

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Agency	Australian Securities and Investments Commission
Question No.	036-01
Reference	Written
Committee member	Senator O'Neill

Questions

1. Has ASIC followed up with Aperion or their client?

Staff from ASIC's Nuix investigatory team recently contacted and met with Aperion Law (now known as FCW Lawyers following a merger on 5 July 2021).

2. When did ASIC become aware that Oliver Harvey, a senior supervisory officer at ASIC was going to Nuix?

Mr Harvey notified ASIC of his intention to accept an offer of employment from NUIX on 19 February 2021. Mr Harvey's last day of employment with ASIC was 15 April 2021.

3. How was this conflict handled?

Mr Harvey was not involved in ASIC's review of the NUIX prospectus or its consideration of the complaint letters from Aperion Law.

Mr Harvey was one of two Chief Supervisory Officers at ASIC who shared the leadership of ASIC's Supervision Group. The Supervision group comprises the Governance and Close and Continuous Monitoring (CCM) teams. The Governance team focuses on preventing harm to investors, consumers and other stakeholders resulting from poor Governance practices.

As a Chief Supervisory Officer Mr Harvey was primarily responsible for engaging with CBA, NAB and ANZ. This involved conducting thematic onsite reviews and continuous monitoring and engagement of these institutions.

The Supervision group is not responsible for the carriage of prospectus reviews or associated complaints or actions.

An IT audit has confirmed that between November 2020 to April 2021 Mr Harvey did not access documents relating to NUIX stored in ASIC's document management system. Following developments in ASIC's investigations relating to NUIX, in early April 2021 ASIC put in place additional IT controls to actively restrict access to NUIX-related matters.

4. Which Commissioners read the Nuix Prospectus during the exposure period knowing that it would be the largest IPO of 2020?

None of ASIC's current Commissioners reviewed the prospectus during the exposure period.

Prospectus reviews are undertaken by ASIC staff in the Corporations team. ASIC's powers in relation to prospectuses have been delegated to staff in that team. The Corporations team ultimately reports to the Executive Director of Markets, Greg Yanco.

5. Was ASIC contacted by Macquarie or any of its advisors, Morgan Stanley and Clayton Utz, to assist with the Nuix IPO?

Prior to the lodgement of the Nuix prospectus, the Corporations Team was contacted by Clayton Utz (as legal advisors to Nuix) to discuss a potential pre-IPO restructuring relief application. An application was lodged with ASIC but was ultimately withdrawn by the applicant.

Morgan Stanley and Macquarie Group did not contact the Corporations team in relation to the IPO.

6. What action, if any, is ASIC undertaking to conduct a full post IPO review of the Prospectus, the handling of this matter by ASIC itself and is ASIC consulting with other member agencies, including the Serious Financial Crime Taskforce?

ASIC is conducting an investigation into whether the IPO Prospectus lodged with ASIC and given to the ASX by NUIX contained false or misleading information in contravention of ss1308 and / or 1309 of the Corporations Act 2001.

ASIC is not consulting with the Serious Financial Crime Taskforce (SFCT) in relation to this matter as this matter does not currently fall within its priorities. The SFCT is a joint-agency taskforce of relevant law enforcement and regulatory agencies and addresses the most serious and complex forms of financial crime. ASIC is a member of the SFTC. The current focus of the SFCT is: cybercrime (technology enabled crime) affecting the tax and superannuation systems; offshore tax evasion; illegal phoenix activity and serious financial crime affecting the ATO-administered measures of the Commonwealth Coronavirus Economic Response Package.

A process review was conducted by ASIC's Chief Legal Office and verbal assurance was provided to the Chair and Executive Director, Markets that the prospectus review during the exposure period, and the assessment of and reply to the complaints from Aperion Law were handled appropriately.

7. What is ASIC's protocol for dealing with a potential perceived conflict of interest in its investigations—for example if ASIC was investigating a deal involving Mr Phillips, Mr Standen and Mr Castagna in respects to Nuix IPO?

At the commencement of each investigation, team members involved in that investigation are expected under ASIC's procedures to disclose any potential conflicts of interest. Staff also have an ongoing responsibility to actively consider, on an ongoing basis, whether a conflict of interest may arise in the course of their work. Any potential conflicts are dealt with in accordance with ASIC's policies relating to conflicts of interest as further set out below in the answer to question 10.

8. Is the passage of time sufficient to enable ASIC to be confident that a perceived conflict of interest does not exist in the Nuix IPO? If so, what passage of time is sufficient to remove a perceived conflict of interest in respect to the Nuix IPO?

As referred to in ASIC Chair Longo's opening statement to the Committee on 18 June 2021, ASIC does not consider that Commissioner Armour has a conflict of interest in respect of the Nuix IPO. The view is based on the following facts:

- Commissioner Armour does not hold any Macquarie shares or otherwise have a financial interest in Macquarie (other than a bank account);
- Commissioner Armour ceased employment with Macquarie in May 2013;
- Commissioner Armour does not have a personal interest in the NUIX IPO.

The removal of a perceived conflict of interest due to the passage of time will depend on the circumstances of each case. In the case of the Nuix IPO, ASIC considers that a period of more than 8 years is sufficient to remove any perception of conflict. ASIC notes by way of comparison that the Australian Government's Statement of Ministerial Standards provides that Ministers are required to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office (see paragraph 2.25).

9. Does ASIC have a decision-making process that one can follow to avoid perceived conflicts of interest? If so, can ASIC please provide that?

ASIC has two key policies relating to conflicts of interest:

- The *Policy on disclosure obligations of ASIC Commissioners (Commission Policy)*. This policy applies to Commissioners and is a bespoke policy given that it reflects the special requirements applying to Commissioners as statutory officeholders;
- The *Conflicts of interest policy (Staff Policy)*. This policy applies to staff members.

Furthermore, in addition to the requirements of these policies, staff are expected to comply with other processes and procedures for the management conflicts of interest for discrete operational and regulatory activities (for example, processes related to procurement activities and decisions made at ASIC committees).

We attach copies of:

- The current Commission Policy, dated March 2021; and
- The current Staff Policy, dated March 2021.

10. Who in ASIC is responsible for noting any possible conflict of interest? Who determines and how is it determined that a perceived conflict of interest does or does not exist?

As referred to in the response to question 9, how ASIC manages conflicts of interest depends on the nature of the activity within ASIC which gives rise to a potential conflict. For the Committee's benefit, ASIC has set out examples below of how it manages conflicts in certain situations in accordance with the Commission Policy and Staff Policy.

Commission Policy

As set out in the Commission Policy, the disclosure of Commissioners' interests and management of conflicts is underpinned by the statutory obligations in the *Australian Securities and Investments Commission Act 2001 (ASIC Act)* and *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* to which the ASIC Chair and ASIC Commissioners are subject. These require:

- the Chair and Commissioners to disclose to the Minister their interests in Australian businesses and products regulated by ASIC, as well as in respect of business relationships the member may resume or commence following the end of his or her term (section 123 of the ASIC Act). In practice, the Chair and Commissioners send their disclosure to the Treasurer's office on a 6 monthly basis.
- the Chair to disclose to the Minister any material personal interest relating to the affairs of ASIC (section 13 of the PGPA Rule);
- the Chair and Commissioners to disclose to each other any material personal interest relating to the affairs of ASIC (section 29 of the PGPA Act). The disclosure must be made at a meeting of the Commission, and the relevant Commissioner must ensure that the disclosure is recorded in the minutes of the meeting;
- the Commissioners to disclose any material personal interest in accordance with any instruction issued by the Chair (section 16 of the PGPA Rule). The ASIC Chair has issued such an instruction, which also applies to the Chair (who is to notify a Deputy Chair of a material personal interest);
- the Chair and Commissioners not to participate in decision-making at a Commission meeting considering a matter in which the Commissioner has a material personal interest (section 16B of the PGPA Rule).

By way of example of how ASIC manages conflicts in the context of its decision-making committees, prior to, and again at the commencement of, each Commission meeting or Commission committee meeting, Commissioners are asked to disclose material personal interests or any other interest that relate to the affairs of ASIC. The chair of the Commission committee determines how to manage conflicts arising from the disclosed interest. This could include the Commissioner being recused from attending or voting on a particular agenda item.

The chair of the Commission committee (or another Commissioner if the Chair of the Commission committee has the interest) will consider whether the interest gives rise to a material conflict and the appropriate response. In doing so, they will consider all the relevant factors and circumstances, including (but not limited to):

- the objectives and functions of ASIC;
- the matter that is to be discussed and determined by the committee;
- the nature of the conflict (i.e. is it real, potential, or perceived);
- the severity of the conflict; and
- the potential effect of the conflict.

Staff Policy

All ASIC staff are bound by the ASIC Code of Conduct. The ASIC Code of Conduct includes a requirement to disclose, and avoid, any conflict of interest (real or apparent) in connection with ASIC employment. ASIC staff have similar statutory duties under the ASIC Act and PGPA Act.

ASIC's Staff Policy requires all ASIC staff to disclose and take reasonable steps to avoid situations where a financial or other interest, or a duty the staff member owes to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of their functions or duties at ASIC.

ASIC staff have an ongoing obligation to report any real or apparent conflict of interest in writing to their Manager and a Senior Executive as soon as this becomes apparent. In disclosing any potential conflicts, staff must consider their personal friendships, familial ties, and business, professional and social associations.

When commencing at ASIC and annually thereafter, staff members must also declare to their Manager and Senior Executive the details of various financial and other interests. This includes:

- a. the staff member's direct and indirect holdings in financial products;
- b. any trading in financial products by the staff member or their "connected persons". Connected persons include spouses, de facto partners, dependent children, and anyone for whom the staff member makes financial decisions. It also includes companies, trusts and other entities controlled by the staff member or any of those other persons;
- c. paid work or other offices outside of ASIC; and
- d. unpaid work that may give rise to a real or apparent conflict of interests or duties.

Senior Executives, assisted by the staff member's Manager, are responsible for assessing and managing any conflict or perception of conflict arising from an interest disclosed. Managers may remove the staff member from the matter and restrict their access to relevant information, transfer the staff member to a different role, or request the staff member to divest themselves of the interest. In this way, ASIC's policy allows for the exercise of judgement to ensure that each particular conflict can be managed in the most appropriate manner.

11. How many incidents of perceived conflict of interest matters have been noted in the last 7 years? Please document those for the committee and how were they managed?

There is a wide variety of situations where a conflict of interest may arise during the course of a Commissioner or staff member carrying out ASIC's work. With regard to this, responding to this question would cause an unreasonable diversion of ASIC's resources.

12. Matters of regulatory capture have been raised with regard to many regulators in the financial services industry. In some ways these concerns are closely linked to conflict of interest or perceived conflict of interest. How does your conflict of interest protocol intersect with your policy around regulatory capture? Who oversees that and what action or sanctions are in that person/committee's toolbox?

ASIC refers to its response to question 10.

Furthermore, as referred to in ASIC's response to question 9 above, staff may also be expected to comply with additional processes and procedures to manage conflicts of interest for particular activities within ASIC.

For example, staff in ASIC's Close and Continuous Monitoring team who conduct onsite reviews in the offices of certain financial institutions are required to comply with additional protocols in light of the nature of their activities. This includes a requirement to disclose applications for positions in financial institution groups in the last 12 months, including who they met with and the outcome. Staff will not be assigned to a financial institution where they have previously worked as a representative, or for which they have previously provided a service for payment (such as legal or consulting services), within the last three years. Furthermore, staff are directed not to discuss employment or other paid opportunities with target entities and are required to notify ASIC of any approaches made by a target entity. Supervisors are assigned to an institution for no more than 36 months at a time and are to spend no more than 20 consecutive business days onsite at any one institution.

13. On what best practice protocol or international standards is ASIC's conflict of interest protocol based? When was the protocol last reviewed and what changes to those protocols, if any, have been implemented at any time in the last 5 years?

In 2020, ASIC conducted a benchmarking process that considered a group of international and domestic comparator regulators to inform its approach to conflicts of interest. As referred to on pages 2 to 3 of both the Commission Policy and Staff Policy, the policies have been updated on various occasions including in light of the benchmarking process.

14. Does ASIC receive a fee for companies wishing to submit their prospectus for IPO listing? If so what are those fees? When are they levied and any other related matters to fees and IPO's.

Fees are set by legislation.

Item 22(a) of Schedule 1 of the *Corporations (Fees) Regulations 2001* sets a fee of \$3,206 for lodging a prospectus. It is levied at lodgement and payment is required irrespective of the outcome of the fundraising. Item 23(a) of Schedule 1 *Corporations (Fees) Regulations 2001*, sets a fee of \$802 for a replacement or supplementary prospectus.

15. How often in the last 20 years has ASIC stopped the advance of an IPO and on what grounds?

In the twenty-year period ended 30 June 2021, **1188** stop orders have been issued. This consists of 949 interim orders and 239 final stop orders. There can be up to two interim

orders on the same document. At a stop order hearing, held within 21 days after the first interim order under s739(3) of the Corporations Act, a delegate can issue a final stop order, issue another interim order giving the issuer more time to remedy defects, or revoke the interim stop order if concerns have been addressed. An interim stop order can also be revoked before the hearing. The stop order numbers also include unlisted entities who were not seeking to list on an exchange.

The reasons for stopping prospectuses vary widely, but are generally related to:

- misleading disclosures, such as including forecasts without a reasonable basis;
- material omissions, such as failing to disclose key aspects of a company's business model; and
- mining related disclosures that do not conform to applicable codes (such as the Australasian Joint Ore Reserves Committee (JORC) code).

16. Is ASIC reviewing its processes around IPO's following the NUIX scandal?

No.

We have described our review processes in detail in our response to the question from Senator O'Neill taken on notice at the public hearing on 18 June 2021 ([Hansard page reference 36](#)) and in our supplementary letter dated 9 July 2021.

Our processes for reviewing prospectuses have been designed having regard to the regulatory regime which puts the onus on the company to ensure the prospectus complies with the law. As set out in RG 254, our processes are designed to identify potentially misleading or deceptive disclosures or material omissions that could give rise to an ASIC stop order. ASIC's stop order powers are limited to where the prospectus disclosure or advertising is clearly defective.

According to emails released under FOI in relation to the letter sent from Aperion Law, the senior manager when speaking with their junior colleague stated "As predicted, a complaint in relation to Nuix.... "Let's digest quickly and see if there is any substance" when referring to the complaint about Nuix.

17. Why did the senior manager say, "As predicted"?

Please see our response to the question from Senator O'Neill taken on notice at the public hearing on 18 June 2021 ([Hansard page reference 39](#)).

18. Why did the senior manager say, "Let's digest this quickly"?

The First Letter from Aperion Law was received by ASIC on Monday 23 November 2020 at 2.10pm. This was day five of the seven-day exposure period for the Nuix prospectus.

