

Conflicts of Interest Policy	
Policy Statement	This policy outlines how to identify and manage actual, potential or perceived conflicts of interest.
Purpose	The purpose of this policy is to assist Directors and senior management of RSL LifeCare Limited (RSLLC) to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity and assets of RSLLC and manage risk.
Objective	RSLLC’s Board aims to ensure that Board members and employees are aware of their obligations to disclose any actual or potential or perceived conflicts of interest that they may have, and to comply with this policy to ensure they effectively manage those conflicts of interest as representatives of RSLLC.
Scope	This policy applies to the Directors and employees of RSLLC.

The provisions of the policy are set out below.

1. Duties owed to the Charity

Directors

Directors have duties of loyalty to RSLLC due to their fiduciary relationship with RSLLC, and are required to always act in the best interests of RSLLC and in a way which furthers RSLLC’s charitable purpose.

The purposes of RSLLC as a public benevolent institution are:

- (a) to provide benevolent relief to persons suffering from ill health, disability, infirmity, homelessness or financial hardship, in particular, Veterans and older people;
- (b) to make aged care and retirement village accommodation, amenities and services available to persons in need; and
- (c) to do all things as may be incidental or ancillary or conducive to the attainment of the purposes in clauses (a) and (b) above.

The duties under the ACNC Governance Standard 5: Duties of Responsible Persons supplement and apply in addition to the obligations that Directors have under general law. These duties include the duty:

1. to act with reasonable care and diligence;
2. to act honestly and fairly in the best interests of the charity and for its charitable purpose;
3. not to misuse their position or information they gain as a Responsible Person

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4. to disclose conflicts of interest;
5. to ensure that the financial affairs of the charity are managed responsibly; and
6. not to allow the charity to operate while it is insolvent.

Employees

All employees have duties of loyalty and fidelity to RSLLC under general law by virtue of their employment relationship with RSLLC. In some cases, where the employee is in a special position of trust or confidence, a fiduciary obligation may also arise. The duty of fidelity requires that an employee must not use information obtained in the course of their employment to the detriment of the employer.

Where a situation of conflict arises, there is a risk that a person will decide based on, or affected by, these influences, rather than in the best interests of RSLLC. This risk must be managed accordingly.

2. Definition of conflicts of interest

A conflict of interest occurs when a person’s personal and/or professional interests or duties conflict with their responsibilities to act in the best interests of RSLLC.

Personal interests include direct interests (i.e. a person’s own interests) as well as those of family, close friends, or other organisations that a person may be involved with or have an interest in (for example, as a shareholder). It also includes a conflict between a Director’s (or employee’s) duty to RSLLC and another duty that the person has (for example, to another entity).

A conflict of interest may be actual, potential or perceived and may be financial (e.g. giving RSLLC contracts to a business in which the Director or employee owns shares) or non-financial (e.g. advocating for RSLLC to employ a family member or close friend (nepotism)).

Examples of interests, positions and relationships that might give rise to an actual, potential or perceived conflict of interest include if the Director or employee:

- is, or has been within the last three years, in a material business relationship (e.g. as a supplier, professional adviser, consultant or customer) with RSLLC, or is associated with someone (family or friends) with such a relationship;
- is, or has been within the last three years, engaged in paid or volunteer work of any other organisation having a material business relationship with RSLLC;
- is, or has been within the last three years, a Board member or trustee of any other organisation having a material business relationship with RSLLC;
- is, or has been within the last three years, in a material business relationship with, or a director, member, or trustee of any other organisation having a material business relationship with an entity in direct competition with RSLLC.

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A useful way to identify conflicts of interest is to use the “impartial observer test” recommended by the Australian Charities and Not-for-profits Commission (ACNC): as a Director or employee of RSLLC, would an impartial observer think that you are likely to, or may be likely to, be improperly affected by your personal interests?¹

3. Policy

This policy has been developed because conflicts of interest have the potential to arise, but do not need to present a significant impediment to the good governance and operations of RSLLC if they are openly and effectively managed. It is the policy of RSLLC as well as a responsibility of the Board, that ethical, legal, financial or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with an individual’s obligations to act in the best interests of RSLLC. RSLLC will manage conflicts of interest by requiring Board members and employees to:

1. avoid conflicts of interest where possible;
2. identify and disclose any conflicts of interest (whether actual, potential or perceived);
3. carefully manage any conflicts of interest; and
4. follow this policy and respond to any breaches.

Responsibility of the Board

The Board is responsible for:

1. ensuring compliance with the law and the constitution regarding conflicts of interest;
2. establishing a system for identifying, disclosing and managing conflicts of interest across RSLLC;
3. monitoring compliance with this policy; and
4. reviewing this policy on an annual basis, to ensure that the policy is operating effectively.

