

Bendigo and Adelaide Bank Limited

Board disclosure of interest and conflict of interest policy

Overview

The policy covers the following.

- Disclosure of interests
- Presence during discussion and voting
- Material information
- Outside commitments

The attachment sets out information about the regulatory context.

Policy and procedures

1. Disclosure of interests

(a) Principle

Each Director must promptly disclose to the Board each of the following.

- Any material personal interest in a matter that relates to the affairs of the Bank.
- Any other interest which the Director believes may create a conflict of interest or the perception of a conflict of interest.

Note: This does not require disclosure of a director's interest in a financial service obtained in the ordinary course of the business of the Bank or its subsidiaries on an arm's length basis. Separate disclosure is required about interests in financial services to Secretariat in an annual questionnaire.

The disclosure must include full details of the nature and extent of the interest, and the relation of the interest to the affairs of the Bank.

There are some exceptions to disclosure – see the Attachment. If a Director is uncertain about whether an interest should be disclosed, the Director should consult with Secretariat.

(b) Procedure

Each new Director must complete a Standing Notice about interests and give it to Secretariat. Secretariat must arrange for the Standing Notice to be tabled at the next meeting of Directors and recorded in the minutes of that meeting.

If there is a change in interests, the Director must give Secretariat information about the change as soon as practicable. Secretariat must arrange for the updated Standing Notice to be tabled at the next meeting of Directors and recorded in the minutes of that meeting.

Secretariat maintains Standing Notices about interests for each Director and must give copies to each new Director of all current Standing Notices when the Director starts.

If a matter arises at a Board meeting in which a Director has an interest not already disclosed, the Director must make the disclosure at the meeting. The interest must be recorded in the minutes.

2. Presence during discussion and voting

A Director who has a material personal interest in a matter being considered at a Directors' meeting may not be present at that meeting while the matter is being considered and may not vote on that matter. The Board minutes must record the interested director leaving the meeting before the discussion and returning after the vote.

However, the Director may be present and vote, if either of the following apply.

- (a) The Directors present at the meeting (who are not affected by a material personal interest at that time) resolve that the interest should not disqualify the Director from being present or from voting.
- (b) The Director would otherwise be entitled to be present and to vote under the Corporations Act.

Example: The interest arises because the director is a shareholder of the Bank and is held in common with other shareholders of the Bank.

In the case of other interests in a matter being considered at a Directors' meeting, the director should consider whether to be present and to vote in relation to the matter.

Note: Clause 65 of the Constitution allows a director who has an interest in a matter to be present and to vote, unless constrained by the Corporations Act.

3. Material information	If a Director has a conflict of interest, regardless of whether the Director is present when the matter is being considered, if the Director is aware of a matter that is material to a decision by the Board, the Director must bring this to the attention of the Board or Chair before the Board considers the matter.
4. Outside commitments	<p>A Director must not accept any appointments that conflict with their position as a Director of the Bank or could reasonably be perceived to interfere materially with the exercise of their unfettered and independent judgment.</p> <p>Before accepting any directorship or public appointment, the Director must inform the Chair, so that any possible conflict, regulatory or other implications (including time commitments) can be considered.</p>

Attachment
Regulatory context

1. Disclosure

1.1 Obligation to disclose A conflict of interest must be disclosed to the board. This obligation is on the director as an individual. If the interest is a “material personal interest” a failure to disclose the interest is an offence.¹

1.2 How to disclose The Corporations Act sets out the requirements in relation to disclosure of a “material personal interest”. This procedure can be adopted for other conflicts that do not comprise a “material personal interest”. Under the Corporations Act, a director may give a specific notice or a standing notice about an interest.

- **Specific notice:** To give a specific notice, the following applies.²
 - (a) The notice must give details of both of the following.
 - (i) The nature and extent of the interest.
 - (ii) The relation of the interest to the affairs of the Bank.
 - (b) The notice must be given at a directors’ meeting as soon as practicable after the director becomes aware of their interest in the matter.
 - (c) The details must be recorded in the minutes of the meeting.
- **Standing notice:** To give a standing notice, the following applies.³
 - (a) The notice must give details of the nature and extent of the interest.
 - (b) The notice must be given in either of the following ways.
 - (i) At a directors’ meeting (either orally or in writing).
 - (ii) To other directors individually in writing. The notice is treated as given when it has been given to every director. In addition, the notice must be tabled at the next director’s meeting after it is given.
 - (c) The director must make sure that the nature of the 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.
 - (d) The standing notice takes effect as soon as it is given. However, it ceases to have effect in each of the following cases.
 - (i) In relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.
 - (ii) If a new director is appointed, until the new director is given the standing notice.

1.3 Are there any exceptions to disclosure? The Corporations Act sets out exceptions to the requirement to disclose a material personal interest.⁴ This includes an interest that arises in any of the following ways.

- Because the director is a member of the company and the interest is held in common with other members of the company.
- In relation to the director’s remuneration as a director of the company.
- The interest is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate.

2. Material personal interest - participation and voting

2.1 Statutory requirements

1. If a director has a “material personal interest” in a matter being considered at a directors’ meeting, the director must not be present while the matter is being considered or vote on the matter, unless a statutory exception applies.⁵ A director commits an offence if the director does not comply with this restriction.
2. If there are not enough directors to form a quorum for a directors’ meeting because a number of directors have a material personal interest, one or more of the directors (including those who have a material personal interest) may call a

¹ Corporations Act, section 191.

² Corporations Act, section 191(3).

³ Corporations Act, section 192.

⁴ See Corporations Act, section 191(2) for a complete list.

⁵ Corporations Act, section 195.

general meeting of shareholders and the general meeting may pass a resolution to deal with the matter.⁶

2.2 Are there any exceptions?

- If the interest comes within an exception to the disclosure requirement (see section 1.3 of this attachment), the restriction on being present and voting also does not apply.
 - In addition, it is an exception if the directors who do not have a material personal interest in the matter pass a resolution that complies with the requirements of the Corporations Act – set out in section 1.3 of this attachment.
 - If the number of directors entitled to be present and vote on a matter would be less than a quorum and the matter needs to be dealt with urgently or there is some other compelling reason for the matter to be dealt with in a directors' meeting (rather than a general meeting), ASIC may provide relief.⁷
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⁶ Section 195(4) Corporations Act.

⁷ Section 196 Corporations Act. ASIC Regulatory Guide 76, Related party transactions, provides guidance on when ASIC will grant relief.