



Conflict of Interest Best Practice Guideline Body Corporate Committees

This practice guide is created for the purpose of supporting body corporate committees in understanding the conflicts of interest rules in the Unit Titles Act 2010 and implementing practices to ensure compliance.

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Introduction

The conflict of interest regime commenced on 9 May 2023 and was introduced by the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022.

The conflict of interest regime applies to both committees and body corporate managers and sits, predominantly, in the Unit Titles Act 2010, in sections 114B to 114F and section 114I.

The conflict of interest rules for committees apply to financial conflicts of interest in relation to matters being considered by the committee.

Sections 114C(3) to (5) set out what constitutes a financial conflict of interest for a committee member. Body corporate managers need to be aware that although these sections sit within the committee conflict rules, they are also used to determine what constitutes a body corporate manager financial conflict of interest.

The relevant sections in the Unit Titles Act are set out in full at the back of this guide. All bold terms below are terms that are defined in that legislation.

Conflicts of Interest – for Committee Members

What is a conflict of interest?

Generally, in a governance role, a '*conflict of interest*' is any situation where your duties or responsibility as an office holder, conflict, or could be seen to conflict, with some other interest you might have outside of your office holder role.

Office holders need to manage their affairs so as to actively avoid, or carefully manage, situations that might lead to a conflict of **interest** or suspicion of a conflict of **interest**.

The same concept applies to a Strata Community, i.e., a body corporate, however the focus is on *financial* conflicts of **interest** only.

Financial conflicts of interest for committee members

The committee conflict of **interest** rules apply to all **matters** the committee are considering. These will be a range of body corporate matters that a committee (with valid delegated powers) will consider over the course of the committee's day to day operations.

A committee member has a duty to identify if they may have a financial conflict of **interest** in a **matter** being considered by the committee. If they may have a financial **interest** in the **matter**, they must disclose that **interest** to the committee.

Financial conflict of interest goes beyond the committee member personally

A committee member needs to ensure they look beyond themselves personally and consider if any of their family members, or entities they are involved in, have a financial conflict of **interest** in a committee **matter**. This can be called an indirect financial **interest**. Under the committee conflict of **interest** rules, indirect financial **interests** must also be disclosed to the committee.

Example One – a direct interest

An example is a committee member that owns a company providing cleaning services.

The committee wishes to contract that committee member's company to provide cleaning services to the building. This is the **matter** the committee is considering. The decision to contract the company has not yet been made.

As owner of the cleaning company, that committee member *may* financially benefit from the committee deciding to engage their company for cleaning services.

This means that the committee member has a financial conflict of **interest** in the **matter** the committee is considering. This can be called a direct **interest**.

That committee member must disclose their financial **interest** to the committee as soon as that committee member becomes aware of it.

Example Two – an indirect interest

This example builds on Example One above.

If a partner, spouse, or child of a committee member owns the cleaning company the committee wishes to engage to provide cleaning services to the building, that partner, spouse, or child may receive a financial benefit from the committee's decision to contract their company.

This causes the committee member to have a financial conflict of **interest** in the **matter**. This can be called an indirect financial **interest**.

That committee member must disclose their financial **interest** to the committee as soon as that committee member becomes aware of it, even though it is an indirect **interest**.

Situations that are not a financial conflict of interest under the rules

The conflict of **interest** rules make it clear there are situations that are not treated as a financial **interest**.

They include a committee member receiving the benefit of insurance cover (e.g., office bearers' insurance) or remuneration (e.g., an honorarium) or other benefit authorised by the body corporate.

Other examples are the financial interest being so remote that it is not reasonable to say it will influence the committee member in carrying out their obligations, or the financial interest is the same or substantially the same as all or most others in the body corporate.

These examples do not constitute a financial **interest** that needs disclosing.

Building on our Example One and Example Two above, if the committee member, or their partner, spouse, or child, no longer owns the cleaning company that the committee wishes to contract (being the **matter**), there is no financial interest in the **matter**, so no disclosure is required.

To disclose or not to disclose

If a committee member has any doubt around whether a situation is a financial **interest** that needs disclosing, that committee member is best to discuss with the committee and document the result. That committee member, or the committee itself, may wish to seek professional advice if there is still uncertainty.

Duty to disclose financial conflicts of interest

Where a committee member has a financial **interest** in a **matter** being considered by the committee, they have a legal duty to disclose their financial conflict to the committee.

The committee member must disclose their financial **interest** as soon as practicable after they become aware of it.

When disclosing the financial **interest**, the committee member must disclose the nature and extent of the **interest**, including any monetary value of the **interest** if it can be quantified.

The conflict rules require committee members to consider instances where they *may* derive a financial benefit. This means financial benefits that are anticipated, not actual, must be included.