Duty to Avoid Conflicts

The section above outlines the duties owed by the Directors and employees to RSLLC. In broad terms the duty is summarised as follows:

1. they must avoid conflicts of interest and not take advantage of such a conflict;
2. they must disclose any situation where they may appear to have a conflict between their duty to act and a personal interest to the Company Secretary; and
3. they must not, in any matter falling within the scope of their service, have a personal interest or inconsistent engagement with a third party, except with the informed consent of the Board (excluding any Director subject of a conflict of interest as the case may be).

¹ ACNC, November 2015, *Managing Conflicts of Interest: A guide for charity Board members*

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Identification and disclosure of conflicts of interest

The Company Secretary will keep and maintain a Register of Interests for Directors (Register of Interests – Directors), Senior Management (Register of Interests – Senior Management) and Employees (Register of Interests – Employees). These registers will contain the nature and extent of the person’s interest in the matter and any steps taken to address it.

Directors will be required to complete the Disclosure Statement in the Annexure to this Policy upon appointment to the Board and each time their circumstances change, to keep their disclosures always updated. This must be done in writing to the Company Secretary (including by email) using the form annexed to this policy and/or by making a disclosure to the Chair of the RSLLC Board at a Board meeting or Committee Chair of sub-committee of the RSLLC Board at a sub-committee meeting. In the latter events, the relevant Chair shall ensure that the Company Secretary is likewise notified, where the Company Secretary is not present at that meeting. The Company Secretary must keep the Chair updated of any such disclosures promptly after disclosure is made to the Company Secretary if the Chair is not already aware of the matter.

In the case of employees:

1. the Company Secretary will make enquiry of senior management every 6 months following the approval of this policy (who in turn must make enquiry of their reports, and report any disclosures promptly to the Company Secretary); and
2. notification can otherwise be made by an employee at any time in writing to the Company Secretary (including by email) using the information outlined in the Annexure to this policy and copied to the employee’s line manager. Employees are encouraged to contact the Company Secretary for guidance where they need clarification on their obligations.

Once an actual, potential or perceived conflict of interest is identified, and notified to the Company Secretary, the Company Secretary must, as soon as practicable, ensure that it is entered onto the relevant Register of Interests. The Company Secretary will circulate an updated copy of the Register of Interests -- Directors to all Directors with the Board papers for each Board meeting and ensure that it is available at each Board meeting. This will assist Directors to comply with their obligation to disclose any actual, potential or perceived conflicts of interests to the other Directors.

Without limitation to the foregoing, it is the responsibility of the Director subject to a conflict of interest to ensure that the nature of their interest is disclosed at any Board meeting at which a matter is considered if that interest has not been previously disclosed, has materially increased or changed or, in any other case, at the first Board meeting after the acquisition of those interests. Disclosures should be made in writing. If a Director is unsure whether something may be considered a conflict of interest, they should raise it with the Company Secretary or Chair.

The Company Secretary must provide the Register of Interests – Directors to Directors on request and to all new Directors for their information as part of their Board induction.

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Note: A notice of an interest must be recorded in the Register of Interests before the interest gives rise to an actual, perceived or potential conflict of interest.

What is Disclosable?

Directors must make a disclosure to the Company Secretary regarding any actual, perceived or potential conflicts of interests with regard to the definition contained in section 2 above and the interests set out in the Annexure, to be included in the Register of Interests – Directors.

For the purpose of the Constitution, this disclosure will constitute general notice that he/she is to be regarded as interested in all transactions with such person, firm or body.

Confidentiality of disclosures

The confidentiality of information in each of the Registers of Interests will be maintained with only Board members, the CEO, COO, CFO, General Counsel, and the Company Secretary and their administrative assistants (under a duty of confidentiality) having access to the register. The register may also be submitted to ACNC upon request.

Should any additional restrictions on disclosure of conflicts be requested and agreed at any Board meeting, those restrictions will be enforced by the Company Secretary.

4. Action required for management of conflicts of interest: Board Members

Conflicts of interest of Board members

Once the conflict of interest has been disclosed, the Board (excluding the Board member disclosing and any other conflicted Board member) must decide whether those conflicted Board members should:

1. vote on the matter (this is a minimum);
2. participate in any debate; or
3. be present in the room during the debate and the voting.

However, if the interest is a *material personal interest* in a matter being considered at a Board meeting, the Director’s entitlement to vote, or be present in the meeting room, is restricted in accordance with section 195 of the Corporations Act which states that the Director with a material personal interest may not be present or vote unless an exception applies.

The key exemption is where the other Directors who do not have a material personal interest have identified the Director and their material personal interest and passed a resolution, that such interest should not disqualify the Director from voting.

