Trustee's conflicts management framework.
- b. The impact of any material changes to applicable licence conditions, or to applicable governing legislation, regulations, prudential standards or guidance notes.
- c. The impact of any material changes in the size or membership profile of the Fund, or the structure of the Trustee (including changes to Responsible Persons), or the Trustee's business or strategic planning.
- d. The impact of any changes to the Trustee's material service providers (including changes to, or within, material service providers).
- e. The level of compliance with the Conflicts Management Policy, including reporting on the Registers.
- f. Any non-compliance with the Conflicts Management Policy, including steps taken to return to, and improve, ongoing compliance.

9.1.4 The results of the review will be reported to the Audit Risk & Compliance Committee and the Board.

9.2 Annual Review

9.2.1 In each year in which a comprehensive review does not take place, the Audit Risk & Compliance Committee will ensure that a review of the appropriateness, effectiveness and adequacy of the conflicts management framework is undertaken, with a specific focus on reviewing:

- a. The effectiveness of processes and controls put in place to identify and respond to actual and potential conflicts of relevant interests and duties.
- b. The level of compliance with the conflicts management framework across the entirety of the Trustee's business operations.

9.2.2 Prior to the commencement of this review, the Audit Risk & Compliance Committee will determine whether the review will be undertaken internally, or outsourced to an appropriately qualified and experienced service provider who is operationally independent from those responsible for administering the conflicts management framework, or a combination of both.

9.2.3 The results of the review will be reported to the Audit Risk & Compliance Committee and the Board and may be used to assist the future development or enhancement of the conflicts management framework.