As set out in [Regulatory Guide 254: Offering securities under a disclosure document](#), the exposure period is intended to provide us and market participants with the opportunity to scrutinise disclosure documents before they are used for fundraising.

We aim to review prospectuses during the exposure period. Where valid *prima facie* deficiencies are detected or brought to our attention within the first seven days, we will usually attempt to resolve these with the issuer during that period. If it becomes apparent that the issues cannot be resolved, the exposure period will be extended to 14 days.

The quote from the email extracted above, reflects the instruction from the senior staff member to the junior staff member, to prioritise review of the complaint. The instruction reflects ASIC's objectives, as described in Section 2 of the *ASIC Act 2001*, to not only promote the confident participation of investors and consumers in the financial system, but to do so in an efficient manner that facilitates commercial certainty.



ASIC
Australian Securities &
Investments Commission

Conflicts of interest policy

March 2021

About this document

This document is ASIC's policy for identifying, avoiding, recording and managing conflicts of interest between Staff Members' personal interests and the proper performance of their duties at ASIC.

Document Control

Policy ownership

Commission Counsel, Chief Legal Office is responsible for the development and implementation of this policy.

Policy application

This policy applies to you if you are a Staff Member of ASIC or are otherwise required to comply with ASIC's policies generally or this policy specifically (e.g. secondees from private organisations, and some consultants and contractors).

Policy approval

This policy has been reviewed and approved by the following parties on the following dates:

Version	Approver	Approval date
1	Commission	31 Aug 11
1.1	Commission	June 2013
1.2	Commission	27 March 2014
1.3	Operational Risk Committee	4 October 2017
1.3	Commission	24 October 2017
1.4	Commission Counsel	3 September 2020
1.5	Commission	16 December 2020

Version history

Version	Details of changes/comments	Date
1	Published	September 2011
1.1	Amended to prohibit day Trading by ASIC staff	June 2013
1.2	Amended to extend pre-Trade approval to all staff	27 March 2014
1.3	Separated ASIC's Policy on Trading into new <i>Trading policy</i> . Added references to myRAD system. Changed frequency of declarations of Interests from biannual to annual. Added guidance for secondees to and from ASIC. Removed requirement to maintain personal record of holdings and Interests. Updated definition of Gift and Benefit to state gift cards are the equivalent to cash. Increased the threshold of Senior Executive Leader approval of gifts to the value of \$250.	8 March 2018

Version	Details of changes/comments	Date
1.4	<p>Removed references to APS Code of Conduct and replaced with ASIC Code of Conduct and amended to reflect basis of employment under the ASIC Act, following ASIC's exit from the <i>Public Service Act 1999</i>.</p> <p>Replaced references to s70 of the <i>Crimes Act 1914</i> with Div 122 of the <i>Criminal Code Act 1995</i>.</p>	3 September 2020
1.5	<p>Updated title of policy from <i>Policy on avoiding conflicts of interest policy and improper use of information</i> to <i>Conflicts of interest policy</i></p> <p>Merged the <i>Guide to avoiding conflicts of interest and improper use of information</i> with this policy to create a single document.</p> <p>Created a section on roles and responsibilities, to update and highlight what is required of business teams and operational teams to embed processes for managing conflicts of interest.</p> <p>Updated key terms to reflect reporting lines under ASIC's governance structure.</p> <p>Updated guidance to distinguish between benefits and hospitality.</p> <p>Introduced a threshold of \$50 for disclosing and seeking approval for hospitality.</p> <p>Amended policy to require the surrender of all gifts to ASIC (where practical).</p> <p>Updated policy to require Senior Executives to disclose discussions with prospective employers.</p> <p>Removed the ability of Senior Executives to approve gifts and benefits for themselves up to the value of \$250.</p> <p>Added requirement to notify ASIC if a Staff Member becomes aware of a conflict of interest affecting another ASIC Staff Member or an ASIC Commissioner.</p> <p>Policy notes ASIC publishes a register of gifts, benefits and hospitality received by ASIC Staff Members and Commissioners on a quarterly basis (where the value is \$100.00 and above).</p>	16 December 2020
1.5.1	<p>Updated paragraph 106 to reflect that Senior Executives who report directly to the Chief Operating Officer must seek approval from the Chief Operating Officer to accept any benefits or hospitality.</p>	29 March 2021

Distribution

Version	Distribution list	Date
1.1	All of ASIC via myASIC	8 March 2018
1.4	All of ASIC via myASIC	4 September 2020
1.5	All of ASIC via myASIC	19 March 2021
1.5	All of ASIC via myASIC (with corrected distribution date in footer)	23 March 2021
1.5.1	All of ASIC via myASIC	29 March 2021

Location

This policy is available on myASIC.

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A Policy objective

Purpose

- 1 Integrity is core to ASIC's work as Australia's corporate, markets and financial services regulator. Our reputation for impartiality and independence is vital to our effectiveness. Yet, in the course of our day-to-day work, we may be faced with various situations in which a conflict of Interest—real, potential or perceived—can arise.
- 2 The purpose of this policy is to protect both our Staff Members and ASIC, and, ultimately, the public interest. It provides guidance about recognising potential conflicts of Interest you may have, or be perceived to have, and understanding your responsibilities in this regard, including the steps that must be taken in response to a conflict of Interests arising.

Why this policy is important

Importance to ASIC

- 3 To engender and preserve public confidence in its work, ASIC must maintain the highest standards of probity and integrity. ASIC will be criticised, and will lose credibility, unless the conduct of its Staff Members is patently and demonstrably proper and correct.
- 4 For the purposes of its statutory functions, ASIC is vested with extensive powers and discretions. The objectivity and independence of ASIC Staff Members in their decision-making is fundamental to the integrity of its work and its reputation. ASIC also receives confidential and potentially valuable Information in the course of its work, and there is an expectation that this Information will only be used for its proper purpose. ASIC also has statutory and common law obligations to maintain the confidentiality of Information.
- 5 ASIC can also suffer financial and reputational harm, where there is a perception of a conflict of Interest. External persons may seek to refer to perceived conflicts and their alleged influence in a number of contexts, including in litigation, Parliamentary committees, media articles and in complaints to the Commonwealth Ombudsman. ASIC may suffer harm from these allegations, even when there is no substance to an alleged conflict.

Importance to you

- 6 We all have a personal responsibility to avoid and disclose real, potential and perceived conflicts of Interest arising in the course of our work. This

includes a number of legal obligations, and in particular under s29 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to disclose your material personal interests relating to the affairs of ASIC. Other legal obligations may arise under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (including under s125 in relation to assisting, or acting as, an ASIC delegate), *Corporations Act 2001* (Corporations Act) and the common law. The wrongful disclosure of Information can also be a criminal offence under Div 122 of the *Criminal Code Act 1995*.

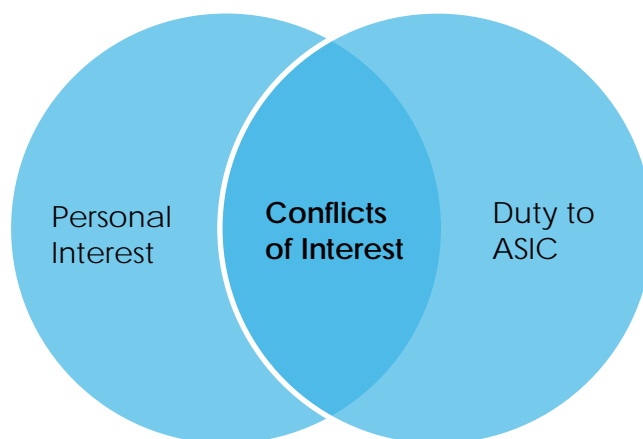
Who does this policy apply to?

- 7 This policy applies to all Staff Members, and those otherwise required to comply with ASIC’s policies generally or this policy specifically (e.g. secondees from private organisations, and some consultants and contractors) (collectively, you, your).

What is a conflict of interest?

- 8 A conflict of Interest occurs when your Interests (direct or indirect), or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions and duties at ASIC. Your Interests could be financial, or a personal, business or social relationship: see Figure 1.

Figure 1: When conflicts of Interest occur



Note: See paragraph 8 for an accessible version of the information contained in this figure.

- 9 A conflict of Interest may be real (actual), potential or perceived.
- 10 When determining whether a specific situation gives rise to a real, potential or perceived conflict of Interest, always consider the matter objectively,

from the perspective of a hypothetical impartial observer—the ‘impartial observer test’. A conflict of Interest exists when an impartial observer would think your Personal Interests would, or would be likely to, improperly influence you in the performance of your duties at ASIC.

- 11 Information on when a conflict of Interest may arise at ASIC is set out at Part C.

Policy in brief

- 12 In summary, this policy is designed to ensure:
- (a) Conflicts of Interest are identified;
 - (b) Staff Members take reasonable steps to avoid conflicts of Interest;
 - (c) Staff Members immediately Notify ASIC of a conflict of Interest; and
 - (d) Identified conflicts of Interest are appropriately recorded and managed.

Non-compliance with this policy

- 13 This policy mirrors and builds on your obligations under ASIC’s [Code of Conduct](#), including your obligation to act with integrity and, honesty and impartially, when dealing with the public and ASIC’s stakeholders.

- 14 A breach of ASIC’s [Code of Conduct](#) is a serious matter and may result in one or more of the following sanctions:

- (a) reprimand;
- (b) deductions from salary, by way of fine;
- (c) reduction in salary;
- (d) reassignment of duties;
- (e) reduction in classification; and
- (f) termination of employment or engagement.

- 15 This policy does not limit your duties or obligations to comply with Australian law or limit your liabilities for contravening any Australian law.

Record keeping: myRAD

- 16 Any disclosures made under this policy should be done using [myRAD](#). If you cannot access myRAD, you should provide written notification via email to your Manager and Senior Executive with a copy to Security Services. You are taken to have signed the notification on the date you email your notification to your Manager and Senior Executive. You should personally retain a copy of your notification.

Privacy and confidentiality

- 17 ASIC will treat your disclosures as having been given in confidence. We collect, use and disclose your personal information in accordance with the *Privacy Act 1988*. Please refer to the [ASIC Privacy Policy](#) for further information about how we handle your personal information, your rights to seek access to and correct personal information, and to complain about breaches of your privacy.

B Roles and responsibilities

Staff members

- 18 As an ASIC Staff Member, you must read, understand and comply with the requirements of this policy. You should seek guidance from your Manager or Commission Counsel, Chief Legal Office (CLO) if you require further clarification on the application of this policy.
- 19 Given the wide variety of ways that conflicts can arise, and the always evolving nature of our work, it is not possible for this policy to address every situation in which a conflict of Interest may arise. Consequently, it is important that Staff Members are constantly mindful of the potential for conflicts of Interest to arise.
- 20 In summary, this policy requires you to:
- (a) take reasonable steps to avoid conflicts of Interest;
 - (b) immediately Notify ASIC of a conflict of Interest;
 - (c) not improperly use Information;
 - (d) decline gifts, and only accept benefits and hospitality in accordance with this Policy;
 - (e) obtain approval to work outside of ASIC,
 - (f) in addition to the requirements of this policy, comply with any specific processes for managing conflicts of Interest for discrete operational and regulatory activities;
 - (g) Notify ASIC if you become aware of a conflict of Interest affecting another ASIC Staff Member or an ASIC Commissioner;
 - (h) declare your Interests on an initial and annual basis; and
 - (i) if your role or reporting line changes to a new Manager, you should Notify your new Manager of your previous disclosures, including measures implemented to control any real, potential or perceived conflicts of Interest.
- 21 You must also read this document in conjunction with ASIC's [Trading policy](#) (PDF 166 KB) and [Guide to ASIC's trading policy](#) (PDF 280 KB).

Managers

- 22 If you are a Manager, in addition to your responsibilities as a Staff Member, you must:

- (a) in respect of a notification:
 - (i) review the notification and recommend to your Senior Executive appropriate arrangements to manage any conflicts of Interest;
 - (ii) ensure the effective implementation of any arrangements to manage a conflict of Interest; and
 - (iii) monitor the controls and measures implemented to manage any conflicts of Interest;
- (b) in respect of annual declarations of Interests:
 - (i) review your Staff Member's declaration and, prior to approving their declaration, confirm that they have met the requirements of this policy; and
 - (ii) where necessary, refer the declaration for approval by your Senior Executive, together with a proposed plan to further investigate and address the matters arising from your Staff Member's declaration; and
- (c) inform your Senior Executive if:
 - (i) it becomes apparent that your Staff Member has not met or is not meeting their continuous disclosure obligations or is not following any process to address a conflict of Interest;
 - (ii) your Staff Member does not make their annual declaration of Interests; or
 - (iii) your Staff Member does not complete the appropriate conflicts of Interest training at ASIC.

Senior executives

- 23 If you are a Senior Executive, in addition to your responsibilities as a Staff Member, you must:
- (a) following a referral by a Manager or notification by your Staff Member:
 - (i) assess whether the circumstances give rise to a real, potential or perceived conflict of Interest;
 - (ii) discuss with the Staff Member the relevant circumstances of any real, potential or perceived conflicts if their Manager has not already done so;
 - (iii) document in myRAD any decisions (including reasons) in relation to the management of any identified conflicts of Interest; and
 - (iv) report any conflict of interest notifications involving a Staff Member of another team to their respective Manager and Senior Executive;

- (v) report any conflict of interest notifications involving a Commissioner to the Chair or, where the conflict involves the Chair, to the Deputy Chair or in the absence of a Deputy Chair, the longest serving Commissioner.
- (b) in respect of annual declarations of Interests, assess the appropriateness of your Manager's plan to further investigate any matters arising from a declaration referred to you and, in any event, address the matters arising from the declaration;
- (c) grant or decline approval for your Staff Members:
 - (i) to personally retain a gift, or to accept a benefit or hospitality in accordance with Part F of this policy; and
 - (ii) to perform work outside of ASIC in accordance with Part C of this policy.

Embedding this policy within business units

- 24 The Senior Executive of a business unit is responsible for embedding this policy into their particular business unit, taking into account the particular activities carried out in that business unit and how these may give rise to conflicts of Interest. For example, the Supervision Group has established conflicts of Interest management procedures and protocols for the Close and Continuous Monitoring activities.

Commission Counsel, Chief Legal Office

- 25 Commission Counsel, CLO is the owner of this policy and is responsible for updating this policy, staff training and providing guidance on implementing this policy.

Security Services, Operations

- 26 The Security Services, Operations team is responsible for the administration of myRAD. Disclosures arising from initial and annual declarations under this policy are used by the Security Services team to determine initial and ongoing suitability for security clearance of a prospective or existing Staff Member.
- 27 The Security Services team is responsible for:
- (a) monitoring and reporting to the Executive Risk Committee any outstanding annual declarations not actioned within the reporting cycle by a Staff Member, their Manager or Senior Executive; and

- (b) reporting to the Executive Risk Committee and the Chair any non-completion and unmitigated concerns relating to Senior Executive annual declarations.