Waiting until after the committee has decided the **matter** in question and then disclosing a financial **interest** is not acceptable. The committee member must disclose the possibility of the financial **interest** in advance of the committee decision being made on the **matter**.

The committee conflict rules apply to current committee members. Once a committee member resigns from the committee, or their term comes to an end, or they are removed by body corporate vote, they are no longer subject to the committee conflict rules.

How should disclosure be made?

There are two steps that must be completed; making disclosure to the committee and recording the **interest** in the "Committee **Interests Register**".

Step 1 - Disclosing to the committee

Disclosing the financial **interest** to the committee should be done in writing (e.g., by email to all committee members). The conflict rules do not say disclosure must be written, but a written record protects the committee member and ensures there is a clear record.

The details of the nature and extent of the **interest**, including any monetary value of the **interest** if it can be quantified, must be disclosed.

The committee should record the disclosure in the committee meeting minutes where disclosure is made at a committee meeting.

Disclosing the financial **interest** to the committee verbally only is not recommended. Nor should the committee member rely on the committee (or the body corporate manager) to make a written record of the committee member's disclosure on their behalf.

The duty to disclose rests solely on the committee member with the financial **interest**. Disclosure by that committee member in writing is essential.

Step 2 - Entering the financial interest in the Committee Interests Register

The committee has a duty to keep a "Committee **Interests Register**".

A committee member with a financial **interest** must record their **interest** in the "Committee **Interests Register**". This duty rests solely on the committee member. That member should not rely on the committee itself or the body corporate manager to complete the Register on their behalf.

The committee holds the Committee **Interests Register**, but this task may be contracted to the body corporate manager.

The details of the nature and extent of the **interest** must be recorded in the **Interests Register**, including any monetary value if the **interest** can be quantified.

It is recommended that a single Committee **Interests Register** is held, and all disclosures are recorded in that single Register. The committee should regularly update the body corporate manager on entries in the Committee **Interests Register**.

Problematic conflicts of interest

If a committee member or a body corporate manager believes that another committee member may have a financial **interest** in a **matter**, but they have not made a disclosure, that committee member should be asked to confirm whether they have a financial **interest**, and the outcome be recorded in committee minutes or committee correspondence.

It is ultimately for the individual committee member to disclose their own financial conflict of **interest** to the committee.

Who can access the Committee Interest Register?

The Committee **Interests Register** must be available for inspection by the members of the committee.

A body corporate's operational rules can also be amended to add a rule recording any other parties (owners or other persons) that may access the Committee **Interests Register**. Whether a rule of this kind is necessary will be driven by the nature of the specific body corporate, the complex it governs and its operations. Professional advice should be sought if considering a rule of this kind.

Committee Interests Register must be issued to owners with Notice of AGM

The Unit Titles Regulations require a copy of the Committee **Interests Register** to be included with the notice of AGM each year (i.e., with the AGM Agenda). This ensures it is circulated to owners annually and promotes full transparency.

Disclosure is an ongoing obligation

The obligation on a committee member to disclose a financial **interest** is ongoing. It is not restricted to matters on a committee meeting agenda.

Every matter being considered by a committee is subject to the conflict of interest rules. This includes matters considered at an in-person meeting or meetings attended remotely or by phone, or other means such as email.

Therefore, committee members need to hold the requirement to disclose financial **interests** at the forefront of their minds at all times.

To prompt committee members, it is essential to include "Committee Conflicts of Interest" as an agenda item at every committee meeting.

The same should be included in every committee decision proposed by email as committee matters dealt with over email are subject to the same conflict rules.

Consequences of being financially interested in a matter

Where a committee member has disclosed a financial conflict of **interest** in a **matter**, the following restrictions apply:

- The committee member must not vote or take part in any decision of the committee that relates to the **matter**, but they are still included in the calculation of the committee quorum needed to make a committee decision on the **matter**; and
- The committee member must not sign any document relating to the entry into a transaction or the initiation of the **matter**; and
- The committee member may take part in any committee discussion relating to the **matter** and be present at the time the decision of the committee is made. However, the committee can decide not to allow this if it wishes.

Lobbying by other committee members

Where a committee member discloses a financial **interest** and can no longer vote on the **matter**, this might affect the outcome of the committee vote. That might cause another committee member to lobby the remaining committee on behalf of the conflicted member to influence the vote in the conflicted member's favour.

Although not expressly covered in the conflict of **interest** rules, committee members should be mindful of the disclosure made and actively resist any such lobbying.

Best practice would be to report any such lobbying to the Committee Chair.

If 50% or more of the committee members have a financial interest in the matter

If 50% or more of the committee members have a financial **interest** in the **matter**, the committee is not allowed to decide on the **matter**.

