



## Conflict of Interest Guidelines

(as adopted by Council March 2009)

As the professional association for the Western Australian legal profession, the Law Society of Western Australia (**Society**) is required to maintain a high standard of professionalism and ethical conduct in its operations.

Accordingly, the Society has issued the following guidelines which apply to the Society's Council and Committee members. The purpose of these guidelines is to explain what conflicts of interest are, when they might arise and what should be done about them, in accordance with the Society's 'good practice' approach to corporate governance.

In addition to these guidelines, the Society's Council and Committee Standing Orders outline a conflicts management process to be followed in dealing with some of the conflict issues identified in accordance with these guidelines.

## **1. What types of conflicts may arise?**

There are two main types of conflicts that may arise:

- (a) a conflict between a Council or Committee member's duty to the Society and any material personal interest that the Council or Committee member may have in matters that are being considered by the Council or a Committee; and
- (b) the specific legal conflict which arises where a Council or Committee member and his or her firm represents a client who is acting against an insured of the Law Mutual Fund (**Insured**),

(**Conflict**).

One or both of these conflicts may be applicable to you depending on your role within the Society.

## **2. Material personal interests**

### **2.1 What is the prohibition regarding conflicts with material personal interests?**

Council or Committee members must not put themselves in a position where there is a conflict, or there is the reasonable potential for a conflict to arise, between their duties and responsibilities to the Society and their material personal interests.

A Conflict may arise if a Council or Committee member has a material personal interest in a matter that is being considered by the Council or a Committee.

### **2.2 What is a material personal interest?**

Whether a personal interest in a matter that is being considered by the Council or a Committee is material will be a question that the relevant Council or Committee member will need to determine, however if a Council or Committee member is unable to decide whether or not a personal interest is material, he or she should discuss the issue with the Society's Executive Director.

A material personal interest in a matter that is being considered by the Council or a Committee may include:

- (a) any direct or indirect pecuniary interest, in a contract, or proposed contract made by, or in the contemplation of, the Council or a Committee;

- (b) business or financial interests, including holding a company directorship or shareholding, a financial investment, or a consultancy or a grant; or
- © a Council or Committee member's affiliations with other organisations or people, including employment, professional or personal relationships,

which may conflict with decisions to be made by the Council or a Committee in a particular matter.

### **2.3 What should a Council or Committee member do if he or she thinks he or she may have a material personal interest that may lead to a Conflict?**

If a Council or Committee member becomes aware of a material personal interest that may lead to a Conflict, he or she must immediately disclose that interest in writing to the Society's Executive Director who will notify the Council President or the Committee Convenor immediately.

## **3. Legal Conflicts**

### **3.1 When might a legal conflict arise?**

A Council or Committee member may find himself or herself with a Conflict if, in his or her capacity as a lawyer, he or she represents a client who is acting against an Insured. In particular, a Council or Committee member may obtain information during the course of his or her role as a Council or Committee member which may relate to his or her client's case and, in his or her capacity as a lawyer he or she will be under a duty to disclose that information to his or her client.

This conflict could result in a breach of that Council or Committee member's duty as a lawyer to disclose information to his or her client or a breach of his or her obligations of confidentiality as a Council or Committee member.

#### **(a) A lawyer's duty to his or her client**

Rule 7 of the Professional Conduct Rules states that:

*'A practitioner must give undivided faithfulness to the client's interest, unaffected by the interest of any other person, including the practitioner's own interest, or by the practitioner's perception of the public interest.'*

*A practitioner must at all times fully and frankly disclose to the client any interest the practitioner has in any matter in which the practitioner acts for the client. If the interest is adverse to the client's interest the practitioner must decline to represent or cease representing the client unless the client is fully informed and voluntarily assents to the practitioner acting or continuing to act on the client's behalf.'*

Lawyers also have a common law duty to disclose and use for a client's benefit all material information coming into his or her possession concerning the client's affair which is most often located as part of a lawyer's duty of care.

**(b) A Council or Committee member's duty of confidentiality**

Under rule 52A of the Society's Constitution, Council members must keep all information gained by virtue of their position as a Council member confidential. Committee members who are not also Council members must keep all information gained by virtue of their position as a Committee member confidential pursuant to the terms of their individual contracts of appointment which provide that they are bound by the Council's policies (which includes CP04.06 titled 'Members Access to and Management of Information').

**3.2 What should you do if you think that a legal conflict has arisen?**

If a Council or Committee member becomes aware of an actual legal conflict he or she must immediately disclose that conflict in writing to the Society's Executive Director who will notify the Council President or the Committee Convenor immediately.

**3.3 What about a potential legal conflict?**

In some situations, there may not be a present legal conflict, but there is the potential for one to arise if events unfold in a particular way.

**3.4 What should you do if you think there is potential for a legal conflict?**

If a Council or Committee member identifies a potential legal conflict he or she must immediately disclose that conflict in writing to the Society's Executive Director who will notify the Council President or the Committee Convenor immediately.

**3.5 What about an inadvertent conflict?**

A legal conflict may emerge unexpectedly; for example where a Council or Committee member's initial instructions in his or her role as a lawyer were not thought to be in conflict with his or her role as a Council or Committee member, but as events unfold, an actual or potential conflict emerges.

If a Council or Committee member identifies that an inadvertent conflict has arisen, he or she must immediately disclose that conflict in writing to the Society's Executive Director who will notify the Council President or the Committee Convenor immediately.

**4 What should you do if you are unsure about whether Conflict exists?**

If a Council or Committee member is uncertain as to whether an actual or potential conflict of interest exists, the Council or Committee member should discuss the matter with the Society's Executive Director.

**5. Declaration**

Council and Committee members are required immediately upon election to disclose any conflicts or material personal interests which have the potential to lead to a Conflict. If there are none, Council and Committee members are required to declare that there are none.

Council and Committee members are also required to disclose all conflicts or material personal interests at the beginning of each Council or Committee meeting.

The Society keeps a record of all disclosed interests.

**6. What happens if a Council or Committee member has a Conflict?**

If the Council or a Committee determines that a Council or Committee member has a Conflict, that Council or Committee member will be notified accordingly in writing by the Society's Executive Director and will be prevented from voting on or being involved in any discussion regarding that matter. Therefore, a Council or Committee member with a Conflict will be asked to leave the meeting when the matter is being discussed.

A Council or Committee member with an identified Conflict will also be prohibited from viewing any documents regarding that Conflict including agenda items and minutes. Any agenda to be viewed by that Council or Committee member which include any matters related to the identified Conflict must be worded in a way which does not reveal any confidential information or have the relevant information blacked out in the copy of the agenda provided to the conflicted Council or Committee member. Any minutes provided to that Council or Committee member must have the relevant sections blacked out.

**7. Are you expected to comply with these guidelines?**

Yes. It is not an option for the Council and Committee members to ignore conflict issues. These guidelines must be followed in all cases in which a Conflict might arise. Any failure to do so will be a breach of an important policy of the Society and will be dealt with accordingly.

**8. What are the consequences of not complying with these guidelines?**

A Council or Committee member's failure to disclose an interest in relation to:

- (a) a contract or proposed contract, made by, or in contemplation of the Council or Committee, could result in a fine of \$500 under section 21(1) of the *Associations Incorporation Act 1987* (WA); or
- (b) any other matters in general, could result in disciplinary action in accordance with the Society's Code of Conduct and Council Standing Orders.