Chief Operating Officer

- 28 The Chief Operating Officer (COO) is responsible for embedding this policy into operational activities which give rise to a higher risk of conflicts of interest arising (e.g. procurement, recruitment, secondments and redundancies) and for implementing security processes that support the identification of conflicts of Interest (e.g. vetting processes and annual declarations of Interests).

Internal Audit

- 29 Internal Audit is responsible for independently reviewing the design, implementation and operational effectiveness of this policy.

C Policy in detail

When conflicts of interest may arise at ASIC

- 30 As noted above, a conflict of Interest arises when your direct or Indirect Interests, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions and duties at ASIC. Your Interests could be financial, or a personal, business or social relationship. Further information on the types of Interests that may conflict with your work at ASIC is set out at Part E.
- 31 There is a wide variety of situations in your work at ASIC where a conflict of Interest may arise.
- 32 Conflicts of Interest may arise in the course of carrying out ASIC's regulatory work, where Staff Members are required to undertake activities and make decisions that could, or could be seen to, affect the rights, liabilities and interests of third Parties. This includes, for example:
- (a) the exercise of ASIC's compulsory powers;
 - (b) the institution and conduct of proceedings;
 - (c) considering applications for relief under the Corporations Act or other legislation that ASIC administers;
 - (d) conducting close and continuous monitoring of a regulated entity;
 - (e) issuing a licence;
 - (f) dealing with a former ASIC Staff Member who works for an entity regulated by ASIC; and
 - (g) disclosing information under s127 of the ASIC Act.
- 33 In addition, conflicts of Interest may arise in the context of operational activities at ASIC. Some examples include:
- (a) procurement;
 - (b) recruitment;
 - (c) secondments to and from ASIC;
 - (d) awarding grants;
 - (e) entering into partnerships with external parties (for example developing regulatory technology);
 - (f) making appointments to a decision-making or advisory panel;
 - (g) commencing a new project outside of your normal duties;
 - (h) receiving gifts, benefits and hospitality from third Parties;

- (i) dealing with former ASIC staff during your work-related duties at ASIC; and
- (j) participating in a committee established under ASIC's Governance Framework.

Note: The framework can be accessed through the [ASIC Internal Governance SharePoint site](#).

- 34 Given the variety of ways in which a conflict of Interest can arise, it is not possible for this policy to provide an exhaustive list. It is your responsibility to actively consider, on an ongoing basis, whether a conflict of Interest may arise in the course of your work. Senior Executives also have particular responsibilities to ensure that this policy is embedded in their business units and operational functions, so that appropriate processes and procedures are in place to address the risks of particular conflicts arising from the work of their teams. Further information on this is set out at Part B.
- 35 You can consult Commission Counsel, CLO or your Manager if you are unclear whether a particular circumstance gives rise to a real, potential or perceived conflict of Interest.

Example 1

You are an analyst responsible for assessing compliance by a holder of a relevant licence under the Corporations Act and your family trust owns Interests in a managed investment scheme operated by the licence holder.

In this case your indirect Financial Interest (i.e. your family trust's holding in the managed investment scheme) is likely to conflict (and be seen to conflict) with your duties at ASIC to assess the licence holder's compliance. For example, you may be, and may be seen to be, tempted to misuse Information gained about the licensee in the course of your duties for the gain of yourself or your family by using the Information for the purposes of your family trust's investment decisions.

Example 2

You are required to advise ASIC on eminent academics and business professionals who would be suitable for appointment to an ASIC consultation panel. One of the potential appointees is a close friend of your spouse.

In this case you may feel that you can make your recommendation to ASIC entirely independently and without having regard to the relationship of your spouse with the potential appointee. Nevertheless, a perception of a conflict of Interest is likely to arise in light of your spouse's relationship with the appointee.

Take reasonable steps to avoid conflicts of interest

- 36 While at ASIC you must take all reasonable steps to avoid situations where your Financial Interests or Other Interests, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.

Immediately notify ASIC of a conflict of interest

- 37 You must Notify ASIC as soon as you become aware that your Financial Interest or Other Interest, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC. You should make your notification to your Manager and Senior Executive using [myRAD](#).
- 38 It is not your Senior Executive's or Manager's responsibility to discover any conflicts of Interest relating to you.
- 39 You must Notify ASIC even if you think that your Interest or duty will not actually impair the proper performance of your functions or duties at ASIC.
- 40 You must disclose all Information you have, or can reasonably be expected to obtain, that may be relevant to whether your Interest or duty conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.

Example 3

You are asked to give advice about a matter and, after examining the documentation, you realise that an entity you previously worked for gave advice on the matter. You should immediately Notify your Manager and submit a myRAD disclosure of Interest notification. Your Manager and Senior Executive may decide that the work of your old firm was so removed that it does not raise any real or perceived conflict of Interest, or alternatively they may decide that further action is required to control the conflict.

Example 4

During the course of a surveillance, you identify that the compliance manager of the entity under surveillance was a person who interviewed you for a position (for which you were unsuccessful) when that compliance manager was employed at a previous entity. Notwithstanding that your connection to the compliance manager may seem remote, a perceived conflict of Interest may arise in that you may be thought to hold a negative attitude towards this person. Accordingly, you should discuss the issue with your Manager and complete a disclosure of Interests in myRAD to determine if any action is required.

'Speak up' if you become aware of another's conflict of interest

- 41 There may be circumstances in which you become aware of a conflict of Interest of another ASIC Staff Member or Commissioner. In such circumstances, you are encouraged to speak up and Notify your Manager and Senior Executive as soon as possible.
- 42 If you are unsure whether the situation relating to another ASIC Staff Member or Commissioner gives rise to a conflict of Interest, or you do not wish to Notify your Manager or Senior Executive, you may consult with Commission Counsel, CLO. You may wish to consider whether the *Public Interest Disclosure Act 2013* may apply to your report: see the ASIC [Public interest disclosures policy and procedures and procedures](#). You may make your report anonymously.

Example 5

You are working on an investigation which you know involves the previous employer of a Commissioner. The Commissioner is currently unaware of the investigation, but they may be present at a meeting where there is no formal process to identify and declare conflicts of interest. As the Commissioner's former employment may give rise to a perceived conflict of Interest between ASIC's investigation and the Commissioner's relationship with their former employer, you should bring the potential conflict to your Senior Executive's attention through myRAD. Your Senior Executive can take steps to manage the conflict by either raising the issue with the Commissioner with the potential conflict or another Commissioner. If you are unsure who you should speak to, seek guidance from Commission Counsel.

Work in which your manager is not involved

- 43 In some cases, a conflict may arise out of a task or project you are involved in that your Manager is not working on. In these circumstances, you must inform the project manager responsible for overseeing the work, in addition to declaring the Interest in myRAD. Your declaration in myRAD ensures appropriate record keeping of the disclosure and the steps taken by you and the project manager to resolve the conflict.

Example 6

You are a member of the procurement evaluation project for a new type of software. You previously worked at a company that tenders for the contract. You must immediately inform the procurement evaluation project manager. You must also Notify your Manager through myRAD of the conflict of Interest and how you have informed the project manager, as well as the steps taken by you and the project manager to control or avoid the conflict, even though your Manager is not involved in the procurement.

Additional disclosure requirements as part of operational activities and governance arrangements

- 44 In some cases, you may be required to declare conflicts of Interest as part of other internal processes or procedures—for example processes related to awarding grants, being on recruitment panels or tender panels, other procurement activities, or being a member of an ASIC decision-making committee. You should follow both the relevant internal process/procedure and your obligations in this policy to Notify your Manager in myRAD.

Example 7

Under ASIC's Governance Framework, you are a member of a committee that provides guidance to certain stakeholder teams. You notice that the agenda for the next meeting concerns a company that your previous employer, a law firm, represented in its engagement with ASIC, although you did not personally work on that matter at the firm. In accordance with that committee's processes, you must inform the Secretariat for the committee about your previous employment with the law firm so that the Chair of the Committee can assess any conflicts of interest for the purposes of the matters being considered by the committee. In addition, you should Notify your Manager through myRAD so that your Manager and Senior Executive can consider whether any other steps need to be taken to manage the conflict.

Not improperly use information

- 45 You must not improperly use or disclose Information obtained in the course of your work at ASIC to gain or benefit yourself or anyone else.
- 46 In addition, in light of ASIC's functions, you must:
- (a) scrupulously observe the prohibitions on insider trading and tipping contained in Div 3 of Pt 7.10 of the Corporations Act;
 - (b) use reasonable endeavours to avoid situations where it might reasonably appear that you have not observed those prohibitions; and
 - (c) get ASIC's written approval before you or your Connected Persons Trade in an Exchange Related Financial Product or pre-register for certain IPOs. Please refer to ASIC's [Trading policy](#) (PDF 166 KB) and [Guide to ASIC's trading policy](#) (PDF 280 KB) for further details.

Example 8

You are asked by your brother-in-law whether ASIC is investigating a particular financial planner, as he invests his funds with them. You are aware through your work that ASIC has a number of surveillances on foot and this firm is the target of one of these surveillances.

You have various obligations under this policy, under ASIC's [Code of Conduct](#) and under legislation not to disclose Information about the surveillance. Further, you should submit a declaration of Interests in myRAD recording your brother-in-law's business relationship with the financial planner under investigation so that your Manager and Senior Executive can assess the conflict and manage it appropriately.

Example 9

While conducting a SharePoint search during the course of your work, you inadvertently come across some investigation documents prepared by another team that are related to your first cousin. You don't have a close relationship with your cousin and haven't seen her in years.

You should immediately inform your Manager to determine if further steps are required and submit a myRAD disclosure of Interests.

Declare your interests

- 47 In making sure you take all reasonable steps to avoid situations where your Interests or non-ASIC duties conflict, or may reasonably be thought to conflict, with your duties as a Staff Member, ASIC must make certain inquiries about your personal affairs.
- 48 ASIC requires you to make declarations of your Interests initially (before commencing employment with ASIC), annually, and on an ongoing basis (continually). Your declarations enable your Manager and Senior Executive to assess whether any of your Financial Interests or Other Interests conflict, or may conflict, with your work at ASIC.

Initial declaration

- 49 When you join ASIC, you must declare in writing:
- (a) that you have read, and acknowledge and understand your obligations under this policy;
 - (b) that you have expressly considered whether your Financial Interest or Other Interest conflicts, or may conflict, with your work at ASIC;
 - (c) that you have informed your Connected Persons about the [Trading policy](#) (PDF 166 KB) and your obligations to seek approval on their behalf prior to Trading;
 - (d) your direct or Indirect Holdings including the names and issuers of any Division 3 Financial Product(s) you hold, directly or indirectly;
 - (e) your paid work outside of ASIC, outside directorships or similar offices held outside of ASIC, and any unpaid work that you consider may affect your work, with details including;

- (i) a summary of the name of your outside employer, directorship, or other office held;
 - (ii) a summary of your outside role and duties;
 - (iii) the date you started the position; and
 - (iv) details of any written approval you obtained from ASIC in accordance with Part D paragraphs 68–72 of this policy;
- (f) a full description of any short-term credit arrangements or Financial Interest or Other Interest that conflicts, or may conflict, with your work at ASIC in a way that is not declared above; and
- (g) any past employers and matters or projects you may have worked on that conflict, or may be reasonably perceived to conflict, with your role or duties at ASIC.

Annual declaration of holdings and other interests

50 You must annually declare (every July) using myRAD:

- (a) that you have read and understood ASIC's Conflicts of Interest Policy and [Trading policy](#) (PDF 166 KB);
- (b) your direct and Indirect Holdings;
- (c) any Trading by you or on your behalf in any Division 3 Financial Products during the relevant declaration period;
- (d) any Trading by your Connected Persons in any Division 3 Financial Products during the relevant declaration period;
- (e) any pre-registration for IPOs by you or your Connected Persons during the relevant declaration period;
- (f) any short-term credit arrangements (for example credit cards, margin loans, personal loans) that, given your role at ASIC, you consider may give rise to a real, potential or perceived conflict with the proper performance of your functions or duties at ASIC;
- (g) any paid work, or directorship or similar office, outside of ASIC;
- (h) any unpaid work outside of ASIC that you consider may give rise to a real, potential or perceived conflict with the proper performance of your functions or duties at ASIC; and
- (i) whether, and, if so, how, your Financial Interests or Other Interests, or a duty you owe to a person other than ASIC, conflicts, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.

51 You do not have to declare any general insurance policy or life insurance policy that you or any Immediate Family Member holds, unless it relates to a matter you have been asked to work on, or are working on, in your capacity

as a Staff Member. Further, you do not have to declare the financial institutions (for example, banks, credit unions, building or friendly societies) of which you, or any Immediate Family Member, are a customer unless the customer relationship affects a matter you have been asked to work on, or are working on, in your capacity as a Staff Member. Given ASIC's responsibilities in relation to credit, you should carefully consider whether any short-term credit arrangements should be declared.

Get approval to work outside ASIC

- 52 You must get written approval from ASIC before you perform paid work outside ASIC or act in an outside directorship or similar office. You must also get ASIC's written approval before performing any unpaid work outside of ASIC that you consider may give rise to, or that may reasonably be thought to give rise to, a conflict with the proper performance of your functions or duties at ASIC.
- 53 You must perform any outside work (paid or unpaid) outside of ASIC's normal working hours and not at the same time as you are performing your work for ASIC.

Decline gifts and only accept benefits and hospitality if appropriate

- 54 You must not improperly use your official position to seek or obtain a gift, benefit or hospitality for you or someone else.
- 55 You must generally decline any gift, benefit or hospitality offered by a third Party in the course of, or related to, your work with ASIC.
- 56 However, in respect of some benefits and hospitality, ASIC recognises that in limited situations, acceptance may be appropriate in the course of your work, provided it does not conflict with the proper performance of your functions or duties at ASIC, or give rise to any real or potential conflicts of Interest. Refer to Part F for additional information on the principles, declaration and approval requirements for gifts, benefits and hospitality.

Inform ASIC of prospective employment negotiations if you are a Senior Executive

- 57 Where a Senior Executive is in negotiations with a prospective employer with which ASIC may engage as a regulator, or that is aligned to the Senior Executive's responsibilities at ASIC, the Senior Executive should inform ASIC as soon as possible, by informing their Manager, a Commissioner or

Commission Counsel. This will enable ASIC to consider and put in place arrangements to manage any real, potential or perceived conflicts of Interest that may arise out of these circumstances.

D Managing conflicts of interest

After you Notify ASIC

- 58 When you Notify ASIC, your Manager and Senior Executive will consider whether your Interests or non-ASIC duties conflict, or may reasonably be thought to conflict, with the proper performance of your functions or duties at ASIC.
- 59 Your Senior Executive (with the assistance of your Manager) is to ensure adequate and appropriate steps are taken to avoid or control any real, potential or perceived conflicts of Interest following your notification.