Instead, the committee must call a body corporate EGM to consider and decide on the **matter**.

Consequences of failure to disclose a financial interest

If a committee member fails to disclose a financial conflict of **interest** to the committee and/or fails to record it in the Committee **Interest Register**, the committee must notify the members of the body corporate as soon as practicable after the committee becomes aware of the failure.

The committee must also notify the body corporate if the committee decision on the **matter** failed to follow the restrictions that apply where there is conflicted committee member. For example, if the conflicted committee member voted on the **matter** when they should not have, or they signed any documents relating to the **matter** when they should not have, or an EGM was not called when it should have (i.e., when 50% or more of committee members are financially conflicted).

The committee must notify the body corporate of such failure(s) as soon as practicable after the committee becomes aware.

The committee decision on the matter remains valid

Any failure above does not affect the validity of the committee's decision on the **matter** or the **matter** itself. The committee decision on the **matter** remains valid.

Could a committee member be at risk of liability for failing to disclose?

Yes, that is a possibility. The fact that the committee's decision on the **matter** remains valid does not affect any right a person may have to make an application under the Unit Titles Act in relation to the committee decision. An owner may take legal action against the committee or an individual committee member.

This means a committee member who fails to disclose a financial **interest** in a committee **matter** could face legal consequences personally should an owner or aggrieved party be unhappy.

A committee member's failure to disclose could also risk invalidating office bearers' liability insurance.

LEGISLATION

(as at publication of this guide)

Unit Titles Act 2010

114B Conflicts of interest of members of body corporate committee

The members of a body corporate committee must comply with the conflict of interest rules contained in sections 114C to 114F.

Section 114B: inserted, on 9 May 2023, by section 22 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (2022 No 19).

114C Duty to disclose conflicts of interest

- (1) A member of a body corporate committee who is interested in a matter must disclose details of the nature and extent of the interest (including any monetary value of the interest, if it can be quantified)—
 - (a) to the committee; and
 - (b) in an interests register kept by the committee (*see* section 114F).
- (2) Disclosure under subsection (1) must be made as soon as practicable after the member becomes aware of being interested in the matter.
- (3) A person is **interested** in a matter if the person—
 - (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
 - (e) may be interested in the matter because the body corporate's operational rules say so.
- (4) However, a person is not interested in a matter—
 - (a) merely because they receive an indemnity, insurance cover, remuneration, or other benefit authorised by the body corporate; or
 - (b) if the interest is due to their membership of the body corporate and it is the same or substantially the same as the interest of all or most other members of the body corporate; or
 - (c) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the person in carrying out their responsibilities under this Act, the regulations, or the body corporate's operational rules.
- (5) In this section and sections 114D to 114F, **matter** means—
 - (a) the body corporate committee's performance of its functions or exercise of its powers; and
 - (b) an arrangement, agreement, or contract (a **transaction**) made or entered into, or proposed to be entered into, by the body corporate committee (whether on behalf of the body corporate or otherwise).

Section 114C: inserted, on 9 May 2023, by section 22 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (2022 No 19).

114D Consequences of being interested in matter

- (1) A member who is interested in a matter—
 - (a) must not vote or take part in any decision of the body corporate committee that relates to the matter; and
 - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; but
 - (c) may take part in any committee discussion relating to the matter and be present at the time the decision of the committee is made (unless the committee decides otherwise).
- (2) A member who is prohibited from voting under subsection (1) may still be counted for the purpose of determining whether there is a quorum at any meeting at which the matter is considered, with 1 exception, as set out in subsection (3).
- (3) If 50% or more of the members of the committee are prohibited from voting under subsection (1), an extraordinary general meeting of the body corporate must be called to consider and determine the matter.

Section 114D: inserted, on 9 May 2023, by section 22 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (2022 No 19).

114E Consequences of failure to disclose interest

- (1) A body corporate committee must notify the members of the body corporate of a failure to comply with section 114C or 114D, and of any transactions affected, as soon as practicable after becoming aware of the failure.
- (2) A failure to comply with section 114C or 114D does not affect the validity of the committee's decision on the matter concerned or the matter itself (but the member's behaviour may be censured under Part 4).
- (3) Subsection (2) does not affect any right a person may have to make an application under this Act in relation to the decision on the matter.

Section 114E: inserted, on 9 May 2023, by section 22 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (2022 No 19).

114F Interests register

- (1) The body corporate committee must keep a register of disclosures made by committee members under section 114C (an **interests register**).
- (2) The interests register must be available for inspection by the members of the committee.
- (3) The operational rules of the body corporate may provide for whether (and, if so, the extent to which) the interests register is to be made available for inspection by other members of the body corporate or any other person.

