

# Manildra Flour Mills Retirement Fund Pty Ltd

## Manildra Flour Mills Retirement Fund

### Conflicts Management Policy

<b>Trustee Name</b>	Manildra Flour Mills Retirement Fund Pty Ltd (ABN: 74 065 680 195, RSE: L0003155), trustee of the Manildra Flour Mills Retirement Fund (ABN: 32 448 411 930, RSE R1067415)
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The following history and amendments have been made to this document:

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<p>Between November 2005 and February 2013, the Trustee maintained a <b>Conflicts of Interest Policy</b> which was regularly reviewed and updated by the Trustee Board.</p> <p>In February 2013, the Trustee's Conflicts of Interest Policy was renamed <b>Conflicts Management Policy</b> in order for it to meet the requirements of <i>APRA Prudential Standard SPS 521 – Conflicts of Interest</i> and <i>Draft Prudential Practice Guide SPG 521 – Conflicts of Interest (December 2012)</i>.</p>			
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# 1. About this Document

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## 1.1 Background

- 1.1.1 This document sets out the conflicts management policy of Manildra Flour Mills Retirement Fund Pty Ltd (“**the Trustee**”) and the Manildra Flour Mills Retirement Fund (“**the Fund**”), and records the Trustee’s approach to ensuring that it 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 It should be read in conjunction with the Trustee’s Fit and Proper Policy, Governance Policy, Insurance Management Framework, Register of Material Risks, Outsourcing Policy and Whistleblower Policy.

## 1.2 Objective

- 1.2.1 This Conflicts Management Policy documents the Trustee’s arrangements for managing situations giving rise to actual, potential<sup>1</sup> and perceived conflicts of interest and conflicts of duty (together “**conflicts**”) for Responsible Persons<sup>2</sup> of the Trustee and for the Trustee as an entity.<sup>3</sup>
- 1.2.2 The interests of the Fund’s beneficiaries must take precedence over the interests of Responsible Persons.
- 1.2.3 This Policy is intended to ensure that where an actual, potential or perceived conflict arises:
- a. Priority is given to the duties and interests of beneficiaries over the duties and interests of other persons;
  - b. The duties to beneficiaries are met despite the conflict; and
  - c. The interests of beneficiaries are not adversely affected by the conflict.

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<sup>1</sup> 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**.

<sup>2</sup> 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.

<sup>3</sup> The Trustee does not directly employ any staff. One of the Directors is nominated as the Fund Secretary and is responsible for the running of the Trustee and the Fund on a day-to-day basis.

## 1.3 Scope

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

- a. Identifying and monitoring actual, potential and perceived conflicts;
- b. Assessing and evaluating those conflicts;
- c. Deciding upon and implementing a response to those conflicts;
- d. Avoiding or managing those conflicts in accordance with the requirements to give priority to the duties to, and interests of, beneficiaries<sup>4</sup>;
- e. Maintaining a record of all identified conflicts and the action taken to avoid or manage them; and
- f. Developing and maintaining the required registers.

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

- a. The Trustee and its Responsible Persons meet their fiduciary and statutory<sup>5</sup> 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.

## 1.4 Risk

1.4.1 The Trustee has identified the risks associated with failing to properly manage conflicts can 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 fails 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. The Trustee is aware that conflicts related to making insured benefits available to beneficiaries may arise in relation to:

- a. The assessment of claims;

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<sup>4</sup> For the purposes of **APRA Prudential Standard SPS 521 – Conflicts of Interest (July 2013)**, 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" is a reference to "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 a RSE Licensee".

<sup>5</sup> 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.*

- b. The selection of the Insurer and the Claims Administrator;
  - c. The types and levels of insured benefits provided to beneficiaries, and the conditions relating to the provision of cover; and
  - d. The monitoring of the Insurer and the Claims Administrator.
- 1.5.2 If such conflicts are identified, the Trustee will ensure that they are disclosed, evaluated, mitigated and/or managed, 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 have 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 have a sound awareness and understanding of this Conflicts Management Policy and accompanying Registers.
- 1.6.2 The Fund Secretary will ensure that all new Responsible Persons receive a copy of this Conflicts Management Policy at the time of their appointment.
- 1.6.3 On an ongoing basis, the Fund Secretary will ensure that this Conflicts Management Policy is available to all Responsible Persons.
- 1.6.4 If changes are made to the Conflicts Management Policy, the Fund Secretary will ensure that these changes are communicated to all Responsible Persons, and that a copy of the revised Conflicts Management Policy is made available.