Controlling conflicts of interest

- 60 In certain circumstances, ASIC may authorise you to continue your duties at ASIC without any further action on your part. If, however, ASIC considers that some action is required to reduce the risk and control the conflict, ASIC may:
- (a) rearrange your duties and responsibilities at ASIC;
 - (b) introduce additional security measures for sensitive and confidential Information;
 - (c) remove you from making a decision in relation to a particular matter or investigation; and
 - (d) escalate the matter to your Senior Executive and Commission for consideration.

Avoiding conflicts of interest

- 61 When it is not possible to control a conflict of Interest, ASIC may request you to take steps to remove the source of and avoid the conflict. ASIC will only ask you to divest yourself of your Interest or non-ASIC duty if the options to control the conflict of Interest are either unavailable or inappropriate in the circumstances. In this case ASIC may:
- (a) transfer you to an equivalent position;
 - (b) request that you divest yourself of the Interest or non-ASIC duty;
 - (c) request that you resign from your paid/volunteer work outside ASIC;
 - (d) remove you from a committee, panel or investigation; or
 - (e) require you to formally decline a gift, benefit and hospitality.
- 62 Staff Members can contact ASIC's People & Development team to request a review of the action taken in paragraph 61.

Considerations for managing conflicts of interest

63 When considering what measures may be needed for the management of a real or potential conflict of Interest, Managers and Senior Executives must consider the factors in Table 1.

Table 1: Factors to consider when managing a conflict of Interest

Factors	Guidance
Novelty and significance of activity	<p>The more novel or significant the activity, the greater the need to remove the conflicted Staff Member. For example, the nature of the activities listed below means they are more likely to require removal of the conflicted Staff Member:</p> <ul style="list-style-type: none"> • procurement; • recruitment; • the rights and Interests of third Parties, such as disclosures of confidential information pursuant to s25 and 127 of the ASIC Act; • making appointments to an advisory or decision-making panel; • grants; • the work of members of the Close and Continuous Monitoring team embedded in regulated entities; • the exercise of ASIC’s compulsory powers; • the institution and conduct of proceedings; • considering applications for relief under the Corporations Act or other legislation which ASIC administers; • the issue of a licence; • making appointments to an advisory or decision-making panel.
Role of conflicted Staff Member and the nature of their involvement in the ASIC activity	<p>It is important to consider the seniority of the conflicted Staff Member and nature of their involvement in the ASIC activity.</p> <p>For example, preparing a recommendation for a more senior Staff Member is not a peripheral activity or merely an administrative activity. In such circumstances, the conflicted Staff Member’s involvement in the recommendation might affect the ultimate decision made by the more senior, non-conflicted Staff Member.</p>

E Additional information: Circumstances giving rise to conflicts of interest

Personal interests

What is an interest?

- 64 An Interest means anything that could affect your personal, professional or business Interests and the personal, professional and business Interests of your relatives, associates and even your rivals. Conflicts of interest can take the form of conflicts with your direct, indirect, financial and non-financial Interests and can arise as a result of private Interests, personal or business associations, conflicting duties and the receipt of gifts, benefits or hospitality.

Example 10

You are a director of a family company that has applied to ASIC for relief from the Corporations Act. The relief will ensure the company avoids a possible breach of the law and will preserve your reputation as a director of a company that meticulously meets its legal obligations. If you are asked by your team to give your views on the company's application, the duty you owe as a director of the company is likely to conflict with the proper performance of your functions or duties at ASIC.

Indirect interests

- 65 'Indirect Interests' can include the following:
- (a) where a family member has an Interest in a transaction or entity and any benefit, they receive will have a beneficial impact on you; or
 - (b) where you may derive a benefit from another person's involvement in an investment partnership, company, family trust or similar arrangement.

Example 11

You have an Indirect Interest in your spouse's separately owned company where that company runs a business or enterprise that produces significant income for your household. In these circumstances, if you are asked to provide advice to your colleagues about the company, your Interest, although indirect, may conflict with the proper performance of your functions or duties at ASIC.

Financial interests

- 66 A 'Financial Interest' is any interest that has an actual or contingent monetary or marketable value. This can include Interests that have an economic, monetary or exchangeable value, such as holdings in Division 3 Financial Products, real estate, directorships, Interests in trusts, and Interests in nominee companies and partnerships.

Example 12

You are a shareholder of a public company that makes a takeover bid for another public company. You know that ASIC is investigating the disclosures made by the bidding company regarding the bid which could affect the acceptance of the bid by the other company, and you know that your team is conducting the investigation. You are asked by your team to give your views. In these circumstances, your Financial Interest as a shareholder may conflict with the proper performance of your functions or duties at ASIC.

Example 13

You are asked to be a part of an investigation on possible market misconduct concerning two listed companies. You hold shares in one of the companies, but the parcel is low in value and small in terms of your overall personal assets. In these circumstances, it is critical that ASIC is informed of your Interest so that it may determine appropriate steps to avoid any potential for conflict, either real or perceived. You should immediately Notify your Manager in myRAD.

Example 14

You are asked to work on a matter that concerns a particular Division 3 Financial Product held by your Superannuation Fund in which you have an Indirect Holding. You have some control or influence over the investment decisions of the Superannuation Fund. In these circumstances, you have an indirect Financial Interest which is likely to conflict, or be reasonably thought to conflict, with your functions or duties at ASIC. You should immediately Notify ASIC by completing a declaration of Interests in myRAD.

Other interests: Personal, family, social and business relationships

- 67 'Other Interest' is a very broad concept, and includes Interests that arise as a result of current or former personal friendships, personal relationships, close social or business relationships, familial ties, professional or social associations, and membership of a group pursuing political or social issues. It can include a relationship where you have had prior dealings of a negative kind (e.g. involving animosity).

Example 15

You and your family were previously on the committee of a large sporting club before it chose to adopt a corporate structure. The club's decision to incorporate led you and your family to leave the club. The club is now applying to ASIC for a no-action letter regarding a breach of the law during its corporatisation. You are asked by your Manager to be involved in the assessment and recommendation regarding the application. In these circumstances, your prior dealings with the club may be seen as likely to give rise to a negative Interest in the club and may conflict with the proper performance of your functions or duties at ASIC.

Example 16

You are asked to review the complaints ASIC has received regarding the directors of a real estate maintenance company, and you know the real estate maintenance company is in dispute with the strata corporation in which you hold a strata title. In these circumstances, your Interest in the strata corporation's dispute with the real estate maintenance company may conflict with the proper performance of your functions or duties at ASIC.

Example 17

Your sister is a substantial seed capital shareholder in a company that intends to lodge a prospectus with ASIC that your team is likely to review. In this situation your familial Interest (i.e. your loyalties to your sister) and connection to the matter ASIC is dealing with may mean that your familial Interest conflicts with the proper performance of your functions or duties at ASIC.

Example 18

You are investigating the affairs of a company and become aware that another company, of which your father is the managing director, is a substantial unsecured creditor of the company under investigation. Your father's company will suffer significant losses if ASIC's investigation triggers the appointment of a liquidator. In this situation your familial Interest (i.e. your desire to protect your father and his company from financial detriment) conflicts with the proper performance of your functions or duties at ASIC.

Paid and unpaid work outside ASIC

- 68 In your day-to-day work, you must always consider whether your paid or unpaid work outside of ASIC gives rise to any real, potential or perceived conflicts of Interest, and, if so, Notify your Manager and Senior Executive via a myRAD disclosure of Interests.

Paid work

- 69 You must get the approval of your Senior Executive (with a recommendation from your Manager) through myRAD before you perform paid work outside of ASIC. ASIC will not approve your proposal for work outside of ASIC if that work may give rise to circumstances where a Financial Interest or Other Interest conflicts, or may conflict, with your work at ASIC.
- 70 Paid work outside of ASIC includes work that is paid as an employee, self-employment, outside directorships and similar offices, and work undertaken, or planned to be undertaken, during periods of leave or long service leave from ASIC.

Unpaid work

- 71 You generally do not need to get approval from ASIC for unpaid work (e.g. work for charitable organisations or community groups) unless it is an outside directorship or similar office. However, your obligations under the ASIC Act, PGPA Act and ASIC's [Code of Conduct](#) may still apply to such unpaid work, and you may still be required to consider, disclose, and take reasonable steps to avoid circumstances where your Financial Interest or Other Interest conflicts, or may conflict, with your work at ASIC.
- 72 If you consider that your unpaid work conflicts, or may conflict, with your work at ASIC, you should Notify your Manager and Senior Executive through myRAD. In some circumstances it may not be appropriate for you to continue the unpaid work.

Example 19

For example, you have previously obtained approval from your Manager to conduct weekend work as an office manager at a national clothing retailer. You have recently been asked by a colleague to review the retailer as part of your role at ASIC. In this case it is likely that a conflict of Interest will arise between your outside work and your functions or duties at ASIC. You should immediately Notify your Manager and Senior Executive by submitting a myRAD disclosure of Interests.

Secondments to and from ASIC

Secondments to ASIC

- 73 If you are a secondee to ASIC from another entity, you need to consider how your Interests and duties arising from your association with that entity may conflict with your duty to ASIC. You and your Manager need to carefully assess the work assigned to you during your secondment to eliminate or minimise the risk of conflict.

- 74 Set out below is guidance on work that should not be done by a secondee or that may give rise to a conflict:
- (a) you should not work on a matter if your permanent employer is the subject of the matter (e.g. a surveillance of your permanent employer or the granting of relief to your permanent employer);
 - (b) as a general proposition to which there may be exceptions, you should not work on a matter if your permanent employer is materially and directly affected by the matter (even though it is not the subject of the matter). An example of this arises if your permanent employer is the complainant;
 - (c) as a general proposition to which there may be exceptions, you should not work on a matter if a section of the regulated population to which your employer belongs is the subject of the matter or is materially and directly affected by the matter (e.g. a class order or regulatory guide that especially affects the industry sector to which your permanent employer belongs). The existence or perception of a conflict may decrease as the size and heterogeneity of the affected section of the regulated population increases; and
 - (d) as a general proposition to which there may be exceptions, you should not work on a matter if a significant competitor of your permanent employer is the subject of the matter.
- 75 If you are a secondee to ASIC from a professional services entity, you also need to consider how your Interests and duties arising from your association, and your permanent employer's association, with clients of the permanent employer may conflict with your duty to ASIC. You and your Manager need to assess carefully the work assigned to you during your secondment to eliminate or minimise the risk of conflict arising from the Interests of clients of your permanent employer.
- 76 Set out below is guidance on work that should not be done by a secondee from a professional services entity or that may give rise to a conflict because of the Interests of clients of the secondee's permanent employer:
- (a) you should not work on a matter if your permanent employer is acting on the matter;
 - (b) as a general proposition to which there may be exceptions, you should not work on a matter if the subject of the matter is a client of your permanent employer for whom you have performed work or about whom you have confidential Information;
 - (c) if the subject of a matter is a client of your permanent employer for whom you have not performed work and about whom you do not have confidential Information, you (and your Manager) still need to consider whether conflict or a perception of a conflict could arise by reason of you working on the matter. For example, if the client is the source of

25% of your permanent employer's billings, a perception of conflict may arise; and

- (d) if a client of your permanent employer is not the subject of the matter but is nonetheless materially and directly affected by the matter, careful consideration needs to be given to whether you should work on the matter.

Secondments from ASIC

- 77 If you are a secondee from ASIC to another entity, you should endeavour to ensure that neither your connection with ASIC nor ASIC Information held by you is misused or perceived to have been misused. Set out below is some guidance in relation to circumstances that may arise during a secondment from ASIC:
- (a) you should not work on a matter if you worked on the matter while at ASIC or if you have confidential Information about the matter gained through working at ASIC;
 - (b) as a general proposition to which there may be exceptions, you should not work on a matter that involves an adversarial interaction with ASIC;
 - (c) you should take all reasonable steps to ensure that the entity to which you are seconded does not expressly or implicitly represent that you can give the entity or its clients special treatment or Inside Information in relation to ASIC.

Senior Executives: Prospective future employment

- 78 When a Senior Executive enters into negotiations with a prospective employer with which ASIC may engage as a regulator, or that is aligned to the Senior Executive's responsibilities at ASIC, there is a risk that a real, potential or perceived conflict of Interest may arise. 'Negotiations' include being invited for subsequent interviews or discussions with the prospective employer, having salary discussions and participating in psychometric assessments.
- 79 Senior Executives may be in a position to influence decisions which affect the interests of a prospective employer, and/or have access to confidential or commercially sensitive information of value to a prospective employer. When a Senior Executive is engaged in negotiations with a prospective employer, the appearance of a conflict can be just as damaging to public confidence in ASIC as a real conflict.
- 80 When a Senior Executive is in negotiations with a prospective employer with which ASIC may engage as a regulator, or that is aligned to the Senior Executive's responsibilities at ASIC, the Senior Executive should inform

ASIC as soon as possible, by informing their Manager, a Commissioner or Commission Counsel. This will enable ASIC to consider and put in place arrangements to manage any real, potential or perceived conflicts of Interest that may arise out of these circumstances.

Example 20

You are an experienced member of the superannuation team at ASIC, have been involved within the superannuation industry for many years and are considered an expert in your field. You are contacted by a superannuation fund that you have previously interacted with in the performance of your duties at ASIC about a possible role at this fund. There are no current matters that ASIC is working on in respect of this fund. You subsequently enter into discussions with the fund about the remuneration and responsibilities should you accept the role. At this point, you should inform your Manager, a Commissioner, or Commission Counsel.

- 81 Your disclosure will not negatively impact your career, and this information will be kept confidential, unless the nature of the disclosure requires internal disclosure. In such circumstances, this will be discussed with you prior to sharing the information internally.
- 82 In determining the measures to manage any real, potential or perceived conflicts of Interest, ASIC will consider:
- (a) the sensitivity of your roles and duties at ASIC;
 - (b) the prospective employer and its relationship with ASIC; and
 - (c) the nature of the Information gained by you during your time at ASIC, and the value of this Information to the prospective employer.

Dealings with former ASIC senior officers

- 83 If you are required, on behalf of ASIC, to conduct business with a Party who was, at any time in the last three years, a senior officer of ASIC (see paragraph 84), you must Notify your Senior Executive in accordance with Part C of this policy as soon as you become aware of this fact.
- 84 A 'senior officer' is:
- (a) a Commissioner;
 - (b) a Regional Commissioner; or
 - (c) a Senior Executive.
- 85 Your Senior Executive should then inform the Chair, in writing. He or she may decide that no further steps other than your notification are necessary, or may direct that further steps be taken. For example, he or she may direct

that the matter be dealt with by the Commission itself, or by a more senior Staff Member.