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Material personal interest is not defined. It must be of some substance or value, rather than merely a slight interest. It must be one that could have the capacity to influence the vote of the Director upon the decision to be made. An example may be a related party transaction under which fees are payable to a third-party firm of which the Director is a member.

If the relevant meeting is held using videoconferencing or streaming technology, the Director should still absent his/herself from the proceedings while the discussion and voting takes place.

Subject to compliance with RSLLC’s policies and the law, no Director is disqualified from contracting with a third party firm or holding any other office in a third party firm, provided such engagement is on commercial, arm’s length terms. However, in exceptional circumstances, such as where a conflict is very significant or likely to impact on regular decision-making at Board level, it may be worthwhile considering whether it is appropriate for the conflicted Director to resign from the Board.

Directors should also note that the related party provisions of the Corporations Act apply to charities, the key obligations of which are summarised in the Related Party Transactions Policy (GP07).

What should be considered when deciding what action to take

In deciding what approach to take, the Board will consider:

1. whether the conflict needs to be avoided or simply documented;
2. whether the conflict will realistically impair the disclosing person’s capacity to impartially participate in decision-making;
3. alternative options to avoid the conflict;
4. RSLLC’s objects and resources; and
5. the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, RSLLC.

The approval of any action requires the agreement of a majority of the Board (excluding any conflicted Board member/s) who are present and voting at the meeting. The action and result of the voting will be recorded in the minutes of the meeting and in the Register of Interests – Directors.

Conflicts of interest arising from charitable fund-raising authority

As an authorised fundraiser subject to the Charitable Fundraising Authority Conditions in NSW, RSLLC must establish a mechanism for dealing with any conflicts of interest. In establishing that mechanism under this policy, the specific conditions of RSLLC 's authority also require that Board members that are remunerated:

1. must be excluded from that part of a meeting where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered; and

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2. must not be counted in a quorum for that part of the meeting where their appointment, conditions of service, remuneration or any proposal for the supply of goods and services by them, or their immediate families, is being considered.

Furthermore, the Charitable Fundraising Authority Conditions require the appointment, conditions of service, remuneration or supply of goods or services by a Board member must be ratified at a general meeting of RSLLC members, and the remuneration of Board members approved by NSW Fair Trading (on delegation from the Minister for Better Regulation and Innovation).

5. Action required for the management of conflicts of interest: Employees

Conflicts of interest of Senior Managers

The Company Secretary will maintain a separate Register of Interests – Senior Management for Executive and General Managers. This register will contain the nature and extent of the person’s interest in the matter and any steps taken to address it.

Once a conflict of interest has been disclosed or identified, the CEO must consider how the conflict of interest is to be managed. In exceptional circumstances, such as where a conflict is very significant or likely to impact day-to-day decision making in the role delegated to the relevant manager on an ongoing basis, it may be worth considering whether it is appropriate for the person conflicted to resign or to alter or reduce their duties with RSLLC.

Conflicts of interest of other Employees

The Company Secretary will maintain a separate Register of Interests – Employees. Once a conflict of interest has been disclosed or identified, a line manager must make sure that the conflict is promptly escalated to the executive committee (which is convened by the CEO). The executive committee must consider how the conflict of interest is to be managed. In exceptional circumstances, such as where a conflict is very significant, it may be worth considering whether it is appropriate for the person conflicted to resign.

What should be considered when deciding what action to take

In deciding what approach to take, consideration needs to be given to:

1. whether the conflict needs to be avoided or simply documented;
2. whether the conflict will realistically impair the disclosing person’s capacity to discharge their role, including all delegated authorities;
3. alternative options to avoid the conflict;
4. RSLLC’s objects and resources; and

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5. the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, RSLLC.

The approval of any action requires the agreement of a majority of the Board/executive who are present and voting at the meeting/committee. The action and result of the voting will be recorded in the minutes of the meeting/committee and in the relevant Register of Interests.

The Registers of Interests and actions taken by an executive committee will be reviewed on a regular basis by the Board.

6. Conflicts of interest in Retirement Villages

Part 4 of the Retirement Villages Regulation 2017 (NSW), as amended by the Retirement Villages Amendment (Rules of Conduct for Operators) Regulation 2019 (NSW), requires operators of retirement villages and its employees to avoid conflicts of interests. A conflict of interest arises when an employee of a retirement village:

- a) has a private interest in a matter which arises if there is a reasonable likelihood or expectation of an appreciable financial gain or other benefit or loss to the employee; and
- b) the private interest has the potential to come into conflict with or affect the employee's ability to carry out their role impartially and in the interests of residents.

