



Building Services Board Policy

Material personal interest

OBJECTIVE

The objective of this policy is to guide members in relation to material personal interest.

SCOPE

This policy applies when a member is aware of a matter that may give rise or does give rise to a material personal interest.

CONTEXT

Duty to disclose a material personal interest

Section 89 of the *Building Services (Registration) Act 2011* (the Act) imposes a duty on a member of the Building Services Board (the Board) or a member of a sub-committee to disclose the nature of a material personal interest in a matter being considered by the Board or a committee. A member must make this disclosure as soon as possible after the facts relevant to the interest have come to the member's attention, and there is a penalty being a fine of up to \$25,000 for failing to make such disclosure.

Voting and presence during the consideration of a matter

Section 90 prohibits a member who has a material personal interest in a matter from voting on the matter and from being present while the matter is being considered.

Section 91 provides for the Board to resolve that section 90 does not apply in respect of a specified member, interest and matter. The member with a declared interest may not vote on or be present for consideration of a resolution under section 91.

Section 92 provides for a quorum if one or more members are absent from a meeting because of the operations of section 90, and empowers the Minister to deal with a matter if the Board cannot because of section 90.

Section 93 empowers the Minister to declare in writing that sections 90 and 92 do not apply to a specified matter.

Material personal interest

The Act does not define the term 'material personal interest'. The term is also used in the *Corporations Act 2001*, where again, it is not defined. It appears in case law because of its use in the *Corporations Act*.¹

¹ Including:

- Good Governance Guide, Issues to consider, Material personal interests, Governance Institute of Australia, 2014.
- When is a director's interest a "material personal interest"?, BSG Legal, http://www.bsglegal.com.au/news-updates_detail.aspx?ArticleId=3
- The impact of a conflict of interest, Allens Arthur Robinson, May 2003, <http://www.allens.com.au/pubs/pdf/cm/focmmay03.pdf>

Key elements of a material personal interest² are that:

- the interest is personal and not public or an interest of another person.
- the personal interest is material and not trivial.

"A conflict of interest occurs when the private interests of a public official come into conflict with their duty to act in the public interest. Conflicts of interest are particularly relevant where the public official has a decision-making role"³.

The materiality of an interest will depend on the circumstances of each case and it will be a matter of judgment for each member to determine. Where a conflict of interest exists even if a member has not declared that conflict, 'material' can be interpreted to mean the matter has a capacity to influence the vote of a particular member on the decision to be made. A material interest need not necessarily be of a financial or pecuniary nature.

TERMS USED

The Board A reference to the Board includes sub-committees of the Board.

POLICY PRINCIPLES

Disclosure of a material personal interest

A member will disclose for the record of a meeting, the nature of each material personal interest arising from a matter considered or to be considered by the Board or a committee, at the beginning of each meeting or as soon as possible after the member becomes aware of a material personal interest.

Dealing with uncertainty

Where a member is uncertain that he or she has a material personal interest, the member will disclose the nature of the possible material personal interest for the record of the meeting. The meeting will then consider the disclosure and the Chairperson will decide that a material personal interest exists or does not exist. The minutes will record the nature of the possible material personal interest disclosed and the Chairperson's decision.

If the Chairperson decides that no material personal interest exists, the Chairperson may proceed with the meeting.

Responding to a declaration of material personal interest

Following a disclosure of a material personal interest or a decision of the Chairman that a material personal interest exists:

- the member who made the disclosure will leave the room; and
- the Board will consider whether to exercise its powers under s.91 to resolve that s.90 does not apply in respect of the specified member, the interest and the matter.

If the Board resolves that s.90 does not apply, its resolution must:

- specify the member, the interest and the matter; and
- state that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

² Maddocks, <https://www.maddocks.com.au/obligations-to-disclose-material-personal-interests/>

³ ICAC, <http://www.icac.nsw.gov.au/preventing-corruption/knowning-your-risks/conflicts-of-interest/4897>

Subdivision 2 — Disclosure of interests

89. Disclosure of interest

(1) *A member of the Board who has a material personal interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.*

Penalty: a fine of \$25,000.

(2) *A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.*

Penalty: a fine of \$25,000.

(3) *Subsection (2) applies to a person who is a member of the committee and also a member of the Board even though the person has already disclosed the nature of the interest at a meeting of the Board.*

(4) *A disclosure under subsection (1) or (2) is to be recorded in the minutes of the meeting.*

90. Voting by interested Board member

(1) *A member who has a material personal interest in a matter that is being considered by the Board —*

(a) must not vote, whether at a meeting or otherwise, on the matter; and

(b) must not be present while the matter is being considered at a meeting.

(2) *A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 91 in respect of the matter, whether relating to that member or a different member.*

91. Section 90 may be declared inapplicable

Section 90 does not apply if the Board has at any time passed a resolution that —

(a) specifies the member, the interest and the matter; and

(b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

92. Quorum where section 90 applies

(1) *Despite section 80, if the Board is dealing with a matter in relation to which a member is disqualified under section 90, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.*

(2) *The Minister may deal with a matter in so far as the Board cannot deal with it because of subsection (1).*

93. Minister may declare sections 90 and 92 inapplicable

(1) *The Minister may by writing declare that section 90 or 92 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.*

(2) *The Minister must, within 14 sitting days after a declaration under subsection (1) is made, cause a copy of the declaration to be laid before each House of Parliament.*

When a member must be absent from the meeting

A member who has disclosed an actual or possible material personal interest must absent himself or herself from the meeting for any consideration or vote:

- on the disclosure;
- pursuant to s.91; and if the Board does not resolve that s.90 does not apply;
- on the matter connected to the material personal interest.

POLICY IMPLEMENTATION

The Chairperson, Board members and the Executive Officer will conduct the affairs of the Board in accordance with this policy.

OTHER RELEVANT POLICIES AND DOCUMENTS

Refer to 'Attachment A – Extracts from the *Building Services (Registration) Act 2011*'.

GOVERNANCE

Resolved by the BSB	Meeting Date 9 November 2017	Item Number 2.5
Chairperson	Signature 	Date 9/11/17
Keywords	board policy; conflict of interest; personal material interest; board member; committee member; declaration; disclosure; consideration; voting; resolution	
Next review	9 November 2020	