High risk operational and regulatory activities

- 86 As detailed in paragraphs 30–34 of this Policy, there are a wide variety of situations in your work at ASIC where a conflict of Interest may arise.
- 87 Certain operational and regulatory activities have a heightened risk of conflicts of interest arising from the activities being undertaken. Consequently, discrete processes and procedures have been established to identify, record and manage any conflicts for those activities. When you are involved in these activities you must comply with the processes and procedures established for them. For example, the Supervision Group has established conflicts management procedures and protocols for the Close and Continuous Monitoring activities. Two examples of specific requirements in respect of operational activities are set out below at paragraphs 88 and 89.

Procurement

- 88 ‘Value for money’ is the core principle underpinning Australian Government Procurement. The principle is enhanced in government procurement by encouraging competition, promoting use of resources in an efficient, effective and ethical manner, and by making decisions in an accountable and transparent manner. Avoiding a conflict of Interest and not making improper use of your position is a key consideration of ethical behaviour. Our [procurement guideline on managing probity](#) (141 KB) explains the probity controls and protocols that have been embedded into ASIC’s procurement processes.

Decision making: ASIC’s Governance Framework

- 89 Commission Secretariat has established processes for identifying, recording and managing conflicts of Interest in relation to decisions made at committees established under ASIC’s Governance Framework.

F Gifts, benefits and hospitality

Introduction

- 90 ASIC Staff should not accept any gifts, hospitality or benefits that give rise to a real (actual), potential or perceived conflicts of Interest. A conflict may arise because acceptance (either in a particular instance or cumulatively) may influence, the actions or decisions of ASIC Staff Members.
- 91 This section provides guidance on understanding your obligations when you are offered gifts, benefits and hospitality in the course of performing your role and duties at ASIC. It also helps identify the situations where these responsibilities arise, what you need to consider, and the steps that must be taken in response.

What is a gift, benefit or hospitality?

- 92 It can be difficult to identify and distinguish between what is a gift, a benefit or hospitality. These concepts are illustrated by the examples in Table 2 below:

Table 2: Examples of gifts, benefits and hospitality

Gifts	<ul style="list-style-type: none"> ▪ tangible items of monetary value (e.g. bottles of wine, flowers) ▪ token gifts (e.g. plaques, certificates, trophies) and low value items such as stationery ▪ a payment or other valuable consideration (e.g. cash or cash equivalent such as gift cards) ▪ lucky door prizes or prizes from conference sponsors
Benefits	<ul style="list-style-type: none"> ▪ free or discounted (subsidised) attendance to training events, conferences and seminars ▪ tickets to cultural, theatre or sporting events ▪ benefits under loyalty schemes ▪ airline lounge memberships ▪ travel and accommodation subsidised by an external Party to facilitate a work-related event ▪ other intangible advantages such as preferential treatment, privileged access, favours and other advantages
Hospitality	<ul style="list-style-type: none"> ▪ meals and beverages ▪ drinks hosted by law firms and consultancy firms or at networking functions ▪ corporate sponsored table at events held at restaurants, hotels or special event venues

Principles

- 93 Generally, you must decline any gift, benefit or hospitality offered by a third Party in the course of, or related to, your work with ASIC.
- 94 However, ASIC recognises that in limited situations (as described below), it may be appropriate and in ASIC's interest to accept benefits and hospitality, provided acceptance does not conflict with the proper performance of your functions or duties at ASIC, or give rise to any real or potential conflicts of Interest. See paragraphs 103–107 for declaration and approval requirements.
- 95 You must not improperly use your official position to seek or obtain a gift, benefit or hospitality for you or someone else.

Gifts

- 96 A gift must be declined, unless declining the gift is impractical or may cause embarrassment or offence. Any gifts must be surrendered to ASIC, other than a token gift (such as a plaque, certificate, trophy or low-value item such as stationery), which your Senior Executive may approve you personally retaining.
- 97 Cash and its equivalents (e.g. gift vouchers) are prohibited. If in the unusual situation you receive a gift of cash or its equivalent, you must return the gift.

Benefits and hospitality

- 98 The following benefits and hospitality may be appropriate to accept, provided that acceptance does not conflict with the proper performance of your functions or duties at ASIC, or give rise to any real or potential conflicts of Interest:
- (a) properly managed attendance at seminars, conferences and other forms of further education or training that can further benefit ASIC; and
 - (b) modest hospitality that may genuinely assist ASIC to develop and maintain constructive relationships with stakeholders and service providers.

Publication of ASIC's gifts, benefits and hospitality register

- 99 Gifts surrendered to ASIC, and benefits and hospitality accepted by Staff Members, valued at \$100 and above will be published quarterly on ASIC's external website.

Considerations when accepting a benefit or hospitality

- 100 In deciding whether it is appropriate to accept a benefit or hospitality, and whether it influences, or could potentially influence, the proper performance of your functions and duties at ASIC, you and your Manager should consider:
- (a) the reason it is being offered;
 - (b) the monetary value or importance of the benefit or hospitality;
 - (c) the venue and exclusivity of the benefit and/or hospitality (such as hospitality not offered as part of a conference, seminar or only for selected entities);
 - (d) the frequency and any cumulative effect of benefits or hospitality offered by the same or related Parties (including where offered to multiple Staff Members or on multiple occasions); and
 - (e) how the benefit or hospitality may appear to the public, noting that all gifts surrendered, and benefits and hospitality received, to the value of \$100 and over is published quarterly on ASIC's external website.

What to declare and when to seek approval

Gifts

- 101 Gifts that may be embarrassing, offensive or impractical to decline must be declared to your Senior Executive in myRAD, and surrendered to ASIC.
- 102 If the gift is a token gift, your Senior Executive may approve you personally retaining it. The declaration and approval are to be recorded in myRAD.



To avoid any embarrassment, if you are a speaker at an event, please notify the hosting Party beforehand that while you have agreed to speak at the event, it is against ASIC policy to accept gifts from third Parties. This is important as gifts are often presented in front of the entire audience.

Benefits and hospitality

- 103 Any benefit (irrespective of value) you wish to accept must be declared in myRAD and the required approval obtained before acceptance.
- 104 All hospitality of a monetary value of \$50 and above must be declared in myRAD and the required approval obtained before acceptance. Hospitality below \$50 does not need to be approved or declared in myRAD.

- 105 Your Senior Executive is authorised to approve the acceptance of a benefit or hospitality valued up to \$250. If the value is greater than \$250, then in addition to your Senior Executive, you must seek approval from a Commissioner.
- 106 Senior Executives who report directly to the Chair or Chief Operating Officer must seek approval from the Chair or Chief Operating Officer to accept any benefits or hospitality.
- 107 If it is impracticable to get prior approval for a benefit or hospitality, you must Notify your Senior Executive using myRAD as soon as practicable after its acceptance and follow any instructions given by your Senior Executive.

Examples of when to declare, seek approval to accept and surrender to ASIC

- 108 See Table 3 below for examples of gifts, benefits and hospitality and when to declare, seek approval to accept and surrender to ASIC.

Table 3: Examples of gifts, benefits and hospitality and when to declare, seek approval to accept and/or surrender to ASIC

Gift, benefit or hospitality	Declare in myRAD?	Obtain approval before accepting?	Surrender to ASIC?	Published on ASIC's external website
Gift such as a bottle of wine	Yes	Not permitted	Yes	Yes, if the value is of \$50 or more
Token gift	Yes	Yes	No, if personal retention has been approved by your Senior Executive	No
Working breakfast or lunch valued at \$30.00	No	No	N/A	No
Tea and biscuits received at a work-related training seminar valued at \$10	No	No	N/A	No
Hospitality valued at \$150 provided by overseas or international regulators or agencies as part of ASIC's official engagement	Yes	No	N/A	Yes

Gift, benefit or hospitality	Declare in myRAD?	Obtain approval before accepting?	Surrender to ASIC?	Published on ASIC's external website
Networking or social events at barrister's chambers or a supplier, where the hospitality is valued at less than \$50	No	No, however attendance must not give rise to any actual or potential conflicts of Interest and must satisfy the principles as set out in paragraph 98. Exercise caution before attending.	N/A	No
Complimentary entry ticket valued at \$75 to a training seminar that further benefits ASIC	Yes	Yes	N/A	No
Discounted or free entry to a conference where hospitality will be provided, and the cost for others attending is \$1,500	Yes	Yes, obtain approval from your Senior Executive and Commissioner	N/A	Yes

109 If you become aware that someone else (for example, a family member) has accepted a gift, benefit or hospitality in circumstances where the acceptance of the gift, benefit or hospitality could reasonably be perceived to conflict with the proper performance of your functions and duties at ASIC, then you should promptly Notify ASIC on myRAD and disclose all relevant details.

If in doubt, check with your manager

110 If you are in any doubt, you should seek advice from your Manager or Senior Executive. Your Manager and Senior Executive may seek assistance from Commission Counsel in reaching a decision regarding whether a benefit or hospitality should be accepted.

111 See also the examples of how to deal with offered gifts, benefits and hospitality on the following pages.

Examples of how to deal with offered gifts, benefits and hospitality

When acceptance is okay



It is appropriate to accept modest hospitality offered as part of a professional association event, where you are attending as a member (e.g. Law Society or CPA).



Hospitality provided by overseas or international regulators or agencies as part of ASIC's official engagement is often incidental to the engagement and refusal may cause offence. If the value of the hospitality being offered is \$50 or more, it must be declared in myRAD.



A professional services panel firm engaged by ASIC offers to provide a sandwich lunch at a work meeting. As the value of the lunch is modest and is provided as an incidental part of ASIC's work with the firm, acceptance of the hospitality is appropriate.

When further consideration is required



Attending festive seasonal events hosted by stakeholders, panel members and consulting firms is subject to the principles and further considerations as set out in paragraphs 98 and 100. You should consider how your attendance will benefit ASIC in carrying out its role and function. When an event relates to a potential supplier, consider whether it coincides with a procurement process. If the event coincides with a procurement, then the invitation should not be accepted because of the potential, or perceived, risk that your attendance may influence the decision-making processes of the procurement.



Further consideration should be given to networking drinks hosted by barristers at their chambers, including seminar events. You should consider how your attendance will benefit ASIC in carrying out its role and function. If in doubt, speak to your Manager and obtain the required approval to attend. Even if the value of the hospitality is less than \$50, attendance must not give rise to any actual or potential conflicts of Interest, and must satisfy the principles as set out in paragraph 98.



An invitation from a law firm, consultancy or expert engaged by ASIC to attend a celebration meal at the conclusion of a matter requires further consideration, and is subject to the principles set out in 98, and further consideration as set out in paragraph 100.



Your team of 10 has been offered free tickets to a corporate-sponsored industry event including a three-course dinner and drinks, to be hosted at a hotel function room.

Various members of the regulated community with whom your team regularly engages will be in attendance, as it is 'the' industry event of the year. The event is sponsored by various members of the regulated community.

Attendance will benefit the team's work with ASIC, including the opportunity to meet with stakeholders and hear the keynote speech. However, the value of each ticket is \$150, the venue and hospitality are not modest, and the purpose of the attendance is only indirectly related to ASIC's work. In this case, your Senior Executive should consider paying for a limited number of team members to attend the event and report back to the rest of the team.



Fifteen team members are offered discounted registration to an industry conference. Attending the conference is directly related to ASIC's functions and duties but the total value of the discounts is \$6,000.

The monetary value of the benefit is substantial and may give rise to the perception that the acceptance of benefit would affect the proper exercise of ASIC's regulatory judgment in respect of the hosts or sponsors of the conference. As such, it may be appropriate to accept the discounted registration for a lower number of staff and pay the full value for the remaining staff whose work would benefit from attendance.



You are giving a presentation on behalf of ASIC at a corporate conference hosted by a Big 4 bank. The Big 4 bank offers you free attendance at the conference, whereas tickets usually cost \$500.

Whether or not you should accept the free registration may depend on the consideration of a number of factors, including whether your attendance would provide necessary background for your own presentation, what benefit ASIC may derive from your attendance at the other conference sessions, and the risk of a public perception of a conflict of Interest, which may be influenced by the work of you and your team in regards to the bank.

When to decline or surrender a gift to ASIC



After attending an overseas regulatory conference, you are offered \$50 in local currency to cover incidental expenses including taxi trips to and from your hotel. The acceptance of cash and cash equivalents is prohibited, and the money should be declined.



You are handed a bottle of wine after appearing at a panel discussion hosted by a law firm. You should decline the bottle, noting ASIC's policy is to decline gifts. If you consider that declining the gift may cause embarrassment, it may be appropriate to

return the gift after the event has concluded, otherwise you must declare the bottle of wine in myRAD, and surrender it to ASIC.



You receive a \$30 gift card in the mail as a token of thanks after speaking at an industry conference. You should attempt to return the gift card to the sender from the industry conference. If you are unable to return the gift card, you must declare it in myRAD and surrender it to ASIC.



Your team is running a pilot of a company's regtech software. After the pilot is successful, the company's management invites the ASIC team to celebratory drinks at its office. As the drinks offer no specific benefit to ASIC's work and could be seen as an inducement by the company to be engaged by ASIC in future, the offer should be declined.



During international travel, a peer regulator presents you with a jewellery box made of mother-of-pearl. As refusal of the gift may cause embarrassment and/or cultural offence, you may accept the gift; however, you must declare it in myRAD to your Senior Executive and surrender it to ASIC.



You have resigned from ASIC and during your last week of work, you receive a gift hamper from a longstanding contractor of ASIC who wishes you well. As it is impractical to return the gift, you should declare the gift in myRAD and surrender it to ASIC.