Some situations that may give rise to a conflict of interest include:

- a) Financial or other personal interests in a matter that the village deals with, or having friends or relatives with such an interest;
- b) Personal beliefs or attitudes that influence the impartiality of a decision or proposed decision;
- c) Personal relationships which lead to the perception that the relationship can or may influence a decision.

Duty to manage and resolve conflicts

Operators of a retirement village have a duty to manage and resolve a conflict. Depending on the nature of the conflict, this may include restricting the conflicted employee's involvement in a matter, engaging an independent party to oversee a matter or the employee relinquishing the personal interest that has caused the conflict.

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Reporting a conflict of interest

In many cases, employees will become aware of the potential for a conflict of interest. All employees have a duty to avoid these situations or to disclose them to their managers as soon as they become apparent. If employees are uncertain whether a conflict exists, they should advise their managers straight away.

Action required when a conflict is reported or discovered

1. If after receiving a report or discovering a conflict of interest, the Village must provide written notice of the conflict to each resident in the Village, as soon as practicable.
2. In some situations, conflicts are not immediately reported or identified, and later discovered. If a Village becomes aware of the existence of a conflict (after the fact), the Village must provide written notice of the discovery of the conflict to each resident in the Village. The notice must contain:
 - a) A description of the conflict of interest;
 - b) An outline of the reason/s why the conflict of interest was not disclosed earlier (if known); and
 - c) The proposed action to be taken by the operator in response to the conflict.
3. Management must record all instances of conflicts of interest that are reported or discovered in the Conflicts of Interest Register including the following information:
 - a) The name, contact details and title of the employee with the conflict of interest;
 - b) The date the conflict of interest was disclosed to the residents (as per above);
 - c) The function connected with the management or operation of the Village to which the conflict of interest relates and the date on which the function was carried out;
 - d) The nature of the private interest giving rise to the conflict of interest; and
 - e) Details of any measures implemented to mitigate any effects of the conflict of interest (below).
4. These records must be kept for the duration of the employee’s employment, and for an additional 5 years after the employment ends.
5. Residents may request access to the records, and the Village must provide access within 5 business days from the date of the request.
6. Penalties may apply for failure to comply with these record keeping obligations.
7. Where a conflict of interest is discovered as opposed to reported, management will review this and any other internal policies and procedures for effectiveness, and remind all staff members of their duties under existing policies.

7. Compliance with the policy

The Chair will be available to discuss with all Directors and management the application of this policy to the circumstances and provide guidance regarding disclosure of interests, if required.

If a Director or manager has a reason to believe that a person subject to the policy has wilfully or negligently failed to comply with it, they should refer the matter in the first instance to the Chairman (or the full Board (if there is a concern about the Chairman’s interests)) who must initiate an investigation into the circumstances. The Director, or manager or any other employee may also make a disclosure under the Whistle-blower Policy (GP11).

If it is found that this person has failed to disclose a conflict of interest, the Board (in relation to a Director or

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the CEO) or CEO (in relation to an employee), as applicable, may take such action against them as is reasonably required to protect the interests and reputation of the charity. This may include seeking to terminate their relationship with RSLLC.

8. Related documents and references (internal & external)

1. ACNC Guide: Managing Conflicts of Interest Guide
2. ACNC Guide: Gifts and Honorariums Guide
3. Board Code of Conduct (GP 05)
4. Related Party Transactions (GP07)
5. Whistle-blower Policy (GP11)

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Annexure

Conflict of Interest Disclosure Statement

To: Company Secretary (companysecretary@rslifecare.org.au)
For the purpose of updating the Register of Interests

From: _____

Date _____

Subject: Disclosure of Conflict of Interest

With regard to my service as [a Director on the Board of RSLLC][a Director on a Board sub-Committee][an employee of RSLLC], I have the following interests to report which may give rise to perceived, potential or actual material conflicts of interest, as detailed below [and in the attachments].

- I am affiliated with another charity (provide details)
- I am affiliated (including directorships or memberships) with a vendor, supplier, or other party having or wishing to have a direct or indirect interest in a business transaction, agreement or investment with RSLLC (provide details)
- I have business dealings or transaction with a vendor, supplier or any other party having or wishing to have a director indirect interest in a business transaction, agreement or investment with RSLLC which could result in benefit to me (provide details)
- I or person(s) I have affiliation with have interest in purchasing services from RSLLC (provide details)
- I am affiliated with an employee of RSLLC (provide details), noting that an affiliated person(s) is a party to or have an interest in any pending legal proceedings involving RSLLC (provide details)
- Other (provide detail)

Signed

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Template of Register of Interests

Name	Description of nature and extent of interest	Relation of interest to RSLLC	Has the Board been notified of the interest?	Date of disclosure	Steps taken by the Board	Actions taken by the Director/Officer

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