



COUNCILLOR DISCLOSURE OF INTEREST PROTOCOL

30 September 2015

Policy Reference Number	Council 000
Classification	Internal
Version	01
Submitted By	Company Secretary
Approved By	President
Date Approved	
Review Date	October 2017
Document Type	Intranet – Council Handbook
Managed By	Company Secretary

Councillor Disclosure of Interest Protocol

1. Introduction

- 1.1 This Councillor Disclosure of Interest Protocol applies to the Councillors of Welding Technology Institute of Australia (Company), including the CEO 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 Councillor's obligations to the Company should be avoided.

2. Background to and purpose of protocol

- 2.1 Councillors 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, Councillors 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 Councillor is also a Councillor of other companies, care must be taken to ensure that the Councillor 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.

The failure of a Councillor to comply with the conflict law may result in that Councillor breaching his or her statutory and fiduciary duties. For example, if a Councillor 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 Councillor 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 Councillor's statutory duties.

- 2.3 Against this background, the purpose of this protocol is to:
 - a. Guide Councillor's 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 Councillors regarding any actual, potential or perceived conflict of interest or duty;
 - c. Provide a mechanism by which Councillors 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 Councillor 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 Councillor 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 Councillor 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 Councillor 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 Councillor must not use any business name or trademark used by the Company for a personal or external business transaction.
- 3.6 Each Councillor must keep his or her personal or external duties or business dealings separate from the Company's business dealings.

4. Confidentiality

- 4.1 A Councillor must not disclose confidential information of the Company to a third party except where that disclosure is:
- a. Authorised by the Council; or
 - b. Required by law or a regulatory body.
- 4.2 The existence and details of any Council and management information, discussions, and decisions that are not publicly known and have not been approved by the Council for public release, are confidential information of the Company and subject to **Item 4.1**.
- 4.3 Each Councillor'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 Council.

Section A - Declaration of interests

6. Disclosure

- 6.1** In addition to a Councillor's obligations under section 191 of the Act (which is attached as an **Annexure** to this protocol), at the time of appointment as a Councillor of the Company, each Councillor must, by completing the prescribed Company standing declaration of interest form, notify the Company Secretary of:
- a. all personal or external business interests that the Councillor 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 Councillorship or other office held by the Councillor in another entity outside the Company.
- 6.2** Each Councillor must continue to fully and frankly inform and update the Company Secretary of:
- a. any change to the Councillor'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 Councillor or an officer of another entity outside the Company before accepting the appointment to that entity.
- 6.3** Each Councillor must disclose to any other entity that he or she is a Councillor 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 8.4** 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 Council agenda for potential conflicts of interest or duty for individual Councillors.
- 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 Councillor, the Company Secretary will, upon consultation with the Chairman, make reasonable efforts to discuss the issue generally with that Councillor and inform that Councillor of the possibility of an actual, potential or perceived conflict of interest or duty arising before circulating background information to that Councillor on that subject matter. This is in order to ensure that a Councillor 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 Councillor, determines that the circulation of background materials containing commercially sensitive information to that Councillor could result in that Councillor having a conflict of interest or duty, those background materials will not be circulated to that Councillor.
- 7-4** If a Councillor, 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 Council to consider.
- 7-5** If a Council identifies a conflict of interest or duty in an agenda item, the Councillor must:
- a. If the background materials have already been received by the Councillor, 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 Councillor amounts to a 'material personal interest', the conflicted Councillor will be excluded from the deliberations and voting process for that matter unless the non-conflicted Councillor determine that the conflicted Councillor's interest should not disqualify the conflicted Councillor from the deliberations and voting process.
- 8.2** If the conflict of interest or duty of the conflicted Councillor does not amount to a 'material personal interest', the conflicted Councillor 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 Councillor does not exclude himself or herself from the deliberations and voting process, the non-conflicted Councillor, with the assistance of the Company Secretary, must consider whether that Councillor should nevertheless be excluded from the deliberations and voting process for that matter.
- 8.4** The conflicted Councillor should be excluded from the deliberations and voting process unless the non-conflicted Councillor form the view, on reasonable grounds, that the conflicted Councillor's interest is immaterial or indirect and will not prevent the conflicted Councillor from acting impartially in relation to the matter.
- 8.5** The assessment of conflicts of interest or duty will always be determined by the particular circumstances. If difficulties are encountered by the Council in assessing a situation of potential conflict, the Council 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 Council obtaining such independent legal advice will be borne by the Company.

- 8.6** If a Councillor is excluded from the deliberation and voting process for a matter, that Council 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 Council's decision by the Company Secretary as soon as feasible after the Council's decision.

Annexure

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

Section 191

Note:

The word “Director” has been replaced by the word “Councillor” and has the same meaning.

9. Material personal interest — Councillor’s duty to disclose

- 9.1** It is a Councillor’s duty to notify other Councillors of material personal interest when conflict arises.
- 9.2** A Councillor of a Company who has a material personal interest in a matter that relates to the affairs of the Company must give the other Councillors notice of the interest unless **Item 10** says otherwise.
- 9.3** For an offence based on **Item 9** strict liability applies to the circumstance, that the Councillor of a Company has a material personal interest in a matter that relates to the affairs of the Company.