G Key terms

Term	Meaning in this document
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CLO	Chief Legal Office
Connected Person	Includes: <ul style="list-style-type: none"> • your spouse or de facto partner, dependent children and anyone for whom you make financial decisions (such as a person for whom you exercise a power of attorney); and • companies, trusts and entities that are controlled by you or the persons described in the point above
Corporations Act	<i>Corporations Act 2001</i>
Division 3 Financial Product	Includes: <ul style="list-style-type: none"> • foreign and domestic Securities (listed and unlisted); • derivatives; • interests in a managed investment scheme (including exchanged traded funds (ETFs), Index Funds, and interests in a Notified Foreign Passport Fund); • debentures, stocks or bonds issued or proposed to be issued by a government; • superannuation products, other than those prescribed by regulations made for the purposes of s1042A(d) of the Corporations Act; and • any other financial product able to be traded on a financial market in Australia or overseas.
Exchange Related Financial Product	Includes: <ul style="list-style-type: none"> • domestic and foreign Securities that are able to be traded on a financial market in Australia, or overseas; • derivatives, where the underlying Security is a single Security and that Security is able to be traded on a financial market in Australia or overseas; • interests in a managed investment scheme able to be traded on a financial market in Australia, excluding interests in an ETF, and excluding interests in an index fund; • debentures, stocks or bonds issued or proposed to be issued by a government; • superannuation products, other than those prescribed by regulations made for the purposes of s1042A(d) of the Corporations Act; and • any other financial product where the value of the product is directly related to a single underlying Security, and that Security is able to be traded on a financial market in Australia or overseas
Financial Interest	Any Interest that has an actual or contingent monetary or marketable value (e.g. real estate, Division 3 Financial Products, directorships, interests in trusts, interests in nominee companies and partnerships)

Term	Meaning in this document
Immediate Family Member	A parent, sibling, spouse, de facto spouse, dependent child or dependent child of a de facto spouse
Indirect Holding	A holding that is not directly held by you legally or beneficially, but significantly correlates with your actions and Interests, and includes, for example, a holding of an Immediate Family Member which you control, or may be reasonably assumed to control, or where you will, or may be reasonably assumed to, derive some benefit
Indirect Interest	An Interest not directly held by you legally or beneficially, but where there is a real likelihood that you will receive some benefit and includes: <ul style="list-style-type: none"> • where a family member has an Interest in a transaction or entity and any benefit they receive will have a beneficial impact on you; or • where you may derive a benefit from another person's involvement in an investment partnership, company, family trust or similar arrangement
Information	Includes supposition that is reasonably definite, including those relating to the intentions, or likely intentions, of a person
Inside Information	Information that is not generally available and, if the Information were generally available, a reasonable person would expect it to have a material effect on the thing or situation to which the Information relates
Interest	Includes a right, or expectation of a right, to benefits produced or to be produced (whether the right is actual, prospective or contingent and whether it is enforceable or not) or a power to exercise, or control the exercise of, a right (including a right to vote) or disposal of a right, and includes a power or control that is indirect, express or implied, formal or informal, exercisable alone or jointly with another Party
IPO	Initial public offering
Manager	A Staff Member with people management responsibilities, or, in the case of Senior Executives reporting directly to the Chair, the Chair.
myRAD	ASIC's Risk and Disclosure system
Notify	To advise in myRAD, or if not available, in writing
Other Interests	Interests in current or former personal friendships, personal relationships, close social or business relationships, familial ties, professional or social associations, or membership of a group pursuing political or social issues, and can include a relationship or circumstance where you have had prior dealings of a negative kind (e.g. involving animosity)
Party	Includes a person, entity, organisation or association
Personal Interest	Includes Financial Interests and Other Interests
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
Privacy Act	<i>Privacy Act 1988</i>

Term	Meaning in this document
Senior Executive	Executive Directors, Senior Executive Leaders, Senior Executive Specialists and all other Staff Members employed at the SES level or, in the case of a requirement in this policy on such a Staff Member to Notify or obtain the approval of a Senior Executive, means the person responsible for that Staff Member's performance appraisal
Staff Member	A person: <ul style="list-style-type: none"> • employed by ASIC under s120(1) of the ASIC Act; • engaged as a consultant under s121 of the ASIC Act; • seconded under s122 of the ASIC Act; or • employed by ASIC under common law contract
Superannuation Fund	Any superannuation fund, whether APRA approved or a self-managed fund
Trade	Means to: <ul style="list-style-type: none"> • apply for, acquire, or dispose of, Division 3 Financial Products, or Exchange Related Financial Products (as applicable), or enter into an agreement to apply for, acquire, or dispose of, Division 3 Financial Products or Exchange Related Financial Products (as applicable); or • procure another person to apply for, acquire, or dispose of, Division 3 Financial Products or Exchange Related Financial Products (as applicable), or enter into an agreement to apply for, acquire, or dispose of, Division 3 Financial Products or Exchange Related Financial Products (as applicable).

H Related Information

Legislation and regulatory documents

ASIC Act, Div 3 of Pt 3; s102, 120–122, 125

Corporations Act, Pt 1.2, Div 3 of Pt 7.10; s761D 1042A

Criminal Code, Div 122

Privacy Act 1988, s6

PGPA Act, s29

Internal documents

[ASIC Code of Conduct](#)

[Guide to ASIC's trading policy](#) (PDF 280 KB)

[Handling sensitive and classified information—Protocol—2019](#) (549 KB)

[Policy on disclosure obligations of ASIC Members](#) (329 KB)

[Procurement guideline—Managing probity](#) (141 KB)

[Trading policy](#) (PDF 166 KB)



ASIC
Australian Securities &
Investments Commission

Disclosure obligations of ASIC Commissioners

March 2021

About this policy

The purpose of this policy is to help ASIC Commissioners comply with their disclosure obligations where an interest could conflict with the proper performance of their functions and duties.

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Commission Secretariat is responsible for the development, review and implementation of this policy.

Policy application

This policy applies to all ASIC Commissioners.

Policy approval

This policy has been reviewed and approved by the following parties on the following dates:

Version	Approver	Approval date
V1	Commission meeting 720	24 October 2017
V2	In-principle approval at Commission meeting 764 Final approval by Chair Shipton	30 April 2019 21 June 2019
V3	Commission meeting 771	24 July 2019
V4	Commission meeting 821	3 February 2021

Version history

Version	Details of changes/comments	Date
V1	Original policy created	24 October 2017
V1.1	Update to Appendix 2 to amend the addressee details and individuals to be copied to the letter.	27 June 2018
V1.2	Update to Appendix 2 to amend the details of ASIC's Minister.	3 January 2019
V2	Update to: <ul style="list-style-type: none"> • appendix 3 to reflect the updated Chairperson's instructions of 12 April 2019; • amend paragraph 51 to ensure consistency with ASIC's <i>Trading policy</i>; • clarify the approval process regarding members accepting gifts; • clarify paragraphs 69 and 70 to apply to self-managed superannuation funds, rather than superannuation funds more broadly; and • amend formatting to reflect the updated policy template and correct minor typographical errors. 	21 June 2019

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Version	Details of changes/comments	Date
V3	<p>Updated to:</p> <ul style="list-style-type: none"> reflect the transition out of the PSA to the ASIC Act and ASIC's Code of Conduct which came into effect on 1 July 2019; clarify the definition of 'Member' as described in Pt 5 of the ASIC Act; and remove reference in paragraph 53 to the example of 'a small gift such as a bottle of wine, flowers or chocolates'. 	24 July 2019
V4	<p>Updated to:</p> <ul style="list-style-type: none"> replace 'Member' with 'Commissioner' to align with the ASIC <i>Conflicts of interest policy</i>; include a requirement in Section C for conflicts of interest of Commissioners identified in Commission committee meetings to be reported and escalated to the Chairperson, or in the case of a conflict of the Chairperson, a Deputy Chairperson (or, if there is no Deputy Chairperson, the longest serving Commissioner); include a requirement in Section C for Commissioners to raise any identified real, potential or perceived conflicts involving other Commissioners that may not have been disclosed; in the key terms, reflect that a reference to the Chairperson includes an Acting Chairperson; align the policy in Section D with the Australian Public Service Commission's (APSC) Guidance for agency heads: Gifts and benefits; and replace Appendix 3 with a link to the current Chairperson's Instructions under Rule 16. 	3 February 2021

Distribution

Version	Date	Distribution list
V1	15 November 2017	Commissioners, Commission EAs
V2	21 June 2019	Commissioners, Commission EAs, Corporate Affairs
V3	24 July 2019	Commissioners, Commission EAs, Corporate Affairs
V4	19 March 2021	Commissioners, Commission EAs, Corporate Affairs

Policy location

This policy can be located on myASIC.

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A Policy objective

- 1 ASIC members (more commonly known as ‘Commissioners’), as described in Pt 5 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), have various statutory obligations to disclose certain interests. In addition, other ASIC policies impose certain obligations on ASIC Commissioners to disclose particular interests.
- 2 This policy is intended to help Commissioners comply with their various disclosure obligations and provides guidance on disclosure of interests to:
 - (a) the Minister (see Section B);
 - (b) each other and to the Chairperson (see Section C); and
 - (c) ASIC (see Section D).
- 3 It also sets out guidance on accepting gifts, benefits and hospitality: see Section E.

Overview of statutory and policy requirements

Statutory disclosure obligations

- 4 Commissioners must comply with the obligations to:
 - (a) disclose pecuniary and other interests to the Minister (see s123 of the ASIC Act);
 - (b) disclose all material personal interests relating to the affairs of ASIC (see s29 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)). Commissioners must comply with s29 of the PGPA Act in accordance with the following sections of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) (unless s12 of the PGPA Rule applies):
 - (i) obligation of Commissioners to make such disclosures in accordance with the instructions of the Chairperson (s16 of the PGPA Rule);
 - (ii) obligation to make disclosures to other Commissioners (s16A of the PGPA Rule);
 - (iii) requirement that a Commissioner is not to be present at a Commission meeting or vote on a matter in relation to which a material personal interest has been disclosed (s16B of the PGPA Rule);

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- (c) obtain ministerial consent before entering paid employment outside ASIC (see s111(1)(b) of the ASIC Act);
 - (d) notify interests to ASIC (see s125 of the ASIC Act). Generally s125 applies to staff, but it can also apply to Commissioners in certain circumstances;
 - (e) make related party disclosures (see s42 of the PGPA Act).
- 5 The Chairperson must comply with their obligations to:
- (a) disclose certain matters to the Minister (see s19 of the PGPA Act); and
 - (b) disclose all material personal interests relating to the affairs of ASIC, in accordance with s13 of the PGPA Rule (see s29 of the PGPA Act).
Section 13 specifies that the Chairperson must make such disclosures to the Minister unless s12 of the PGPA Rule applies.

Policy obligations

- 6 In addition, Commissioners must comply with:
- (a) ASIC's [Code of Conduct](#);
 - (b) ASIC's [Trading policy](#) (PDF 166 KB);
 - (c) this policy.

Why disclosure is important

- 7 The Australian Parliament imposes high standards on Commissioners under the ASIC Act and the PGPA Act.
- 8 ASIC decisions may be found to be void and of no effect if Commissioners have not complied with their obligations. This would adversely affect both ASIC and those relying on ASIC decisions. Additionally, there is significant reputational risk to ASIC if a Commissioner is perceived as having acted inconsistently with their obligations.

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B Obligations to disclose information to the Minister

Disclosure of interests, business relationships and financial arrangements: s123 of the ASIC Act

- 9 [Section 123 of the ASIC Act](#) requires a member (Commissioner) to disclose to the Minister in writing:
- (a) any direct or indirect pecuniary interest in a business in Australia or in a body corporate carrying on business in Australia;
 - (b) any direct or indirect pecuniary interest in interests regulated by ASIC;
 - (c) any agreement, understanding or expectation that the Commissioner will enter a new business relationship or resume a previous business relationship when they cease to be a Commissioner; and
 - (d) any severance or ongoing financial arrangement that takes account of any such agreement, understanding or expectation.

Interests that must be disclosed

- 10 Interests required to be disclosed include, but are not limited to:
- (a) pecuniary interests—that is, interests in money, or money’s worth (such as shares);
 - (b) indirect pecuniary interests held through an intermediate entity such as:
 - (i) a trust or company; or
 - (ii) some business, contractual or legal relationship such that an event or circumstance affecting a third party will lead to a gain or loss of money to the person;
 - (c) other interests arising because of a relationship between a Commissioner and another person who has a pecuniary interest, such as when a spouse or dependent child of the Commissioner has a substantial holding of shares in a company;
 - (d) other kinds of interests arising from particular relationships—for example:
 - (i) as a director of, or a consultant to, a company;
 - (ii) as a director of a charitable body; and
 - (iii) as an adviser, such as a financial or legal adviser, to a company; and
 - (e) a close personal relationship with someone likely to be affected by a particular determination of ASIC.

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- 11 The information regarding pecuniary interests that must be provided to the Minister is summarised in the pro-forma disclosure letter to the Minister and assets disclosure schedule: see [Appendix 2](#). Commissioners should use the pro-forma document provided.
- 12 Commissioners' disclosures must highlight any instances of trading in financial products (as defined in ASIC's [Trading policy](#) (PDF 166 KB)) that have occurred during the relevant disclosure period. Trading that occurs through dividend reinvestment plans is excluded.
- 13 The Commission Secretary will notify Commissioners when s123 disclosures to the Minister are due. At present, the Minister requires Commissioners to make s123 disclosures every six months.
- 14 Each Commissioner should provide a copy of the disclosures to the Minister to the Chairperson, and to the Commission Secretary for confidential record-keeping purposes.

Future business relationships must be disclosed

- 15 Commissioners must disclose in writing to the Minister:
any agreement, understanding or expectation that the [Commissioner] will resume a previous business relationship ... or enter into a new business relationship when the [Commissioner] ceases to be a [Commissioner].
- Note: See s123(1)(c) of the ASIC Act.
- 16 Commissioners who commence discussions with potential employers should be aware that this can give rise to real or perceived conflicts of interest.
- 17 This obligation applies to agreements or understandings entered into, or expectations arising, before or after the Commissioner's appointment: see s123(4) of the ASIC Act.
- 18 A Commissioner is only required to disclose such an expectation when the Commissioner:
can identify the other party, or one or more other parties, to the relationship. Disclosure is required whether or not the field of business or legal nature of the relationship has been determined.
- Note: See s123(5) of the ASIC Act.
- 19 The term 'business relationship' is not defined. However, it would seem to be a broad concept. It may not be limited to relationships of a commercial nature. Even if a post was purely voluntary or charitable, the Commissioner should arguably disclose it if it is part of a business context—for example, an engagement with a non-government organisation.

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- 20 In any event, Commissioners entering discussions or negotiations regarding an engagement after their term ends should consider the nature of the arrangement that they are contemplating. If it is unclear whether the arrangement would fall within the definition of a ‘business relationship’, they may decide to disclose the arrangement out of prudence.
- 21 When a Commissioner reaches an expectation of a business engagement with an identified party or organisation after the end of their term as a Commissioner, they must disclose this to the Minister. The obligation to disclose might well arise before they have formally entered into an agreement.
- 22 Commissioners must disclose such interests under s123 of the ASIC Act every six months. However, Commissioners should also disclose a future business interest as soon as reasonably practicable and not necessarily at the same time as the regular disclosure.
- 23 In addition, a Commissioner who expects to be engaged by a business in the future may have a current pecuniary interest in that business. The Commissioner must disclose this as part of their biannual disclosure of pecuniary interests under s123(1)(a) of the ASIC Act (and potentially s123(1)(b)).
- 24 An obligation to disclose a future business relationship may also arise under s29 of the PGPA Act, which requires Commissioners to disclose the details of any ‘material personal interest that relates to the affairs of ASIC.’ If a Commissioner has an interest arising from an expectation of future employment or business that could be perceived as impacting on their present duties, this would be disclosable. Further details on s29, and the corresponding PGPA Rules, are set out in Section C.
- 25 Future business relationships are a material personal interest that Commissioners must disclose to the Chairperson in accordance with the Chairperson’s instructions under PGPA Rule 16: see Section C.

Outside employment must be approved by the Minister

- 26 Commissioners must not engage in any paid employment outside the duties of their office without the consent of the Minister: see s111(1)(b) of the ASIC Act. The Governor-General can terminate the appointment of a Commissioner who, without the consent of the Minister, engages in any paid employment outside the duties of their office.

