

# **Summary of Conflicts Management Policy**

MLC Nominees Pty Limited

PFS Nominees Pty Limited

NULIS Nominees (Australia) Limited

# Conflicts of Interest Principles

## 1. Overview

This Policy applies to MLC Nominees Pty Limited, PFS Nominees Pty Limited and NULIS Nominees (Australia) Limited (each referred to as ‘the Trustee’) who form part of the National Australia Bank Group (‘the Group’). The Group means National Australia Bank Limited and its controlled entities. This Policy has been prepared having regard to the Group Conflicts of Interest Policy.

The Trustee Board is ultimately responsible for the development and maintenance of the Trustees’ conflicts management framework.<sup>1</sup>

Each Trustee has outsourced the day-to-day operations of the registrable superannuation entities (RSEs) under its trusteeship to various related and non-related party Service Providers<sup>2</sup>. The duties and obligations of each Service Provider are set out in the contractual terms of a Service Level Agreement. Each Service Provider, its delegates and their employees are required to act in accordance with this Policy.

Whilst the Trustee has outsourced certain activities to Service Providers, the Trustee retains ultimate accountability for the actions of each Service Provider.

The following are the statutory covenants that are required to be included in governing rules of all Registrable Superannuation Entities (RSEs).<sup>3</sup>

The governing rules must contain the following covenants by the trustee of the entity in relation to conflicts of interest:

where there is a conflict between the duties of the Trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the Trustee to any other person or the interests of the Trustee or an associate of the Trustee, the trustee must:

- (i) give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons; and
- (ii) ensure that the duties to the beneficiaries are met despite the conflict; and
- (iii) ensure that the interests of the beneficiaries are not adversely affected by the conflict; and
- (iv) comply with the prudential standards in relation to conflicts.

Similar covenants to those above are also imposed on the directors of all RSE trustee companies.<sup>4</sup>

### Investments in entities or financial products

A provision in the governing rules of a regulated superannuation fund is void to the extent that it specifies an entity or financial products through which the assets of the fund may or must be invested.<sup>5</sup>

**Note:** an APRA prudential standard is of no effect to the extent that it conflicts with the SIS Act or the SIS regulations.<sup>6</sup> In other words, the requirements of the SIS legislation override the provisions of APRA’s Superannuation standards.

---

<sup>1</sup> This is a requirement of paragraph 10 of APRA’s Superannuation Prudential Standard SPS 521.

<sup>2</sup> Superannuation Prudential Standard SPS 231 defines ‘service provider’ as an entity which provides outsourced activities on behalf of the RSE Licensee.

<sup>3</sup> Superannuation Industry (Supervision) (SIS) Act 1993 (Cth) section 52(2)(d)

<sup>4</sup> Superannuation Industry (Supervision) (SIS) Act 1993 (Cth) section 52A(2)(d)

<sup>5</sup> SIS section 58A

<sup>6</sup> SIS section 34D(2)

For the purposes of Superannuation Prudential Standard SPS 521 - Conflicts of Interest, a reference to a 'conflict' is a conflict:

- between the duties owed by an RSE licensee (or responsible person<sup>7</sup> of an RSE licensee)<sup>8</sup> to beneficiaries and the duties owed by them to any other person;
- between the interests of beneficiaries and the duties owed by an RSE licensee (or responsible person of an RSE licensee) to any other person;
- between an interest of an RSE licensee, an associate<sup>9</sup> of an RSE licensee (or a responsible person of an RSE licensee) and the RSE licensee's duties to beneficiaries; and
- between an interest of an RSE licensee, an associate of an RSE licensee (or a responsible person of an RSE licensee) and the interests of beneficiaries.

Conflicts of duty and interest (herein referred to as 'conflicts of interest') can be potential, actual or perceived. In some instances, conflicts of interest exist only as a perception of conflict by one party. Some conflicts of interest may result in a civil or criminal offence. Failure to manage conflicts of interest appropriately may lead to legal and/or regulatory action as well as damage to the reputation of the Trustee.

Managing conflicts of interest is particularly important with respect to the Trustee's fiduciary responsibilities. As a fiduciary, the Trustee must give priority to its duties to, and the interests of, beneficiaries.

Accordingly, a framework is essential for ensuring that all potential, actual and perceived conflicts are effectively identified, assessed, avoided or prudently managed, and monitored.

There are three mechanisms for managing conflicts of interest:

- **Managing (or controlling)** conflicts of interest: Conflicts of interest can be controlled by implementing measures that eliminate or mitigate the adverse impact of the conflict. Controls include organisational structures, reporting lines and processes, physical layout and information barriers ('Chinese walls'), monitoring and supervision.
- **Disclosing** conflicts of interest: This will involve the Trustee or its Responsible Persons disclosing relevant personal or business conflicts of duties or interests during or prior to entering into an agreement or performing a transaction (for example, in product literature) or more generally (for example, on a public website).
- **Avoiding** conflicts of interest: Where a conflict of interest has a serious potential impact on the Trustee or members of its RSEs that cannot be managed by way of internal control or disclosure, it must be avoided. For example, a director or employee with a business or personal interest may remove him/herself from any discussion and/or decision making that could give rise to the conflict of interest. A conflict of interest must always be avoided where required by law.