Note:

For strict liability, see subsection 6.1 of the Criminal Code.

10. Notice of interest, not required

- 10.1** The Councillor does not need to give notice of an interest under **Item 9**, if the interest:
- a. Arises because the Councillor is a Member of the Company and is held in common with the other Members of the Company; or
 - b. Arises in relation to the Councillor’s remuneration as a Councillor of the Company; or
 - c. 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 Members; or
 - d. Arises merely because the Councillor is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
 - e. Arises merely because the Councillor has a right of subrogation in relation to a guarantee or indemnity referred to in **Item d.** above; or
 - f. Relates to a contract that insures, or would insure, the Councillor against liabilities the Councillor 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
 - g. 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
 - h. 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 Councillor is a Councillor of the related body corporate; or

10.2 The Company is a proprietary Company and the other Councillors are aware of the nature and extent of the interest and its relation to the affairs of the Company; or

10.3 All the following conditions are satisfied:

- a. The Councillor has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under **Item 9.1.**;
- b. If a person who was not a Councillor of the Company at the time when the notice under **Item 9.1.** was given is appointed as a Councillor of the Company - the notice is given to that person;
- c. The nature or extent of the interest has not materially increased above that disclosed in the notice; or

10.4 The Councillor 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:

Item 10.3.c. above: the notice may be given to the person referred to in this Item by someone other than the Councillor to whose interests it relates (for example, by the secretary).

11. The notice required by Item 9.1. must:

11.1 Give details of:

- a. The nature and extent of the interest; and
- b. The relation of the interest to the affairs of the Company; and
- c. Be given at a Councillors' meeting as soon as practicable after the Councillor becomes aware of their interest in the matter.

11.2 The details must be recorded in the minutes of the Meeting.

12. Effect of contravention by Councillor

12.1 A contravention of this section by a Councillor does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

12.2 This section does not apply to single Councillor proprietary Company

12.3 This section does not apply to a proprietary Company that has only 1 Councillor.

Section 192

Councillor may give other Councillors standing notice about an interest.

Note:

The word “Director” has been replaced by the word “Councillor” and has the same meaning.

13. Power to give notice

- 13.1** A Councillor of a Company who has an interest in a matter may give the other Councillors standing notice of the nature and extent of the interest in the matter in accordance with **Item 10.3.b.** 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 Councillors before the interest becomes a material personal interest.

- 13.2** The notice under **Item 13.1.** must:

- a. Give details of the nature and extent of the interest; and
- b. Be given:
 - i. at a Councillors’ meeting (either orally or in writing); or
 - ii. to the other Councillors individually in writing.

- 13.3** The standing notice is given under **Item 13.2.b.ii.** when it has been given to every Councillor.

- 13.4** Standing notice must be tabled at meeting if given to Councillors individually

- 13.5** If the standing notice is given to the other Councillors individually in writing, it must be tabled at the next Councillors’ meeting after it is given.

14. Nature and extent of interest must be recorded in minutes

- 14.1** The Councillor 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.

15. Dates of effect and expiry of standing notice

- 15.1** 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 Councillor of the Company at the time when the notice was given is appointed as a Councillor of the Company.

- 15.2** A standing notice that ceases to have effect under **Item 15.1.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 **Item 15.1.** above by someone other than the Councillor to whose interests it relates (for example, by the Company Secretary).

16. Effect of material increase in nature or extent

- 16.1 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.

17. Effect of contravention by a Councillor

- 17.1 A contravention of this Section by a Councillor does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

Section 195

18. Restrictions on voting--directors of public companies only

18.1 Restrictions on voting and being present

- a. 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:
- i. be present while the matter is being considered at the meeting; or
 - ii. vote on the matter.
- b. **Item 18.1.** does not apply if:
- i. **Item 18.2** or **18.3** allows the Councillor to be present; or
 - ii. the interest does not need to be disclosed under section 191.

Note:

A defendant bears an evidential burden in relation to the matter in **Item 18.1.a.** see subsection 13.3(3) of the *Criminal Code* .

- c. An offence based on **Item 18.1** is an offence of strict liability.

Note:

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

18.2 Participation with approval of other Councillors

- a. The Councillor may be present and vote if Councillors who do not have a material personal interest in the matter have passed a resolution that:
- i. identifies the Councillor, the nature and extent of the Councillor's interest in the matter and its relation to the affairs of the company; and
 - ii. states that those Councillors are satisfied that the interest should not disqualify the Councillor from voting or being present.

18.3 Participation with ASIC approval

- a. The Councillor may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.
- b. The Councillor may consider or vote on resolution to deal with matter at general meeting.
- c. If there are not enough Councillors to form a quorum for a Council meeting because of Item 18.1, 1 or more of the Councillors (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.

18.4 Effect of contravention by a Councillor

- a.** A contravention by a Councillor of:
 - i.** This section; or
 - ii.** A condition attached to a declaration or order made by ASIC under section 196; does not affect the validity of any resolution.