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- 27 ASIC's [Code of Conduct](#) applies to all ASIC employees, Commissioners, contractors, consultants, secondees and volunteers.
- 28 The Code of Conduct also requires Commissioners to disclose and avoid situations in which there is a real or potential conflict of interest.

Chairperson's obligation to disclose certain matters about ASIC to the Minister

- 29 The Chairperson is under an obligation to disclose certain matters to the Minister: see s19 of the PGPA Act.
- 30 This obligation requires the Chairperson to:
- (a) keep the Minister informed of ASIC's activities;
 - (b) give the Minister or the Finance Minister any reports, documents and information about ASIC's activities as required;
 - (c) notify the Minister as soon as practicable after the Chairperson makes a significant decision about ASIC;
 - (d) give the Minister reasonable notice if the Chairperson becomes aware of any significant issue that may affect ASIC; and
 - (e) notify the Minister as soon as practicable after the Chairperson becomes aware of any significant issue that has affected ASIC.

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C Obligations to disclose information to each other and to the Chairperson

Disclosure of material personal interests relating to the affairs of ASIC: PGPA Act and PGPA Rule

- 31 [Section 29 of the PGPA Act](#) creates a statutory obligation on Commissioners to disclose details of any material personal interest that relates to the affairs of ASIC. The PGPA Rule sets out the manner in which Commissioners must disclose these interests, as well as certain interests that do not need to be disclosed.
- 32 The Chairperson must make their disclosure in writing to the Minister: see s13 of the PGPA Rule. The disclosure must set out the nature and extent of the interest and how the interest relates to the affairs of ASIC. The Chairperson must make the disclosure as soon as practicable after they become aware of the interest.
- 33 All Commissioners, including the Chairperson, must disclose to each other any material personal interest that relates to the affairs of ASIC: see s16A of the PGPA Rule. The Commissioner can disclose verbally or in writing. The disclosure must be made at the next Commission meeting and include details of the nature and extent of the interest and how the interest relates to the affairs of ASIC. The Commissioner must also ensure that they make the disclosure as soon as practicable after they become aware of the interest and recorded in the minutes of the meeting.
- 34 Commissioners other than the Chairperson must disclose any material personal interests that relate to the affairs of ASIC in accordance with any instructions given by the Chairperson: see s16 of the PGPA Rule and the [Chairperson's instructions to ASIC members for the purpose of Rule 16 of the Public Governance, Performance and Accountability Rule 2014](#) (PDF 71 KB) (Chairperson's instructions).
- 35 A Commissioner must not attend a meeting of ASIC or vote on a matter that is being considered at that meeting if the Commissioner has a material personal interest in that matter: see s16B of the PGPA Rule. The Commissioners who do not have any personal interest in the matter may decide not to disqualify the Commissioner with a personal interest in the matter from attending or voting at the meeting. The absence of the Commissioner, or the other Commissioners' agreement for the Commissioner to participate, must be recorded in the minutes of the meeting.

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36 There are specific circumstances where a Commissioner does not need to disclose material personal interests (e.g. remuneration, insurance against liability): see s12 of the PGPA Rule.

Definition of ‘material personal interest’

37 ‘Material’ means a personal interest that can give rise to a real or perceived conflict of interest. The nature and substance of the interest must have the real or perceived capacity to affect the ability of the person to honestly discharge their duties to the entity.

Definition of ‘affairs of ASIC’

38 The personal interest must relate to ‘the affairs of the entity’ to warrant disclosure.

39 ASIC has a wide range of unique powers and functions and, as such, a wide range of matters capable of being considered or determined by Commissioners and ASIC. Given this, ‘the affairs of ASIC’ could include all of the affairs and matters that are capable of being determined by ASIC in which a Commissioner may take part.

40 More generally, Commissioners should remain alert to:

- (a) their own financial and non-financial interests;
- (b) personal and professional relationships (past or present); and
- (c) the financial and non-financial interests of their immediate family (to the extent that Commissioners know such interests).

41 This is important to ensure that as and when any potential conflict (real or perceived) arises, Commissioners can disclose and deal with it appropriately.

Disclosing conflicts of interest of other Commissioners

42 Commission Secretariat maintains a record of disclosures of Commissioners made in compliance with s123 of the ASIC Act. They also maintain a Register of Conflicts of Interest disclosed at Commission meetings and Commission-level committee meetings (Commission committee meetings).

43 Due to the broad nature of ASIC’s regulatory mandate, circumstances can arise where a Commissioner does not have sufficient information to identify and disclose a conflict of interest affecting them. For example, where a matter is under consideration at a Commission committee meeting and the Commissioner affected by the conflict has been provided with insufficient information about the parties or persons of interest under consideration before receiving the meeting papers.

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44 To help address this risk to ASIC, where Commissioners become aware of a real, potential or perceived conflict of interest affecting another Commissioner, they must disclose this conflict to the Commission committee chair or the Chairperson (as appropriate according to the circumstances). If it is the Chairperson who has the conflict, then they should disclose to a Deputy Chairperson. If both the Chairperson and the Deputy Chairperson(s) are conflicted, or in the absence of a Deputy Chairperson, the Commissioner should disclose to the longest serving Commissioner.

Commission meetings and Commission committee meetings

- 45 Prior to, and again at the commencement of, each Commission meeting or Commission committee meeting, Commissioners are asked to disclose material personal interests or any other interest that relate to the affairs of ASIC.
- 46 The Commission committee chair determines how to manage conflicts arising from the disclosed interest. This could include the Commissioner being recused from attending or voting on a particular agenda item, as provided by s16B of the PGPA Rule.
- 47 If the Commission committee chair has the interest, they must notify:
- (a) the Chairperson;
 - (b) a Deputy Chairperson; or
 - (c) in the absence of a deputy chairperson, the longest serving commissioner.
- 48 This person will decide whether the Commission committee chair may continue to determine the matter.
- 49 The minutes of the meeting must record the disclosure and the determination made by the relevant Commission committee chair.
- 50 There may be circumstances where an interest becomes apparent in the course a Commission committee meeting. The Commissioner must immediately notify the Commission committee chair. The Commission committee chair must then make a determination on the disclosure and manage any determined conflict appropriately. In particular circumstances, the Commission committee chair may need to defer any decision on that matter—for example, if they wish to obtain further legal advice.
- 51 Interests disclosed at a Committee meeting should also be disclosed in accordance with the [Chairperson's instructions](#) (PDF 71 KB) if the relevant

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disclosure has not previously been recorded in the minutes of a Commission Meeting.

Notification of conflict by Commission committee chair

- 52 If it is determined as part of a Commission committee meeting process that a Commissioner has a conflict of interest, then the chair of the relevant Commission committee must notify the Chairperson of that conflict. The chair must document the notification either in the minutes of the relevant committee (if the Chairperson is in attendance at the committee meeting) or separately after conclusion of the meeting.
- 53 If the Commission committee chair has determined a conflict of interest relating to the Chairperson, then the relevant chair should notify a Deputy Chairperson or the longest serving Commissioner (as appropriate).
- 54 The obligations set out in paragraphs 52–53 do not detract from a Commissioner’s primary disclosure obligations.

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D Obligations to disclose information to ASIC

Notification of interests to ASIC: s125 of the ASIC Act

- 55 [Section 125 of the ASIC Act](#) requires a person to provide a notice to ASIC if the person must consider a matter in which the person has a direct or indirect interest that could conflict with their role. This section generally applies to ASIC staff members rather than Commissioners.
- 56 However, s125(1)(c) applies more broadly. It applies to any person ‘performing functions or services by way of assisting an ASIC delegate’. This could potentially apply to a Commissioner who is involved with a delegate of ASIC on a particular matter.
- 57 In our opinion, the Commissioner’s obligation under s125 to notify ASIC in such an instance will have already been fulfilled by compliance with the requirements under s16A of the PGPA Rule 16A (i.e. disclosure to the other Commissioners).

Related party transactions

- 58 The annual financial statements of ASIC must comply with the accounting standards issued by the Australian Accounting Standards Board (AASB): s42 of the PGPA Act.
- 59 The Australian Accounting Standard [AASB 124 Related party disclosures](#) requires government entities to disclose financial results that may be affected by the existence of transactions with related parties.
- 60 All Commissioners and key management personnel of ASIC must complete a Related Party Declaration once a year to meet these reporting obligations. This requires the collection of information about related parties, which includes the close family members of ASIC’s key management personnel and any entities that they control.
- 61 The Related Party Declaration will collect information relating to:
- (a) the names of close family members of ASIC’s key management personnel;
 - (b) the details of any entities those family members control;
 - (c) whether the family members are employed at ASIC;
 - (d) any compensation paid by ASIC to the key management personnel; and
 - (e) any transactions between the key management personnel and a related party that have arisen within the financial year.

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- 62 Finance will notify key management personnel, including Commissioners, when they must complete the annual Related Party Declaration.

Approval to trade

- 63 Under ASIC's [Trading policy](#) (PDF 166 KB) and Guide, all Commissioners (including the Chairperson) must obtain approval before they or their 'connected persons' (as defined in the trading policy) trade in financial products. Commissioners can submit requests for approval to trade through the myRAD system.

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E Disclosure of gifts, benefits and hospitality

What is a gift, benefit or hospitality

- 64 Commissioners should not accept any gifts, hospitality or benefits that gives rise to a real, potential or perceived conflict of interest. A conflict may arise because acceptance (either in a particular instance or cumulatively) may influence or be perceived to influence the actions or decisions of Commissioners.
- 65 It can be difficult to identify and distinguish between what is a gift, benefit or hospitality. These concepts are illustrated in Table 1.

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OFFICIAL: Sensitive**Table 1: Examples of gifts, benefits and hospitality**

Gift	<ul style="list-style-type: none"> • Tangible items of monetary value (e.g. bottles of wine, flowers). • Token gifts (e.g. plaques, certificates, trophies) and low value items such as stationery. • A payment or other valuable consideration (e.g. cash or cash equivalent such as gift cards). • Lucky door prizes or prizes from conference sponsors.
Benefit	<ul style="list-style-type: none"> • Free or discounted (subsidised) attendance to training events, conferences and seminars. • Tickets to cultural, theatre or sporting events. • Airline lounge memberships. • Travel and accommodation subsidised by an external party to facilitate a work-related event. • Other intangible advantages such as preferential treatment, privileged access, favours and other advantages.
Hospitality	<ul style="list-style-type: none"> • Meals and beverages. • Drinks hosted by law firms and consultancy firms or at networking functions. • Corporate sponsored table at events held at restaurants, hotels or special event venues. • Tickets to cultural, theatre or sporting events.

Principles underlying our approach to gifts, benefits or hospitality

- 66 Generally, Commissioners must decline any gift, benefit or hospitality offered in the course of, or related to, their official duties on behalf of ASIC.
- 67 ASIC recognises that in limited situations (as described in paragraph 70), it may be appropriate and in ASIC's interest for Commissioners to accept benefits and hospitality. This is only the case if acceptance does not give rise to a real conflict and would benefit ASIC in performing its role, duties and functions.

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- 68 Commissioners should not accept gifts offered in connection with their official duties or position if this may create a real or potential conflict of interest with the Commissioner's performance of their duties. Commissioners should take particular care if the person or organisation offering a gift or benefit is in a tender, contractual, regulatory or lobbying relationship with ASIC.
- 69 Where possible, Commissioners should communicate in advance of speaking at an event in an official capacity that ASIC has a policy of not accepting gifts.
- 70 However, ASIC recognises that there may be circumstances where it is impractical or may cause offence if the gift is refused. In those limited circumstances it could be necessary to accept the gift, providing that the acceptance does not give rise to a real or potential conflict of interest.
- 71 Commissioners should record all accepted gifts in myRAD and surrender the gift to ASIC unless it is impractical to do so (e.g. a perishable gift such as fresh fruit). Where it is impractical to surrender a gift, the must review and approve the acceptance and retention of the gift by a Commissioner. A Deputy Chairperson or longest serving Commissioner must review and approve any gifts to be accepted and retained by the Chairperson.

Benefits and official hospitality

- 72 In their official capacity, Commissioners must sometimes attend seminars or speak at public engagements where hospitality may be provided to the Commissioner in the form of accommodation, food and beverages.
- 73 For hospitality other than 'modest hospitality' (see paragraph 74), where possible the Commissioner should seek the approval of the Chairperson through myRAD before they accept the hospitality. If prior approval is not possible, the Commissioner must make appropriate disclosure to the Chairperson through myRAD
- 74 A Commissioner is not required to seek prior approval if the hospitality comprises of modest items of food and beverages, such as working lunches, breakfasts or a drinks reception. What is 'modest' will depend on the circumstances, but as a general guide it should not be disproportionately lavish or exclusive for the circumstances. For example, hospitality offered during an overseas trip may be viewed as exclusive or expensive normally but be appropriate as part of an official international engagement. Any hospitality over the value of A\$100 must be reported in myRAD.

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- 75 Provided that acceptance does not give rise to a real or potential conflict of interest, it may be appropriate for a Commissioner to accept the following benefits and hospitality:
- (a) Properly managed attendance at seminars, conferences and other public engagements, where hospitality may be provided to the Commissioner in the form of accommodation, food and beverages.
 - (b) Hospitality provided when a Commissioner is representing ASIC at meetings with other government agencies, international regulators or international bodies.
 - (c) Modest hospitality that may genuinely assist ASIC to develop and maintain constructive relationships with stakeholders.

Considerations when accepting a gift, benefit or hospitality

- 76 The Australian Public Service Commission (APSC) has published [*Guidance for agency heads: Gifts and benefits*](#). The guidance sets out that agency heads should not accept gifts, benefits or hospitality that might reasonably be seen to compromise their integrity.
- 77 The APSC recommends a government officials exercise good judgement when determining whether a gift, benefit or hospitality is being offered in the context of official duties.
- 78 In deciding whether it is appropriate to accept a gift, benefit or hospitality, a Commissioner should consider the following factors:
- (a) the reason it is being offered;
 - (b) whether it gives rise to a real conflict of interest;
 - (c) whether acceptance provides a benefit to ASIC in carrying out its role, duties or functions;
 - (d) the venue and exclusivity of the benefit and/or hospitality (such as hospitality not offered as part of a conference, seminar or only for selected entities);
 - (e) the frequency and any cumulative effect of benefits or hospitality offered by the same or related parties; and
 - (f) how the benefit or hospitality may appear to the public, noting that all gifts surrendered, and benefits and hospitality received valued at A\$100 and over, are published quarterly on ASIC's external website.