## **1.7 Breaches**

- 1.7.1 Failure by a Responsible Person or a member of the Fund Secretariat 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 may be reported to ASIC and/or APRA by the Trustee's auditors.
- 1.7.3 For more information, see the Trustee's **Incident and Breach Reporting Procedures**.

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## 2. Conflicts Management Framework

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- 2.1.1 The Trustee is committed to maintaining an effective conflicts management framework at all times which:
- a. Provides reasonable assurance that all relevant perceived, 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.
  - 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.
- 2.1.2 The Trustee defines its 'conflicts management framework' as "the totality of systems, structures, policies, processes and controls within its business operations that identify, assess, mitigate, manage and monitor all conflicts".<sup>6</sup>
- 2.1.3 In turn, the Trustee defines its 'business operations' 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".<sup>7</sup>
- 2.1.4 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 **Conflicts of Interest Register** to records Board level discussions about conflicts that arise. (See Appendix 1)
  - e. Clearly defined roles, responsibilities and resources for the oversight of conflicts management within the Trustee's business operations.
  - f. A review process to ensure that the conflicts management framework remains effective.

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

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

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## 3. Conflicts Management Culture

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3.1.1 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.

3.1.2 The Trustee's conflicts management culture may be demonstrated through:

- a. **Openness** – the requirement to disclose all actual 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 this Conflicts Management Framework and the Trustee's **Register of Relevant Interests** and **Register of Relevant Duties** will be made publicly available on the Fund's website.<sup>8</sup>
- c. **Recruitment and professional development** – there are procedures in place which require the initial disclosure of actual or potential conflicts of relevant duties and relevant interests upon appointment, as well as ongoing disclosure of all actual 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 Trustee's **Whistleblower Policy**.

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<sup>8</sup> In accordance with the requirements of **Regulation 2.38** of the **Superannuation Industry (Supervision) Regulations 1994**.

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## 4. Conflicts Management Stakeholders

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### 4.1 The Board

- 4.1.1 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.
- 4.1.2 The Board is charged with overall responsibility for:
- a. Identifying all actual and potential conflicts in relation to the Trustee's business operations;
  - b. Taking all reasonably practicable actions to ensure that all identified conflicts are assessed and avoided or prudently managed, including agreeing on the conflict management methodology and overseeing governance; and
  - c. Instilling a strong culture of conflict identification and management throughout the Trustee.
- 4.1.3 As part of meeting this responsibility, the Board will take all reasonable steps to ensure that all Responsible Persons clearly understand:
- a. The importance of identifying all actual and potential conflicts;
  - b. The circumstances that might give rise to a conflict;
  - c. The content and purpose of the Trustee's conflicts management framework; and
  - d. Their obligations, as appropriate, as a Responsible Person of the Trustee.
- 4.1.4 The Board is regularly assisted by the Fund Secretary and the External Risk & Compliance Consultant and invites representatives from the Trustee's auditors to attend meetings as appropriate.

### 4.2 Audit, Risk and Compliance Committee

- 4.2.1 The Board has delegated responsibility for overseeing the continued implementation and maintenance of the Trustee's conflicts management framework to the Audit, Risk & Compliance Committee.
- 4.2.2 The Committee is regularly assisted by the Fund Secretary, and the External Risk and Compliance Consultant, and invites representatives from the Trustee's internal and external auditors to attend meetings.
- 4.2.3 The Audit, Risk & Compliance Committee is responsible for maintaining the Trustee's conflicts management framework. This includes:
- a. Ensuring that there are appropriate procedures in place to ensure that all relevant business units are fully aware of, and comply with, the Trustee's conflicts management framework.
  - b. Maintaining comprehensive, up-to-date registers and keeping these registers under regular review.
  - c. Implementing procedures that require incoming Responsible Persons to disclose all relevant duties and relevant interests prior to the person taking up the appointment.