## 2. Policy Statements

- The Trustee's conflicts management framework comprises the totality of systems, structures, policies, processes and controls utilised by the Trustee and its Service Providers to identify, assess, mitigate, manage and monitor all conflicts in accordance with this Policy.

---

<sup>7</sup> A Responsible Person refers to an individual who holds a Responsible Person Position (as determined by the Trustee in accordance with Superannuation Prudential Standard SPS 520 - Fit and Proper).

<sup>8</sup> Any references in this Policy to the Trustee refers to the constitutional corporation / body corporate (the duties of which are carried out by a group of individual trustees) and any reference to a Responsible Person will be taken to include directors of the RSE Licensee as well as other persons so determined by the RSE Licensee.

<sup>9</sup> Section 12 of the Superannuation Industry (Supervision) Act 1993 adopts the definition of 'associate' from s.13 of the Corporations Act 2001. Specifically, s.13(d) stipulates that reference to an associate includes "a director of a body corporate of which the primary person is also a director and that carries on a financial services business".

- Processes should be put in place for the development and maintenance of registers of relevant duties and relevant interests<sup>10</sup>.
- Details of any conflicts identified in a Trustee Board meeting (or board committee or other relevant meeting) should be recorded in the minutes, including actions taken to manage or avoid the conflict.
- Regular and thorough enquiry to identify all conflicts arising from existing or prospective arrangements involving a Service Provider or adviser must be undertaken, including any matters that may potentially affect their performance.
- Conflicts of interest must be explicitly considered when implementing change and managed in accordance with the Trustee's risk management framework.
- All processes and controls which are put in place to identify and monitor potential conflicts of interest and assess, manage or avoid actual or perceived conflicts of interest must be documented.
- Any identified conflict of interest and actions taken to manage the conflict must be documented.
- Where disclosure of a conflict of interest is appropriate, it must be disclosed in a timely, prominent, specific, concise and meaningful way. If disclosure to members is required, it must be in a form that allows them to make an informed decision about how the conflict may affect the service being provided to them.
- The adequacy of actions taken to manage potential, actual or perceived conflicts of interest must be reviewed on a regular basis. If, at a later stage, the actions taken to manage a conflict of interest are found to be ineffective or are no longer appropriate, alternative actions should be implemented and/or the matter should be escalated as appropriate.
- Any failure to appropriately identify, record, control, disclose or avoid a conflict of interest is a breach of this Policy. The breach must be recorded, reported and escalated, and appropriate remedial action must be taken, in accordance with the Trustee's event management process.
- If there is a conflict or inconsistency between this Policy and any applicable legislative requirements, regulations or standards of a Government regulator, those legislative obligations, regulations or standards take precedence to the extent of the conflict or inconsistency. In such an event, full details must be provided to the Trustee.

### 3. Service Provider Responsibilities

- Each Service Provider must implement and embed robust arrangements to identify and manage conflicts of interest in harmony with this Policy. These arrangements must be communicated to its employees, contractors and representatives, and include education and training.
- Each Service Provider must implement measures to monitor compliance with its processes for managing conflicts of interest, including monitoring actions taken to manage conflicts.
- Each Service Provider must adhere to all regulatory obligations relating to conflicts of interest.

---

<sup>10</sup> Superannuation Prudential Standard SPS 521 - Conflicts of Interest defines a relevant duty and relevant interest as follows:

- a **relevant duty** refers to any duty owed by the RSE licensee, or a responsible person of the RSE licensee, to beneficiaries or to any other person; and
- a **relevant interest** of an RSE licensee, an associate of the RSE licensee or a responsible person of the RSE licensee refers to any interest, gift, emolument or benefit, whether pecuniary or non-pecuniary, directly or indirectly held by the RSE licensee, the associate or the responsible person

that the RSE licensee has determined to be relevant for the purposes of this Policy. Paragraph 16 of Superannuation Prudential Standard SPS 521 - Conflicts of Interest states:

“A relevant duty or a relevant interest is one that might reasonably be considered to have the potential to have a significant impact on the capacity of the RSE licensee, the associate of the RSE licensee or the responsible person with the relevant duty or holding the relevant interest, to act in a manner that is consistent with the best interests of beneficiaries.”

#### **4. Review of the conflicts management framework**

- The Trustee must, on an annual basis, review the Trustee's conflicts management framework and report the results of this review to the Board.
- The Trustee must, at least every three years, ensure that the appropriateness, effectiveness and adequacy of the Trustee's conflicts management framework is subject to a comprehensive review by operationally independent, appropriately trained and competent persons.

#### **5. Related Policies & References**

- Superannuation Prudential Standard SPS 521 - Conflicts of Interest
- Superannuation Prudential Practice Guide SPG 521 - Conflicts of Interest