

DIRECTOR INTERESTS PROTOCOL

PREPARED BY: Company Secretary

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1. Introduction

- 1.1 This Director interest protocol applies to the directors of Australian Energy Market Operator Limited (**Company**), including the managing director of the Company.
- 1.2 Broadly, a duty or interest arises when a person is in a decision making position and participates in an activity or acquires another interest or an interest that jeopardises, could jeopardise or could be perceived to jeopardise, his or her judgement, objectivity or independence.
- 1.3 The policy of the Company is that conflicts of interest or duty or business dealings or personal relationships which create an actual, potential or perceived conflict with a director's obligations to the Company should be avoided.

2. Background to and purpose of protocol

- 2.1 Directors occupy fiduciary positions and are subject to the general prohibition on fiduciaries placing themselves in a position of conflict whereby a personal interest or duty conflicts with their duty to the Company.
- 2.2 Generally, under Australian law, directors who have a material personal interest in the subject matter of a decision should not be part of the deliberation and voting process relating to that decision. In addition, where a director is also a director of other companies, care must be taken to ensure that the director is not placed in a position where his or her duty of honesty to one company in respect of certain information conflicts with his duty of confidentiality to another company. Further details of these duties are set out at items 3 and 4 below.
- 2.3 The failure of a director to comply with the conflict law may result in that director breaching his or her statutory and fiduciary duties. For example, if a director with a material personal interest is present for the discussion of a matter on which he or she has a material personal interest and no valid permission is obtained, that director would have committed a criminal offence under section 195 of the Corporations Act 2001 (Cth) (**Act**). Other criminal and civil penalties may also apply under the Act arising from a breach of the director's statutory duties.
- 2.4 Against this background, the purpose of this protocol is to:
 - a) guide directors as to the practices appropriate to maintain the public perception of and confidence in the Company's integrity and conflict procedures;
 - b) set out the responsibility and accountability of directors regarding any actual, potential or perceived conflict of interest or duty;


- c) provide a mechanism by which directors can declare a conflict of interest or duty with the aim of avoiding any actual, potential or perceived conflicts of interest or duty; and
- d) provide a mechanism by which any actual, potential or perceived conflict of interest or duty can be managed.

3. Conflicts of interest or duty

- 3.1 Each director must be aware of, and is responsible for, potential conflicts between (directly or indirectly):
 - a) on the one hand:
 - i) the interests of the Company; or
 - ii) their duties to the Company; and
 - b) on the other hand:
 - i) their personal or external business interests; or
 - ii) their duties to any third party.
- 3.2 Each director must avoid placing himself or herself in a position that may lead to:
 - a) an actual or a potential conflict of interest or duty; or
 - b) a reasonable perception of a conflict of interest or duty.
- 3.3 A director must not improperly use his or her position for personal gain or gain of someone else or to compete with or harm the Company.
- 3.4 A director must not improperly use or information acquired through his or her position, for personal gain or gain of someone else or to compete with or harm the Company.
- 3.5 A director must not use any business name or trademark used by the Company for a personal or external business transaction.
- 3.6 Each director must keep his or her personal or external duties or business dealings separate from the Company's business dealings.

4. Confidentiality

- 4.1 Any information acquired by a director while performing his or her duties that is not publicly known and has not been approved by the Board of directors of the Company (**Board**) for public release is confidential information of the Company and must be kept confidential. A director must not disclose the information to a third party except where that disclosure is:
 - a) authorised by the Board; or

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- b) required by law or a regulatory body.
 - 4.2 The existence and details of any Board and management information, discussions, and decisions that are not publicly known and have not been approved by the Board for public release, are confidential information of the Company and subject to item 4.1.
 - 4.3 Each director's obligation of confidentiality continues after he or she leaves the Company.

5. Structure of protocol

- 5.1 This protocol consists of two sections. Section A outlines the process under which a declaration of interest is to be made and Section B outlines the manner in which actual, potential or perceived conflicts of interest or duty will be managed by the Board.

Section A - Declaration of interests

6. Disclosure

- 6.1 In addition to a director's obligations under section 191 of the Act (which is attached as an annexure to this protocol), at the time of appointment as a director of the Company, each director must, by completing the prescribed AEMO standing declaration of interest form, notify the Company Secretary of:
- a) all personal or external business interests that the director has that could result in:
 - i) an actual or a potential conflict of interest or duty; or
 - ii) a reasonable perception of a conflict of interest or duty; and
 - b) any existing directorship or other office held by the director in another entity outside the Company.
- 6.2 Each director must continue to fully and frankly inform and update the Company Secretary of:
- a) any change to the director's personal or external business interests that could result in:
 - i) an actual or a potential conflict of interest or duty; or
 - ii) a reasonable perception of a conflict of interest or duty; and
 - b) any proposed appointment as a director or an officer of another entity outside the Company before accepting the appointment to that entity.
- 6.3 Each director must disclose to any other entity that he or she is a director or officer of or otherwise connected to (as an employee, contractor or adviser) that he or she is bound by the confidentiality obligations under item 4 of this protocol and will therefore not be able to disclose any such confidential information of the Company to the entity.