### 4.3 External Risk and Compliance Consultant

- 4.3.1 The Trustee has appointed an external risk and compliance consultant to the role of Risk Manager.<sup>9</sup>
- 4.3.2 The Board, on the advice of the Audit, Risk & Compliance Committee, has delegated authority to the Risk Manager to manage and maintain 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.
- 4.3.3 The Risk Manager, in partnership with the Fund Secretary, works to ensure that all Responsible Persons are aware of the Trustee's risk management framework and their individual responsibilities, as appropriate, in relation to mitigating risks and/or monitoring and reporting on risk mitigation strategies and control mechanisms in relation to particular risks.

### 4.4 Fund Secretary

- 4.4.1 The Board has delegated authority to the Fund Secretary to manage and maintain the Trustee's compliance management framework on a day-to-day basis.
- 4.4.2 As part of this role, the Fund Secretary is responsible for:
- a. Ensuring that all Responsible Persons are fully aware of, and comply with, the Trustee's conflicts management framework and their individual responsibilities, as appropriate, in relation to identifying, disclosing and managing actual and potential conflicts.
  - b. Maintaining a comprehensive and up-to-date **Register of Relevant Interests** and **Register of Relevant Duties** and keeping these Registers under regular review.
  - c. Implementing procedures that require incoming Responsible Persons to disclose all relevant duties and relevant interests prior to the person taking up the appointment.

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<sup>9</sup> The appointment of the Compliance and Risk Management Consultant, to the role of Risk Manager, has been executed in accordance with the relevant requirements as contained in **APRA Prudential Standard SPS 231 – Outsourcing (July 2013)**.

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## 5. Outsourcing Arrangements

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- 5.1 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, 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.
- 5.2 The **Outsourcing Policy**, which has been developed in line with *APRA Prudential Standard SPS 231 – Outsourcing (July 2013)*, provides an explanation of the approach taken by the Trustee to identify and handle conflicts that might arise through its outsourcing arrangements, including how all risks arising from such arrangements are identified, monitored, managed and mitigated.

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## 6. Defining a Conflict

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### 6.1 Relevant Conflict

6.1.1 The Trustee considers a 'relevant conflict' to be a conflict between:<sup>10</sup>

- a. The *relevant duties* owed by the Trustee or a Responsible Person of the Trustee, to beneficiaries, **and** the duties owed by the Trustee, or a Responsible Person of the Trustee, to any other person<sup>11</sup>.
- b. A *relevant interest* of the Trustee, or a Responsible Person of the Trustee, **and** their *relevant duties* owed by the Trustee, or the Responsible Person to beneficiaries.
- c. A *relevant interest* of the Trustee, a Responsible Person of the Trustee, **and** the interests of beneficiaries.
- d. The interests of beneficiaries **and** the duties owed by the Trustee, or a Responsible Person of the Trustee, to any other person.

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

6.1.3 In addition, a relevant conflict may also be held by a person or 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.

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

6.1.5 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.

### 6.2 Definition of 'Relevant Duty'

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

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

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

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<sup>10</sup> See **APRA Prudential Standard SPS 521 – Conflicts of Interest (Paragraph 7)**. The definitions provided here also reference "an associate of the Trustee". The term 'associate' is defined in **Superannuation Industry (Supervision) Act 1993 s.12**, which makes reference to the relevant definitions contained in sections 10-17 of the *Corporations Act 2001*. 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. The Trustee has determined that the definition of "associate of the Trustee's is not applicable at this time.

<sup>11</sup> In APRA's view, the words 'any other person' are intended to be read broadly to ensure that all other duties that the Trustee or its Responsible Person/s might owe to other individuals and entities are captured. For example, if a Director is also an employee of an employer sponsor of the Fund, they will owe duties to that employer sponsor. Similarly, if a Responsible Person is also a Director on another board, they will owe duties to that company and its shareholders as appropriate.

- a. Where the remuneration structure adopted by the Trustee in relation to a Responsible Person 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.

6.2.4 Examples of a situation where a conflict of duty may arise for a Responsible Person include:

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

6.2.5 A Responsible Person will not be deemed to have a conflict of duty solely as a result of being a beneficiary of the Fund (including making voluntary contributions to the Fund, receiving standard employer contributions as a member of the Fund, receiving standard, non-discretionary benefits as a member of the Fund or holding insurance within the Fund).

6.2.6 However, the Trustee will be particularly alert to situations which could result in a conflict between a Responsible Person's personal interest in the Fund, and his or her relevant duties to the Trustee. For example, where a change in the crediting rate 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 duty which must be acknowledged.

