

## **Conflict of Interest**

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Policy (Australia)

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## About this document

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### Audience

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This policy applies to executive and non-executive directors and staff members of the Praemium Group of companies. However, it is limited to Praemium Limited (Australia) and each of its Australian incorporated subsidiaries.

Praemium Limited has subsidiaries that are incorporated in the United Kingdom ('UK'). Because the laws in the UK differ from those in Australia, the UK subsidiary group has adopted its own conflicts of interest policies and procedures.

To the greatest extent possible the Praemium Group will ensure that the policies and procedures in different jurisdictions will be consistent with each other. The only differences that arise should arise as a consequence of different requirements under law or as a consequence of regulation affecting a subsidiary or its operations.

### Objectives

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The aim of this policy is to ensure decisions made by Praemium executive or non-executive directors and staff members are made ethically and in the best interests of Praemium, and Praemium's reputation is not negatively affected by those decisions.

### Scope

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This document outlines the policy that is approved by the Board of Directors, who are ultimately responsible for managing conflicts of interest for the Praemium Group of companies in Australia.

The processes and procedures that outline the practical steps to manage this policy is contained in the Conflicts of Interest Procedure (Australia).

### Related documentation

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- Conflict of Interest Procedure (Australia)
- Praemium Group Privacy Policy (Australia)
- Insider Trading Policy (Australia)

### Next Review

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This policy is due to be reviewed by the Legal Department June 2010.

## 1. Policy Statement

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- 1.1. It is Praemium's policy that directors and staff must:
- (a) avoid positions of conflict or potential conflict:
    - (i) Therefore, all Praemium directors and staff must avoid placing themselves in a situation that could be or may lead to a conflict of interest or duty, or a reasonable perception of an actual or potential conflict of interest or duty.
  - (b) disclose any material personal interest;
    - (i) Therefore, all Praemium directors must fully and frankly disclose to the Board of Directors material personal interests that relate to the affairs of the Group or external business interests that may lead to an actual or potential conflict of interest or duty, or a reasonable perception of an actual or a potential conflict of interest or duty; and
    - (ii) all Praemium staffs must fully and frankly disclose to their manager any material personal interests that related to the affairs of the Group or external business interests that may lead to an actual or potential conflict of interest or duty, or a reasonable perception of an actual or a potential conflict of interest or duty.

## 2. What is a Conflict of Interest and Duty?

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- 2.1. A conflict of interest arises when a director or staff member has two or more competing interests.
- 2.2. A conflict of interest may involve a conflict between a director's or staff member's duties and responsibilities to serve Praemium and the director's or staff member's personal interests.
- 2.3. A conflict of interest can arise from avoiding a personal loss as well as gaining a personal advantage – whether financial or otherwise.
- 2.4. A conflict of duty normally arises where a director or staff member has multiple roles and could be said to be wearing two hats. That is, they have 2 official roles with a competitive relationship.

## 3. What is a Material Personal Interest -

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- 3.1. In most cases a person will have a conflict of interest where they have a material personal interest in the outcome of that matter. According to the law a material personal interest exists where there is a connection between the person and a matter.

**Example:**

A director or staff member has an **interest** in a proposed arrangement between Praemium and a particular third party, if they are a shareholder of that third party, or a member of their family owns or works for that third party, or if they have the capacity as a consequence of their relationship with that third party to influence the decisions of that third party in respect

to matters involving Praemium.

A third party could be any person or entity which is involved, or has the potential to be involved, directly or indirectly in a transaction, arrangement, agreement or relationship with Praemium – including a client or supplier, or a potential client or supplier, a regulator, a stock broker, journalist, researcher etc.

The interest will be material if it has the potential to have a material / significant impact. Whilst it is useful to determine whether a matter is or is not material by reference to a financial impact, other factors may be relevant.

## 4. How to identify a Conflict

- 4.1. ASIC has issued some guidelines to assist directors on what does and does not constitute a material personal interest. These are set out in Annexure A of this policy. These guidelines, the example set out above, and the checklist set out below should be used to assist directors and staff to identify whether there is the potential for a conflict of interest to arise.
- 4.2. The following list of matters should be considered when identifying a conflict of interest:
- (a) Is there a competing interest between the person's official role and his/her personal interests or duties?
  - (b) Does the matter fall within the scope of a material personal interest as described above?
  - (c) Is there a realistic expectation that the person potentially in conflict will, directly or indirectly, gain a financial or other personal or professional benefit or suffer a financial or personal or professional loss?
  - (d) Does the matter have the potential to affect the person's or a relative or friend of the person, financial, professional or personal situation?
  - (e) Does the matter have the potential to impact on the value of the shares or property owned by the person or a relative or friend of the person ?
  - (f) Does the matter have the potential to affect the person's or a relative or friend of the person, private business interests?
  - (g) Does the matter have the potential to affect any debts owed by the person
  - (h) Should the person or relative or friend benefit from or detrimentally be affected by the person's decision, action, or influence as a consequence of the person's position?
- 4.3. Dealing and disclosure of share holdings in Praemium by staff and directors are dealt with in the Praemium Insider Trading (Australia) Policy.