Section 114F: inserted, on 9 May 2023, by section 22 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (2022 No 19).

114I Conflicts of interest of body corporate managers

- (1) A body corporate manager must, as soon as practicable after becoming aware of any conflict of interest, disclose it to the body corporate committee or, if there is no committee, to the body corporate chairperson, and the body corporate must decide whether, and on what terms, the manager may continue to act in the matter concerned.
- (2) To avoid doubt, if a person is engaged as a body corporate manager by more than 1 body corporate,—
 - (a) the manager must act independently in relation to each body corporate; and
 - (b) all matters for which the manager is responsible in relation to each body corporate must be independently satisfied; and
 - (c) the manager must not intermix the funds, records, or any other things of any of the body corporates with those of 1 or more of the other body corporates.
- (3) For the purposes of determining whether there is a conflict of interest in relation to a matter, section 114C(3) to (5) applies—
 - (a) as if a reference to a body corporate committee were a reference to a body corporate manager; and
 - (b) with any other necessary modifications.
- (4) The body corporate committee or the chairperson of a body corporate must keep a separate register of disclosures made by its body corporate managers (an **interests register**).
- (5) The register must be available for inspection—
 - (a) by members of the body corporate committee (if any); and
 - (b) if the operational rules of the body corporate allow, by any other members of the body corporate or any other person to the extent that the rules provide.

Section 114I: inserted, on 9 May 2023, by section 22 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 (2022 No 19).

Unit Titles Regulations 2011

Regulation 6(5)

- (5) Notice of an annual general meeting must be accompanied by the following documents:
 - (a) a proxy appointment form; and
 - (b) a postal voting form; and
 - (c) a copy of the financial statements for the most recent financial year; and
 - (ca) a copy of the body corporate committee interests register; and
 - (d) any other document that the body corporate or chairperson (as the case may be) considers relevant.

Amendments to the Unit Titles Act 2010 came into force on 9 May 2024

176B Tribunal may make pecuniary penalty orders

- (1) The Tribunal may, on the application of the chief executive, order a body corporate manager to pay to the Crown the pecuniary penalty that the Tribunal determines to be appropriate if the Tribunal is satisfied that—
 - (a) the body corporate manager has intentionally and without reasonable excuse breached their duty—
 - (i) under section 114I(1) (disclosure of conflict of interest to a body corporate); or
 - (ii) under section 114I(2) (duties when engaged as a body corporate manager by more than 1 body corporate); and
 - (b) the breach of duty has materially and negatively impacted on 1 or more individual unit owners or the body corporate as a whole.
- (2) The Tribunal may, on the application of the chief executive, order a body corporate or a body corporate manager to pay to the Crown the pecuniary penalty that the Tribunal determines to be appropriate if the Tribunal is satisfied that the body corporate, the body corporate manager, or both have intentionally and without reasonable excuse—
 - (a) failed to comply with the requirement to produce documents under section 202A(3); or
 - (b) obstructed or hindered an authorised person in exercising the power of entry to a unit title development under section 202B(1)(b); or
 - (c) failed to comply with an improvement notice issued under section 176F.
- (3) The chief executive may not make an application under subsection (1) or (2) later than 12 months from the date on which the chief executive first became aware of the breach of this Act.

Compare: 1986 No 120 s 109B

176C Maximum amount of pecuniary penalty

The maximum amount of pecuniary penalty for a breach of this Act is,—

- (a) for a breach referred to in section 176B(1), \$5,000;
- (b) for a breach referred to in section 176B(2)(a), \$1,500;
- (c) for a breach referred to in section 176B(2)(b) or (c), \$3,000.

Compare: 1986 No 120 s 109C

176D Considerations for Tribunal in determining pecuniary penalty

In determining an appropriate pecuniary penalty, the Tribunal must have regard to all relevant matters, including—

- (a) the nature and extent of the breach of this Act; and
- (b) the nature and extent of any loss or damage suffered as a result of the breach; and
- (c) any gains made or losses avoided by the body corporate or the body corporate manager as a result of the breach; and
- (d) the circumstances in which the breach took place.

Compare: 1986 No 120 s 109D

176E Only 1 pecuniary penalty order may be made for same conduct

- (1) If conduct by a body corporate constitutes a breach of 2 or more provisions of this Act, proceedings may be brought against that body corporate for the conduct under any 1 or more of the provisions, but no body corporate is liable to more than 1 pecuniary penalty order for the same conduct.
- (2) If conduct by a body corporate manager constitutes a breach of 2 or more provisions of this Act, proceedings may be brought against that body corporate manager for the conduct under any 1 or more of the provisions, but no body corporate manager is liable to more than 1 pecuniary penalty order for the same conduct.

Compare: 1986 No 120 s 109E

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