6.2.7 A Director's first and primary consideration must be to give priority to the duties to, and interests of, beneficiaries. 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 elected or nominated them as a Director. This interest must be declared at the beginning of the Director's tenure. In addition, whenever the Trustee is dealing with an issue which affects the members of the sponsoring organisation that has elected or nominated the Director, the Director must determine whether or not the interest has developed in a conflict of duty.

6.2.8 The Trustee will ensure that Directors are made aware of the strong possibility of a conflict of duty arising between acting in the best interests of beneficiaries and acting in the best interests of the nominating or appointing body, and are instructed that they must:

- i. Give priority to the duties to, and interests of, beneficiaries, over the duties to, and interests of, other persons, including sponsoring organisations.
- ii. Ensure that the duties to beneficiaries are met despite the actual or perceived conflict.

- iii. Ensure that the interests of beneficiaries are not adversely affected by the actual or perceived conflict.

### **6.3 Definition of 'Relevant Interest'**

- 6.3.1 The Trustee considers a 'relevant interest' of the Trustee, an associate of the Trustee, or a Responsible Person of the Trustee, to refer to any interest, gift, emolument<sup>12</sup> or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the Trustee, the Responsible Person, that the Trustee has determined to be relevant.<sup>13</sup> It also includes the interest created by Directors being members of the Fund.
- 6.3.2 The Trustee has determined that a single interest of greater than \$500 will be considered to be relevant for the purpose of this Policy. A single interest of greater than \$500 is considered by the Trustee to be more likely to have a significant impact on the capacity of the Trustee, or a Responsible Person of the Trustee holding the relevant interest, to act in a manner that is consistent with the best interests of beneficiaries.
- 6.3.3 The Trustee has also determined that situations where multiple interests, gifts, emoluments or benefits are received by the Trustee, or a Responsible Person, from the same entity, the total value of which exceeds \$500 within a 12 month period, will be determined to be relevant for the purpose of this Policy. The receipt of multiple gifts from a single entity within a 12 month period are considered by the Trustee to be more likely to have a significant impact on the capacity of the Trustee, or a Responsible Person of the Trustee, to act in a manner that is consistent with the best interests of beneficiaries.
- 6.3.4 For the reasons outlined above, all interests, gifts, emoluments or benefits, whether pecuniary or non-pecuniary, received by the Trustee, or a Responsible Person of the Trustee, are required to be declared.
- 6.3.5 The Trustee will determine relevance 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.

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<sup>12</sup> "Emolument" is compensation received by virtue of holding an office or having employment (usually in the form of wages or fees).

<sup>13</sup> See APRA Prudential Standard SPS 521 – Conflicts of Interest, Paragraph 6(b).

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## 7. Identifying and Notifying a Conflict

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- 6.1 Each Responsible Person of the Trustee must advise the Trustee as soon as he or she becomes aware of any actual or potential conflict. If there is doubt as to whether a conflict exists, it should be disclosed. If the Responsible Person of the Trustee believes that it could reasonably be perceived that he or she has a conflict, the perceived conflict should also be disclosed in order to promote timely resolution.
- 6.2 If a Responsible Person becomes aware of an actual or potential conflict, they must immediately notify the Fund Secretary, who must assess the potential impact of the conflict upon the Trustee and/or the Fund and determine whether it should be referred to the Trustee Board for consideration.
- 6.3 If the Fund Secretary becomes aware of an actual or potential conflict, he or she must immediately notify it to the Chair of the Board who must assess the potential impact of the conflict upon the Trustee and/or the Fund and determine whether it should be referred to the Trustee Board for a response.
- 6.4 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.
- a. The person to whom the conflict is disclosed must assess the potential impact of the conflict upon the Trustee and/or the Fund and determine whether it should be referred to the full Trustee Board for a response.
  - b. If both the Chair of the Board and the Fund Secretary are made aware of an actual or potential conflict, then they may have a joint responsibility to manage the conflict unless they are conflicted from doing so.
- 6.5 If there is uncertainty as to whether a conflict exists, it should be discussed with the Chair of the Board and/or the Fund Secretary. The Chair of the Board and/or the Fund Secretary may then have a joint responsibility to manage the conflict.
- 6.6 If a Responsible Person of the Trustee believes that another Responsible Person of the Trustee has, or may have, a conflict which has not been disclosed, the first Responsible Person of the Trustee must bring the matter to the attention of the Chair of the Board and/or the Fund Secretary and provide an explanation why he or she holds that belief. Disclosure should be made in writing as soon as possible after the conflict is recognised.
- 6.7 Each Responsible Person must declare, as part of their annual Declaration, 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.
- 6.8 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 is asked to confirm that their individual circumstances have not changed.