## 5. When does a Material Personal Interest not require Disclosure?

- 5.1. Section 5 of this policy applies to any director of the Praemium Group which has been incorporated in Australia and is based on their obligations pursuant to Corporations Act. In addition, staff, as a matter of good practice should also take the matters set out above when considering disclosure requirements of conflicts of interest and or duty.
- 5.2. The existence of any material personal interest and/or conflict of interest is not required to be disclosed if the interest<sup>1</sup>:
- (a) arises because the director is a member of the company and the interest is held in common with the other members; or
  - (b) arises in relation to the person's remuneration as a director or member of staff; or
  - (c) relates to a proposed contract which is subject to the approval of members of Praemium Limited and will not impose an obligation on the Praemium Group if it is not approved by the members; or
  - (d) arises merely because the affected person is a guarantor or has given an indemnity or security for all or part of a loan to any member of the Praemium group;
  - (e) arises merely because the person has a right of subrogation or has given an indemnity; or
  - (f) relates to a contract that insures a person against liabilities incurred as an executive or officer of the company (provided the company or related body corporate is not the insurer); or
  - (g) relates to any payment by the company or related body corporate in respect of any indemnity permitted under section 199A<sup>2</sup> of the Corporations Act or any contract relating to the

<sup>1</sup> The matters set out in section 3.1 of this policy reflect the requirements of the Corporations Act. If the Corporations Act is amended with the effect that any of the matters set out in this section of this policy are no longer excluded from the list of matters that are required to be disclosed, the requirements of the law will prevail.

<sup>2</sup> (1) (i) A company or a related body corporate must not exempt a person (whether directly or through an interposed entity) from a liability to the company incurred as an officer or auditor of the company.

When indemnity for liability (other than for legal costs) not allowed

- (2) A company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:

- (a) a liability owed to the company or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H or 1317HA;
- (c) a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

- (3) A company or related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer or auditor of the company if the costs are incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or
  - (b) in defending or resisting criminal proceedings in which the person is found guilty; or
  - (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (d) in connection with proceedings for relief to the person under this Act in which the Court denies the relief.

indemnity;

- (h) is in a contract with, or for the benefit of, a related body corporate and arises merely because the person is a director or staff member of the related body corporate.

5.3. A director is not required to disclose a material personal interest in the following circumstances:-

- (a) in relation to a proprietary company, if all of the directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or
- (b) if the director has already given notice to all the directors (at any time) of the nature and extent of the interest and its relation to the affairs of the company and the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the director has given a standing notice of the nature and extent of the interest and the notice is still effective in relation to the interest; or
- (d) the director is the sole director of a proprietary company.

## 6. Avoiding Conflicts of Interest

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6.1. Conflicts of interest can be avoided by:

- (a) Disclosing their existence / potential existence;
- (b) Removing the conflicted person from the decision making / assessment / negotiation process; or
- (c) Any other method considered appropriate by the Board of the relevant entity affected by the conflict or potential conflict.

## 7. Privacy

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7.1. Praemium recognises that the reporting of potential or actual conflicts of interests and duty may involve disclosing personal information. This information will be handled in accordance with Praemium's Group Privacy Policy.

7.2. If disclosing an interest by a staff member to a manager raises privacy concerns for the staff member, the staff member may disclose the interest to the Group Company Secretary.

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Paragraph (c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

Note 1: Paragraph (c)--This includes proceedings by ASIC for an order under section 206C, 206D or 206E (disqualification), section 232 (oppression), section 1317E, 1317G, 1317H or 1317HA (civil penalties) or section 1324 (injunction).

Note 2: The company may be able to give the person a loan or advance in respect of the legal costs (see section 212).

- (4) For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings

## **8. Responsibilities**

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- 8.1. Directors and staff members of Praemium are responsible for
- (a) Being aware of their obligations to avoid, where possible, conflicts of interest and duty;
  - (b) Assessing if their personal and business interests conflict or have the potential to conflict with their duty as a director or staff member whichever the case may be;
  - (c) Formally disclosing all actual and potential conflicts of interest or duty in accordance with the conflicts of interest procedure; and
  - (d) Complying with any other requirements of this policy or conflicts of interest procedure.
- 8.2. The Group shall maintain a register of conflicts on its board portal and shall be available for review by officers of any group company.

## **9. Breach**

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- 9.1. A breach of this policy or a failure to disclose an interest or duty, subject to the circumstances surrounding the breach and the nature of the interest and conflict, may result in termination of directorship or employment, whichever the case may be.

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## Annexure A

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### ASIC Regulatory Guide 76 (RG 76)

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- 9.2. RG 76.15 a prohibition on attending and voting by a director does not apply if the only interest that the director has:
- (a) is as a member of the company; and
  - (b) is in common with the other members of the company (s232A(2)).
- RG 76.16 This exception is probably only available where the interest is in common with all members of the company. This may be important where, for example, there are classes of shares with different rights and the issue in question will affect those classes differently.
- RG 76.17 Subsection 231(3) provides that a director does not have a material personal interest in a contract merely because:
- (a) where the contract relates to a loan to the company — the director has guaranteed repayment; or
  - (b) where the contract is made with, for the benefit of, or on behalf of a related body corporate — the director is also a director of that related body corporate.
- RG 76.18 To be caught by the prohibition, an interest must be both personal and material. To be personal an interest need not be pecuniary. However, it will not be personal if it affects the director as a member of a group or class, such as, ordinary customers of a bank or shop on generally available terms.
- RG 76.19 At common law, a person in a fiduciary position, such as a director of a company, has a duty not to profit from a position of trust or place him or herself in a position where duty and interest might conflict. The vast range of types of transactions to which the rule might apply means it is not possible to define 'interests'. However, the conflict rule must be applied realistically to a state of affairs which discloses a real conflict of duty and interest and not some theoretical conflict. In other words, an interest will not be material if it is remote or contingent.