



Australian Government

**SCREEN  
AUSTRALIA**

## **BOARD CONFLICT OF INTEREST POLICY**

Transactions involving Board members and member-related entities occur in the ordinary course of Screen Australia's business since the board includes members actively involved in the film and television industries. Screen Australia's policy is that transactions involving Board members and member-related entities are to be on commercial terms that are no more favourable than those available to others and consistent with Screen Australia's funding and investment guidelines.

Screen Australia's system for avoiding Board member conflicts of interest operates at two levels. At management level, a register of standing interests is maintained and, where management considers that a conflict of interest exists, board papers relating to that matter are withheld from the affected member. At board level, where any member has a material personal interest in a transaction to be considered at a board meeting, that member will not be present while the transaction is being considered, and will not vote upon the transaction.

The board considers that a member has a material personal interest in the following circumstances:

- i) where the member, or the partner or child of the member, has a production role in the film.
- ii) where the member is an officer (a director, secretary, executive officer or employee) of:
  - (a) the production company, or the parent of that company; or,
  - (b) a company acquiring commercial exploitation rights in the film.
- iii) where the member or the member's firm acts as the solicitor, accountant, auditor or adviser for:
  - (a) any person with a production role in the film;
  - (b) the production company;
  - (c) a company acquiring commercial exploitation rights in the film; or
  - (d) an investor in the film.
- iv) where the member, or a company of which the member is a shareholder or an officer, is entitled to receive a payment from the budgeted cost of the film.
- v) where the director has an ownership interest either directly or indirectly exceeding 5% in any entity which transacts with Screen Australia.

## **PROCEDURES**

The secretariat will maintain a register of standing interests of Board members. Each member is responsible for notifying the secretariat of any changes required. Quarterly and prior to the adoption of the Annual Report, the register will be included in the board papers for review.

In addition to this, *Disclosure of Relevant Interests* will be a standing item on the Board meeting agenda and all conflicts will be minuted.

## **4. STATUTORY REQUIREMENTS**

The Board is legally bound by the *APS Code of Conduct* and the *APS Values* (Sections 13 and 14 of the *Public Service Act 1999*, at **Attachment A**).

The relevant provisions of the *Commonwealth Authorities and Companies (CAC) Act 1997* are reproduced at **Attachment B**.

## **Public Service Act 1999**

### **Part 3—The Australian Public Service**

#### **13 The APS Code of Conduct**

- (1) An APS employee must behave honestly and with integrity in the course of APS employment.
- (2) An APS employee must act with care and diligence in the course of APS employment.
- (3) An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- (4) An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws. For this purpose, *Australian law* means:
  - (a) any Act (including this Act), or any instrument made under an Act; or
  - (b) any law of a State or Territory, including any instrument made under such a law.
- (5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
- (6) An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.
- (7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
- (8) An APS employee must use Commonwealth resources in a proper manner.
- (9) An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
- (10) An APS employee must not make improper use of:
  - (a) inside information; or
  - (b) the employee's duties, status, power or authority;in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- (11) An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
- (12) An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- (13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

#### **14 Agency Heads bound by Code of Conduct**

- (1) Agency Heads are bound by the Code of Conduct in the same way as APS employees.

(2) Statutory office holders are bound by the Code of Conduct in the same way as APS employees.

(3) In this section:

*statutory office holder* means a person who holds any office or appointment under an Act, being an office or appointment that is prescribed by the regulations for the purposes of this definition.

**Commonwealth Authorities and Companies Act 1997**

**Subdivision B—Disclosure of, and voting on matters involving, material personal interests**

**27F Material personal interest—director’s duty to disclose**

*Director’s duty to notify other directors of material personal interest when conflict arises*

(1) A director of a Commonwealth authority who has a material personal interest in a matter that relates to the affairs of the authority must give the other directors notice of the interest unless subsection (2) says otherwise.

(2) The director does not need to give notice of an interest under subsection (1) if:

(a) the interest:

- i. arises in relation to the director’s remuneration as a director of the authority; or
- ii. relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the authority (but only if the contract does not make the authority or a subsidiary of the authority the insurer); or
- iii. relates to any payment by the authority or a subsidiary of the authority in respect of an indemnity permitted under section 27M or any contract relating to such an indemnity; or
- iv. is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a subsidiary of the authority and arises merely because the director is a director of the subsidiary; or

(b) all the following conditions are satisfied:

- i. the director has already given notice of the nature and extent of the interest and its relation to the affairs of the authority under subsection (1)
- ii. if a person who was not a director of the authority at the time when the notice under subsection (1) was given is appointed as a director of the authority—the notice is given to that person
- iii. the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(c) the director has given a standing notice of the nature and extent of the interest under section 27G and the notice is still effective in relation to the interest.

(3) The notice required by subsection (1) must:

(a) give details of:

- i. the nature and extent of the interest; and
- ii. the relation of the interest to the affairs of the authority; and

(b) be given at a directors’ meeting as soon as practicable after the director becomes aware of his or her interest in the matter.

The details must be recorded in the minutes of the meeting.

*Effect of contravention by director*

(4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**27G Director may give other directors standing notice about an interest**

*Power to give notice*

(1) A director of a Commonwealth authority who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the authority at the time the notice is given.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

(2) The notice under subsection (1) must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
  - i. at a directors' meeting (either orally or in writing); or
  - ii. to the other directors individually in writing. The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

*Standing notice must be tabled at meeting if given to directors individually*

(3) If the standing notice is given to the other directors individually in writing it must be tabled at the next directors' meeting after it is given.

*Nature and extent of interest must be recorded in minutes*

(4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

*Dates of effect and expiry of standing notice*

(5) The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a person who was not a director of the authority at the time when the notice was given is appointed as a director of the authority. A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

*Effect of material increase in nature or extent of interest*

(6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

### *Effect of contravention by director*

(7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

### **27H Interaction of sections 27F and 27G with other laws etc.**

Sections 27F and 27G have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and
- (b) any provision in the Commonwealth authority's enabling legislation that restricts a director from:
  - i. having a material personal interest in a matter; or
  - ii. holding an office or possessing property; involving duties or interests that conflict with their duties or interests as a director.

### **27J Restrictions on voting**

#### *Restrictions on voting and being present*

(1) A director of a Commonwealth authority who has a material personal interest in a matter that is being considered at a directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter;

unless:

- (c) subsection (2) or (3) allows the director to be present; or
- (d) the interest does not need to be disclosed under section 27F.

#### *Participation with approval of other directors*

(2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:

- (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the authority; and
- (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

#### *Participation with Ministerial approval*

(3) The director may be present and vote if they are so entitled under a declaration or order made by the responsible Minister under section 27K.

### *Effect of contravention by director*

(4) A contravention by a director of:

- (a) this section; or
- (b) a condition attached to a declaration or order made by the responsible Minister under section 27K; does not affect the validity of any resolution.