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## 8. Responding to a Conflict

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### 8.1 Assessing and Evaluating a Conflict

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

8.1.2 The assessment will consider:

- a. The nature of the conflict – is it a conflict with a relevant duty or a conflict of interest?
- b. The materiality of the conflict – if it is a conflict of interest, is it material?
- 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 Responsible Person's ability to:
  - i. Give priority to the duties to, and interests of, beneficiaries over the duties to and interests of other persons; or
  - ii. Ensure that the duties to beneficiaries are met despite the conflict; or
  - iii. Ensure that the interests of the beneficiaries are not adversely affected by the conflict.

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

- a. Failed to disclose the conflict;
- b. Inappropriately failed to disqualify himself or herself because of the conflict;
- c. Inappropriately participated in deliberations relating to a matter in which he or she had a conflict; and/or
- d. Acted in his or her own interests, or those of a related party, in preference to the interests of the beneficiaries of the Fund.

### 8.2 Deciding Upon and Implementing a Response to a Conflict

8.2.1 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.

8.2.2 To facilitate the clear demonstration of the Trustee's response, the Trustee has determined that where a response is required to a conflict (actual, potential or perceived) both the conflict and the response will be recorded in the **Conflict of Interest Register. (See Appendix 1)**

8.2.3 The Conflict Register will be tabled at each Board meeting together with the Relevant Interests and Relevant Duties Registers.

8.2.4 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 to 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.

8.2.5 In addition, in response to an identified conflict, the Chair of the Board and/or Fund Secretary may:

- a. Seek additional relevant information in relation to the conflict.
- b. Refer the conflict to the Board of Directors for its consideration.
- c. Seek legal or other external advice to confirm the appropriateness of a particular course of action.

8.2.6 The alternative responses to the identified conflict that will be considered, with reference to the need to meet the priorities outlined in Section 7.2.1 above, include:

- a. **Avoid the conflict** - 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.<sup>14</sup>
- 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 Board, or to beneficiaries generally, as appropriate.
- d. If the conflict arises in relation to a Responsible Person of the Trustee, **allocate another Responsible Person of the Trustee to provide the service or conduct the activity**, and/or require the affected Responsible Person to have no involvement in a matter linked to the conflict.
- e. **Take no action** because the conflict is determined to be immaterial.

### 8.3 Responding to a Conflict of Relevant Duty

8.3.1 If a conflict is held by a Director (including the Chair), the Board as a whole may, again with reference to the priorities outlined in Section 8.2 above:<sup>15</sup>

- a. Allow the Director to remain in a Board/Committee meeting while the matter is being discussed.
- b. Require the Director to leave a Board/Committee meeting temporarily while the matter is being discussed.
- c. Allow the Director involved to speak to a motion but not allow him or her to exercise a vote on the question of whether there is a conflict and if so, whether the conflict is material.

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<sup>14</sup> 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.

<sup>15</sup> *Notes:*

1. Under the **Superannuation Industry (Supervision) Act 1983**, Trustee Board resolutions require a two-thirds majority (or a higher majority if required under the Trust Deed or the Constitution of the Trustee Company) of the total number of Directors, including any Directors who are required to abstain from voting due to a conflict of interest. In some circumstances, this may result in an effective requirement for a unanimous vote for some resolutions involving a conflict of interest.
2. The Directors recognise that a quorum must be maintained for a vote to be valid. In the rare case that a conflict of interest reduces the number of Directors eligible to vote below a quorum, it may be necessary to refer the matter to a properly constituted committee of Directors who do not have any conflict of interest. Alternatively, in some circumstances it may be appropriate to delegate a decision to an appropriately qualified external advisor. In the former case, the Directors (including those with a conflict of interest) would appoint a committee of directors who do not have a conflict of interest.