Section B - Management of conflicts

7. Release of sensitive information

- 7.1 Relying on information that has been provided as required by Section A, the Company Secretary is responsible for monitoring the subject matter of any Board agendas for potential conflicts of interest or duty for individual directors.
- 7.2 If the Company Secretary has reason to believe that an agenda item could result in an actual, potential or perceived conflict of interest or duty for a director, the Company Secretary will, upon consultation with the Chairman, make reasonable efforts to discuss the issue generally with that director and inform that director of the possibility of an actual, potential or perceived conflict of interest or duty arising before circulating background information to that director on that subject matter. This is in order to ensure that a director is not placed in a position of conflict of interest or duty due to the inadvertent disclosure of commercially sensitive information.
- 7.3 If the Company Secretary, after consultation with the Chairman and the relevant director, determines that the circulation of background materials containing commercially sensitive information to that director could result in that director having a conflict of interest or duty, those background materials will not be circulated to that director.
- 7.4 If a director, following discussions with the Chairman and the Company Secretary, does not agree that an actual, potential and perceived conflict of interest exists, they may request the Board to consider.
- 7.5 If a director identifies a conflict of interest or duty in an agenda item, the director must:
 - a) if the background materials have already been received by the director, return the background materials on that item; and
 - b) advise the Company Secretary that he or she is declaring a conflict of interest or duty.

8. Deliberations and voting process

- 8.1 If the conflict of interest or duty of the conflicted director amounts to a 'material personal interest', the conflicted director will be excluded from the deliberations and voting process for that matter unless the non-conflicted directors determine that the conflicted director's interest should not disqualify the conflicted director from the deliberations and voting process.
- 8.2 If the conflict of interest or duty of the conflicted director does not amount to a 'material personal interest', the conflicted director should exclude himself or herself from the deliberations and voting process if he or she believes that there could be a perception of conflict.

- 8.3 If the conflicted director does not exclude himself or herself from the deliberations and voting process, the non-conflicted directors, with the assistance of the Company Secretary, must consider whether that director should nevertheless be excluded from the deliberations and voting process for that matter.
- 8.4 The conflicted director should be excluded from the deliberations and voting process unless the non-conflicted directors form the view, on reasonable grounds, that the conflicted director's interest is immaterial or indirect and will not prevent the conflicted director from acting impartially in relation to the matter.
- 8.5 Subject to item 8.6, where the non-conflicted directors determine that the subject matter would affect a market participant connected with the conflicted director, they should determine that the conflict of interest prevents the conflicted director from participating in the deliberations and voting process for that matter.
- 8.6 If the subject matter applies commonly to all market participants, it will be presumed that a conflict of interest should not prevent the conflicted director from participating in the deliberations and voting process for that matter.
- 8.7 The assessment of conflicts of interest or duty will always be determined by the particular circumstances. If difficulties are encountered by the Board in assessing a situation of potential conflict, the Board may request that independent legal advice be sought as to whether he or she is subject to a conflict of interest or duty in respect of a matter. The costs associated with a director obtaining such independent legal advice will be borne by the Company.
- 8.8 If a director is excluded from the deliberation and voting process for a matter, that director will:
 - a) leave the meeting and the Company Secretary will record these facts in the minutes of the meeting;
 - b) not participate in the discussions or make any attempt to influence the discussions or vote on the subject matter; and
 - c) be advised of the Board's decision by the Company Secretary as soon as feasible after the Board's decision.

Adopted unanimously by resolution of the board of directors of Australian Energy Market Operator Limited held on [8 April 2010].

Annexure – Sections 191, 192 and 195 of the Corporations Act 2001 (Cth)

191 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 company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless subsection (2) says otherwise.
- 1A. For an offence based on subsection (1), strict liability applies to the circumstance, that the director of a company has a material personal interest in a matter that relates to the affairs of the company.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

2. The director does not need to give notice of an interest under subsection (1) if:
 - a) the interest:
 - i) arises because the director is a member of the company and is held in common with the other members of the company; or
 - ii) arises in relation to the director’s remuneration as a director of the company; or
 - iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or
 - iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or
 - v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or
 - vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or
 - vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or
 - viii) 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; or
 - b) the company is a proprietary company and the other directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or

- c) 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 company under subsection (1);
 - ii) if a person who was not a director of the company at the time when the notice under subsection (1) was given is appointed as a director of the company—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
- d) the director has given a standing notice of the nature and extent of the interest under section 192 and the notice is still effective in relation to the interest.

Note: Subparagraph (c)(ii)—the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

- 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 company; and
 - b) be given at a directors' meeting as soon as practicable after the director becomes aware of their 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.

Section does not apply to single director proprietary company

- 5. This section does not apply to a proprietary company that has only 1 director.

Section 192 - Director may give other directors standing notice about an interest

Power to give notice

1. A director of a company 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 company 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 company at the time when the notice was given is appointed as a director of the company.

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.



Note: the notice may be given to the person referred to in that paragraph (b) by someone other than the director to whose interests it relates (for example, by the secretary).

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 a 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.

Section 195 – Restrictions on voting- directors of public companies only

Restrictions on voting and being present

(1) A director of a public company 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.

(1A) Subsection (1) does not apply if:

- (a) subsection (2) or (3) allows the director to be present; or
- (b) the interest does not need to be disclosed under section 191.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code* .

(1B) An offence based on subsection (1) is an offence of strict liability.

Note: For **strict liability** , see section 6.1 of the *Criminal Code* .

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 company; and
- (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

Participation with ASIC approval

(3) The director may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.

Director may consider or vote on resolution to deal with matter at general meeting

(4) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material



personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

Effect of contravention by director

(5) A contravention by a director of:

(a) this section; or

(b) a condition attached to a declaration or order made by ASIC under section 196;

does not affect the validity of any resolution.