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OFFICIAL: Sensitive**Examples of how to deal with offered benefits and hospitality****Table 2: Situations in which you can accept, must consider further or must decline benefits and hospitality**

<p>Appropriate to accept</p> 	<ul style="list-style-type: none"> You may accept modest hospitality offered as part of a professional association event if you are attending as a member (e.g. Law Society or CPA Australia). You may accept hospitality provided by international regulators or agencies as part of ASIC's official engagement. If the value of the hospitality being offered is A\$100 or above, you must declare it in myRAD. You may accept hospitality from a relative, friend or acquaintance outside the course of official duties (purely personal capacity) that does not give rise to or create the impression of a conflict of interest.
<p>Further consideration required</p> 	<ul style="list-style-type: none"> Attending festive seasonal events hosted by stakeholders, panel members and consulting firms is subject to the principles and further considerations as set out in paragraphs 72–78. Consider how your attendance will benefit ASIC in carrying out its role and function. If an event relates to a potential supplier, consider whether it coincides with a procurement process. If the event coincides with a procurement, then you should not accept the invitation. This is because of the potential or perceived risk that your attendance may influence the decision-making processes of the procurement. Further consideration should be given to networking drinks hosted by barristers at their chambers, including seminar events. Specifically, you should consider how your attendance at these drinks will benefit ASIC in carrying out its role and function. You are giving a presentation on behalf of ASIC at a corporate conference hosted by a Big Four bank. The bank offers you free attendance at the conference, whereas tickets usually cost A\$1500. Whether or not you should accept the free registration may depend on a number of factors, including: <ul style="list-style-type: none"> whether your attendance would provide necessary background for your own presentation; what benefit ASIC may derive from your attendance at the other conference sessions; and the risk of a public perception of a conflict of interest, which may be influenced by the work ASIC does in regards to the bank
<p>Decline or surrender a gift to ASIC</p> 	<ul style="list-style-type: none"> After attending an overseas regulatory conference, the organiser offers you A\$50 in local currency to cover incidental expenses, including taxi trips to and from your hotel. The acceptance of cash and cash equivalents is prohibited, and you should decline the money. You are handed a bottle of wine after appearing at a panel discussion hosted by a law firm. You should decline the bottle, noting ASIC's policy is to decline gifts. If you consider that declining the gift may cause embarrassment, you must declare the bottle of wine in myRAD, and surrender it to ASIC You receive a A\$30 gift card in the mail as a token of thanks after speaking at an industry conference. You should attempt to return the gift card to the sender from the industry conference. If you are unable to return the gift card, you must declare it in myRAD and surrender it to ASIC. During international travel, a peer regulator presents you with a jewellery box made of mother-of-pearl. As refusal of the gift may cause embarrassment and/or cultural offence, acceptance of the gift is appropriate. You should declare it in myRAD and either surrender it or seek approval to retain it.

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79 ASIC publishes a register that discloses gifts, benefits and hospitality accepted or surrendered by Commissioners valued at more than A\$100. ASIC updates the register quarterly.

What to declare and when to seek approval**Table 3: Examples of process for various gifts, benefits and types of hospitality**

Gift, benefit or hospitality	Declare in myRAD?	Obtain approval before accepting?	Surrender to ASIC?	Published on ASIC's external website
Gift such as a bottle of wine	Yes	Not permitted	Yes	Yes, if the value is of \$100 or more
Token gift	Yes	Yes, if approved by Chairperson or Deputy Chairperson	No, if personal retention has been approved by the Chairperson or Deputy Chairperson	No
Working breakfast or lunch valued A\$30	No	No	N/A	No
Hospitality valued at A\$150 provided by international regulators or agencies as part of ASIC's official engagement	Yes	No	N/A	Yes
Networking or social events at barrister's chambers or a supplier, where the hospitality is modest (i.e. valued at less than A\$100)	No	No, however attendance must not give rise to any real or potential conflicts of interest and must satisfy the principles set out at paragraphs 72–78.	N/A	No
Complimentary entry ticket valued at A\$75 to a training seminar that further benefits ASIC	Yes	No	N/A	No

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Gift, benefit or hospitality	Declare in myRAD?	Obtain approval before accepting?	Surrender to ASIC?	Published on ASIC's external website
Discounted or free entry to a conference where hospitality will be provided, and the cost for others attending is A\$1,500	Yes	Yes, if approved by the Chairperson, or Deputy Chairperson or longest serving Commissioner	N/A	Yes

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F Administration of this policy

Approval and implementation

- 80 This policy and any substantial changes must be approved by Commission.
- 81 This policy is available via the Register of Policies on SharePoint.

Monitoring and reporting

- 82 The Commission Secretariat is the owner of this policy. They are responsible for monitoring this policy for operational or legislative changes, or changes in Australian Government policy, that would substantially affect the objectives or implementation of this policy.
- 83 In any event, this policy should be reviewed on the second anniversary of any version approved by Commission.
- 84 This policy is an internal policy of ASIC and is subject to monitoring and reporting by the Internal Audit and Operational Risk teams.

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Appendix 1: Examples of material personal interests that relate to the affairs of ASIC

Pecuniary interests

- 85 Direct pecuniary interests include interests in shares or interests as a creditor of a company.
- 86 The amount or value of the interest is important in knowing whether the interest is material. This value will be important if it is a significant amount or if it forms more than a minimal proportion of the Commissioner's total assets (e.g. more than 5%). In such cases, the inference could be drawn that there is a potential conflict.
- 87 The nature of the matter before ASIC may also be relevant in deciding whether an interest of a particular amount or value is material in the circumstances.

Example 1

ASIC is considering an application by a listed company for relief from a requirement of the *Corporations Act 2001* (Corporations Act). A Commissioner holds shares worth A\$100,000 in the company. This is an asset with a significant real value, although it forms less than 5% of the Commissioner's total assets.

The Commissioner proposes making an order for relief under a delegation by ASIC. The nature of the relief sought and the transaction in which the relief is sought will be relevant.

For example, relief from an auditing requirement on the grounds of cost saving may have virtually no effect on the amount or value of the interest of the Commissioner. In this instance, may be possible to conclude that the interest could not conflict and therefore would not be material.

By contrast, if the relief is sought in relation to a proposed takeover that will double the value of shares on issue (and so double the amount or value of the Commissioner's holding) the conclusion may be that the interest could conflict and will be material.

Example 2

A Commissioner has a financial interest in a commercial transaction involving ASIC, such as procurement by ASIC of accommodation, goods or services.

Because shareholdings in listed companies are widespread, a Commissioner may find that they have an indirect pecuniary interest in a commercial transaction that ASIC proposes to enter into with a listed company. Whether the interest will be material will depend on the amount

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or value of the proposed commercial transaction for the listed entity in which the Commissioner has a pecuniary interest, and the nature and extent of that interest.

A common example of an indirect pecuniary interest would be an interest in a self-managed superannuation fund which holds shares in a company whose business will be affected by an ASIC decision.

Example 3

A Commissioner could be a beneficiary of a self-managed superannuation fund which has a large portfolio of shares in listed companies, where the Commissioner or a Connected Person has the power to direct or influence investment decisions.

Generally, the approach in Example 2 for direct pecuniary interests should be followed.

Professional and business connections

- 88 A Commissioner of ASIC will have previous wide experience in business, the professions, finance or administration: see s9 of the ASIC Act. A Commissioner is therefore likely to have had many interactions with companies or businesses in Australia.
- 89 A Commissioner may in many cases be able to form the view that these interactions do not give rise to a material personal interest relating to the affairs of ASIC.
- 90 However, some connections may yet be sufficiently close to require careful consideration. For example, previous employment by a company or partnership in a firm could in some circumstances give rise to the perception of a conflict with proper performance of the Commissioner's functions.

Example 4

A Commissioner was a partner in a law firm or an accounting firm.

That firm frequently acts for persons or companies about whom ASIC is making a determination. Even if the Commissioner has only recently ceased to be a partner of the firm, that fact alone would be unlikely to give rise to a material personal interest. However, there may be further relevant circumstances. For example, the Commissioner may have:

- had access to relevant confidential information about the person or company;
- personally provided some advice to the person or company;
- been an integral part of the client relationship team with the person or company;

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- been involved in advising the person or company on the circumstances that gave rise to the matter to be determined by ASIC.

Depending on the nature of the determination, one or more of these factors may lead to the view that the interest is material.

The position would be even clearer if the matter for determination by ASIC was not about the affairs of the company, which was a client of the firm, but rather to conduct of the firm of which the Commissioner was previously a partner (even if all the events occurred after the cessation of the partnership).

Family relations

- 91 It would not be uncommon for a Commissioner of ASIC to be married to someone who holds a senior position in the corporate or financial world.
- 92 A link between a Commissioner's spouse and a company whose affairs are the subject of a determination by ASIC could clearly give rise to a perception of a conflict of interest.
- 93 However, whether there was an interest that could conflict would depend on the particular circumstances.

Example 5

A Commissioner has a relative who is an executive of a major Australian company. Whether this could give rise to a perception of conflict will depend on circumstances, such as the closeness of the relative and the importance of the position of the executive.

Contrast a case where the Commissioner's spouse is a second-tier executive reporting to the CEO with a case where the Commissioner's nephew or niece, with whom the Commissioner has no contact, holds that position. The interest through a nephew or niece could perhaps be disregarded, whereas the interest through a spouse may amount to an interest which could conflict.

On the other hand, if the position is CEO, there may be an interest that could conflict, regardless of whether the relationship is as spouse or niece or nephew.

The special relationship of trust and confidence between spouses or partners is such that the relationship can readily be perceived as giving rise to inappropriate influence or information flow, even where the spouses and partners are persons of great integrity. Therefore, Commissioners must take particular care when assessing possible interests involving their spouse or partner.

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OFFICIAL: Sensitive**Other material personal interests**

- 94 There is no limit to the kinds of material personal interest that could relate to the affairs of ASIC.
- 95 For example, there could be circumstances where a Commissioner's previous involvement in litigation by a company might give the Commissioner a material personal interest.
- 96 The circumstances could involve a close relative.

Example 6

The spouse of a Commissioner has been adversely portrayed by a newspaper or television channel. They have subsequently taken defamation proceedings and then lost those proceedings. In this instance, the Commissioner could (depending on all the circumstances) be regarded as having a material personal interest relating to the affairs of ASIC if the newspaper company or television company was the subject of a determination by ASIC.

Another example would be a close personal association with someone likely to be affected by a particular determination of ASIC, such as a next-door neighbour or long-term weekly tennis partner.

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Appendix 2: Pro-forma disclosure to the Minister

[<Date>

STRICTLY CONFIDENTIAL

[Insert Minister's name]
 [Position e.g. 'Treasurer']
 PO Box 6022
 Parliament House
 Canberra ACT 2600

By email: [chief of staff's email address]

Dear [Insert Minister's name],

Disclosure of interests – s.123 of the *Australian Securities and Investments Commission Act 2001* ('Act')

[Following my appointment as a member of the Australian Securities and Investments Commission,] please find below my disclosure of various direct and indirect pecuniary interests and other matters required by the Act and Treasury policy. [Since my last disclosure there has been a change to: [list changes]].

1. Direct or indirect pecuniary interest in:**(a) a body corporate carrying on business in Australia**

(if you have a private/family company or a family trust, specify the name of the company/trust here. If no interest, respond 'None')

(b) a business in Australia

(if you have any interest in a business, disclose this here. If you do not, you can respond 'None')

2. Direct or indirect pecuniary interest in interests (including securities, futures contracts or other financial products) regulated by ASIC

Relevant financial products are as follows:

(a) Securities

Please refer to the attached schedule

(b) Superannuation Interests

Please refer to the attached schedule

(c) Bank Deposit Accounts

Please refer to the attached schedule

(d) Life Insurance

(Please detail name of insurer/nature of policy e.g. AMP, Term Life. If nothing, respond 'None')

(e) House and contents insurance

(Detail the name of the insurer)

(f) Motor Vehicle Insurance

(Detail the name of the insurer)

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3. Any agreement, understanding or expectation that I will:

- (a) Resume a previous business relationship (whether or not that relationship existed immediately before my appointment); or

(Please set out details of the relationship, if there are none, respond 'None']

- (b) Enter into a new business relationship when I cease to be a member.

(Please set out details of the relationship, if there are none, respond 'None']

4. Any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph 3

(Please set out details of the arrangement, if there are none, respond 'None')

5. Direct or indirect pecuniary interests in real estate in Australia

Please refer to the attached schedule

6. Directorships of Australian bodies corporate

(Please set out details of the directorships/offices held, if there are none, respond 'None')

7. Gifts, hospitality (in excess of generally accepted standards in the business community) and subsidised travel from third parties.

(Please set out details, if there are none, respond 'None')

Yours faithfully,

<Commissioner's name>

Encl.

Cc:

[Insert the Chair's details]

[Insert the Commission Secretary's details]

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<Commissioner's name>	Currency	
ASSETS		
Bank Accounts		
Australia		
List bank		
List account name type (no need to include account #s or account balances)		
ANZ		
JG & CJ Smith – cheque account		AUD
Smith Family Trust – Cash Management account		AUD
CBA		
JG Smith – term deposit account		AUD
List accounts held in any other countries (if applicable) in the same format as above (and the currency in which the account is held e.g. USD, GBP, EUR).		
Stocks		
	<i>No. held</i>	
Australia		
List company and number held (examples below)		
Telstra	650	AUD
BHP	1000	AUD
Westpac	250	AUD
List stocks held in any other countries (if applicable) in the same format as above (and the currency in which the account is held e.g. USD, GBP, EUR).		
Note any instances of trading in stocks which have occurred during the disclosure period		
Real estate		
Australia (for example)		
1 Jones Street, Smithtown NSW (residence)		
25/4 Harbour Ave, Niceville QLD (investment)		
List property held in any other countries (if applicable) in the same format as above.		
Retirement Funds		
(Examples below)		
Colonial First State		AUD
John Smith Superannuation Fund		AUD
Public Sector Superannuation Fund		AUD
(no need to include account #s or account balances)		

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OFFICIAL: Sensitive**Key terms**

Term	Meaning in this document
APSC	Australian Public Service Commission
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Chairperson	Chairperson of ASIC, including any Acting Chairperson
Chairperson's instructions	Chairperson's instructions to ASIC members for the purpose of Rule 16 of the Public Governance, Performance and Accountability Rule 2014 (PDF 71KB)
Commissioner	Has the meaning given to 'member' in Pt 5 of the ASIC Act
Commission committee chair	Chairperson of a Commission-level committee
Commission committee	Includes Commission and Commission-level committees, as defined in the ASIC Governance Framework
connected persons	Includes: <ul style="list-style-type: none"> • your spouse or de facto partner, dependent children and anyone for whom you make financial decisions (such as a person for whom you exercise a power of attorney); and • companies, trusts and entities that are controlled by you or the persons described in the point above
Corporations Act	<i>Corporations Act 2001</i>
member	A Commissioner, otherwise referred to as a member of ASIC, as described in Pt 5 of the ASIC Act
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
s123 (for example)	A section of the ASIC Act (in this example numbered 123), unless otherwise specified