Participation by directors with a conflict of interest for this very limited purpose is permissible. The committee must comply with the equal representation rules (i.e. equal numbers of employer and member directors and, optionally, an independent director) and appoint its own Chairman.

Resolutions must be passed by a majority of two thirds of the committee and would be binding on the trustee. If it is not possible to appoint a committee meeting the equal representation rules, independent professional advice will be obtained.

d. Require the Director to abstain from voting on, or having any involvement in, any matter where there is a conflict.

e. 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.

8.3.2 Under no circumstances will a Director be allowed to participate in a discussion or vote on an issue after making a declaration of a conflict of relevant duty if they, or a close personal associate or relative, stand to make a personal gain or profit from the proposed action.

#### **8.4 Responding to a Conflict of Relevant Interest**

8.4.1 The solicitation of gifts or benefits from third parties by Responsible Persons of the Trustee in relation to the performance of their relevant duties is strictly forbidden. Any Responsible Person 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 Fund Secretary and/or Chair of the Board for determination of an appropriate response.

8.4.2 Under no circumstances should a Responsible Person of the Trustee accept:

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 in carrying out their relevant duties; or

b. Monetary gifts such as cash, cheques, money orders, travellers' cheques, direct deposits and the like.<sup>16</sup>

8.4.3 Responsible Persons of the Trustee must not accept any relevant (>\$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 Fund Secretary or the Chair of the Board. Where consent is provided, acceptance of the interest, gift, emolument or benefit must be disclosed for inclusion on the appropriate Register.

8.4.4 Responsible Persons and Officers of the Trustee may accept non-relevant (more than \$100 but less than \$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 Fund Secretary or Chair of the Board (subject to Section 7.4.5 below) so long as the receipt of such gifts or benefits are disclosed to the Trustee.

8.4.5 Prior consent of the Fund Secretary or the Chair of the Board 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.

8.4.6 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;

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<sup>16</sup> Other than the payment of regular salary and agreed bonuses which have been approved by the Fund Secretary and/or the Chair of the Board.

- 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.

8.4.7 All Responsible Persons of the Trustee in attendance at a Trustee Board or Committee meeting are to disclose any material interests, gifts, emoluments or benefits received from a third party as a consequence of their office.

## **8.5 Escalation of the Conflicts Management Process**

8.5.1 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. The appropriate escalation process will be determined on a case-by-case basis. Responsibilities accorded to, or decisions made by, Board Committees or the Full Board will be appropriately minuted.

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## 9. Disclosing and Recording Conflicts

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### 9.1 Declarations

- 9.1.1 On appointment, each Director and Responsible Person (as part of completing the **Statement of Personal Information** and the **Statutory Declaration**) is asked to declare all relevant duties they hold, and any actual or potential conflicts that they have between these duties and the duties owed to the beneficiaries of the Fund. They are also asked to confirm that they are willing to comply with the Trustee's Conflicts Management Policy.
- 9.1.2 On an annual basis, each Director and Responsible Person (as part of completing the Statutory Declaration) is asked to declare they have notified the Trustee of all relevant duties they hold, and any actual or potential conflicts they have between these duties owed to beneficiaries of the Fund, as well as any relevant interests they have received, since the last date of the last **Statutory Declaration**. They are also asked to confirm they have complied with this **Policy**.
- 9.1.3 As part of the due diligence process conducted prior to appointment, and then on an annual basis following appointment, the Trustee requires each of its material service providers to declare all relevant actual or potential conflicts of which they are aware. They are also asked to confirm that they are willing to comply with the Trustee's Conflicts Management Policy.
- 9.1.4 The Fund Secretary will record all notified actual or potential conflicts in the relevant Register.
- 9.1.5 At the commencement of each Trustee Board and Committee meeting, the Chair of the Board or of the Committee will ask all attendees to confirm their ability to act under the "Fit and Proper" requirements. This includes declaring any new actual 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.
- 9.1.6 Standing disclosed conflicts are taken as read and don't need to be declared at each meeting, unless the nature or materiality of the disclosed conflict increases substantially.
- 9.1.7 If a new actual or potential conflict is disclosed at a Trustee Board or Committee meeting, the Board or Committee must give proper consideration to the disclosed conflict.
- 9.1.8 The Fund Secretary will record details of the conflict, its materiality, and the actions taken or planned to be taken to avoid or manage it, in the minutes of the meeting as well as entering relevant conflicts into the relevant Register.

### 9.2 Related Party Transactions

- 9.2.1 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.

### 9.3 Register of Relevant Duties

- 9.3.1 The Register of Relevant Duties records:
- a. All duties owed by the Trustee, and Responsible Persons of the Trustee, to any other person or entity; and

- b. All instances where the duties owed by the Trustee or by a Responsible Person of the Trustee, to any other person or entity, conflict, or may be seen to conflict, with the relevant duties owed by the Trustee, the Responsible Person to beneficiaries.
- 9.3.2 At a minimum, all directorships, roles and office positions held by Responsible Persons of the Trustee, in any corporate entity, as well as any material shareholdings<sup>17</sup> in, or derivation of any financial benefit from, a corporate entity, is required to be disclosed in this Register.
- 9.3.3 For all actual and potential conflicts of duty identified, the Register includes a description of the nature of the conflict and a summary of the action taken to manage it.
- 9.3.4 The Fund Secretary 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.
- 9.3.5 As a standing agenda item for each regular meeting of the Full Board, a copy of the Register will be tabled and a verbal update by the Fund Secretary on any additions or changes to the Register since the last meeting.

#### **9.4 Register of Relevant Interests**

- 9.4.1 The **Register of Relevant Interests** records all interests, gifts, emoluments or benefits, whether pecuniary or non-pecuniary, directly or indirectly held by the Trustee, or a Responsible Person of the Trustee, and where applicable a record of Fund membership, which are in actual or potential conflict with the interests of beneficiaries, and which the Trustee has determined to be relevant.
- 9.4.2 The Register includes a description and value of the interest and a summary of the action taken to avoid or prudently manage any conflict.
- 9.4.3 The Fund Secretary 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.
- 9.4.4 As a standing agenda item for each regular meeting of the Full Board, a copy of the Register will be tabled and a verbal update by the Fund Secretary on any additions or changes to the Register since the last meeting.

#### **9.5 Disclosure to Beneficiaries**

- 9.5.1 If the Trustee believes that public disclosure of an actual or potential conflict is required, this may be made in the Fund's Annual Report, Financial Services Guide or Product Disclosure Statement.
- 9.5.2 If this is not practicable (for example, if the conflict arises with only a limited number of beneficiaries, or if the timing of these documents would result in an unreasonable delay in disclosure) the disclosure will be made in writing, where possible, to the beneficiaries concerned.

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<sup>17</sup> A material shareholding is considered to be a shareholding that exceeds 10% of the total amount of shares on issue.

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## 10. Evaluation of Conflicts Management and Disclosure

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- 10.1 The management of identified conflicts will be evaluated by the Board on a regular basis.
- 10.2 As a standing agenda item for each regular meeting of the Full Board, the Board of Directors receive a copy of the **Register of Relevant Duties**, the **Register of Relevant Interests**, and the Conflicts of Interest Register, together with a verbal report from the Fund Secretary covering any additions or changes made to either of the Registers since their previous tabling, and the status of notified conflicts. This provides an immediate opportunity to address any concerns and determine any additional actions that may be needed to deal with the conflict.

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## 11. Review of the Conflicts Management Framework

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### 11.1 Comprehensive Review

11.1.1 The Board will ensure that the appropriateness, effectiveness and adequacy of the Trustee's conflicts management framework is subject to a comprehensive review by an operationally independent, appropriately trained and competent person at least every three years. This review must have regard to:

- a. The size, business mix and complexity of the Trustee's business operations.
- b. The extent of any changes made to these operations since the last review.
- c. Any changes to the external environment in which the Trustee operates.

11.1.2 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.

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

- a. Whether all relevant conflicts 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 change in the size or membership profile of the Fund or structure of the Trustee (including changes to Responsible Persons), or to 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.

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

### 11.2 Annual Review

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

11.2.2 Prior to the commencement of this review, the Audit, Risk and 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.

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

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## 12. APPENDIX 1 Conflict of Interest Register

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This Register is used to record discussion and actions taken by the Trustee in relation to any conflict involving a Trustee Director or other Responsible Person.

CONFLICT OF INTEREST REGISTER				
Name	Position	Person and/or Organisation with Interest	Nature of Conflict or Interest	Date of Deliberation