

# No Roads Expeditions Foundation (Aust) Limited

## CONFLICTS OF INTEREST POLICY

### Introduction

The purpose of this policy is to assist the board of No Roads Expeditions Foundation (Aust) Limited ('Charity') to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of the Charity and manage risk. The board aims to ensure that directors are aware of their obligations to disclose any conflicts of interest that they may have, and to ensure they effectively manage those conflicts and other conflicts in the organisation. Conflicts of interest commonly arise, and do not need to present a problem to the Charity if they are appropriately managed.

### Scope

This policy applies to the directors and all members, employees, agents and contractors of the Charity.

### Definition of conflicts of interest

A conflict of interest occurs when a person's personal interests conflict with their responsibility to act in the best interests of the Charity. Personal interests include direct interests as well as those of family, friends, or other organisations a person may be involved with or have an interest in. It also includes a conflict between a person's duty to the Charity and another duty that the person has (for example, to another charity). A conflict of interest may be actual, potential or perceived and may be financial or non-financial (for example ethical or legal conflicts). These situations present the risk that a person will make a decision based on, or affected by, these influences, rather than in the best interests of the Charity.

### Responsibilities of the board

The directors must:

- avoid conflicts of interest where possible;
- where conflicts of interest do arise and cannot be avoided, disclose and carefully manage these in accordance with the process set out below (see '*management of directors' conflicts of interest*');
- be familiar with the ACNC governance standards, particularly governance standard 5 (annexed to this policy for reference);
- establish a system for identifying and managing conflicts of interest across the Charity, including amongst its members, employees, agents and contractors as relevant; and
- monitor compliance with this policy and respond to any breaches.

### Management of directors' conflicts of interest

The board must follow the process below to manage directors' conflicts of interest:

#### 1) Identification and disclosure of a conflict of interest

Once an actual, potential or perceived conflict of interest is identified for a particular director, it must be entered into the Charity's register of interests and raised with the board. If all of the other directors share a conflict, the board should refer to governance standard 5 to ensure that proper disclosure occurs. The register of interests must be maintained by the secretary with a record of information relating to the conflict of interest, including the nature and extent of the conflict of interest and any steps taken to address it.

#### 2) Action required after disclosure of conflicts of interest

Once the conflict of interest has been appropriately disclosed, the board (excluding the director disclosing and any other conflicted director) must decide whether or not the conflicted director should:

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

In exceptional circumstances, such as where a conflict is very significant or likely to prevent a director from regularly participating in discussions, it may be worth considering whether it is appropriate for the person conflicted to resign as director.

### **3) Considerations in deciding conflicts management**

In deciding what approach to take under step 2 above, the board should consider:

- whether the conflict needs to be avoided or simply documented (including in the meeting minutes);
- whether the conflict will realistically impair the disclosing person's capacity to impartially participate in decision-making;
- alternative options to avoid the conflict;
- the Charity's objects and resources; and
- the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the Charity.

The approval of any action requires the agreement of at least a majority of the board, excluding any conflicted director/s, who are present and voting at the meeting. The action and result of the voting must be recorded in the minutes of the meeting and in the register of interests.

#### **Management of other conflicts of interest**

All members, employees, agents and contractors of the Charity must notify the board of any conflicts of interest. The board is responsible for establishing a system for disclosing, managing and recording conflicts of interest across the Charity and must ensure that all relevant individuals are aware of their responsibility to disclose conflicts of interest.

#### **Compliance with this policy**

If the board has reason to believe that a person has failed to comply with this policy, it will investigate the circumstances. If it is found that this person has failed to disclose a conflict of interest, the Charity may take action against them. This may include seeking to terminate their relationship with the Charity.

If a person suspects that a director has failed to disclose a conflict of interest, they must notify the board.

#### **Review of policy**

This policy shall be reviewed by the board every two years.

Adopted by the board of the Charity on .....of.....2018

## Annex: Governance standard 5, extracted from the Australian Charities and Not-for profits Commission Regulation 2013

### 45.25 Governance standard 5—Duties of responsible entities

#### *Object*

- (1) The object of this governance standard is:
- (a) to ensure that the responsible entities of a registered entity conduct themselves in the manner that would be necessary if:
    - (i) the relationship between them and the entity were a fiduciary relationship; and
    - (ii) they were obliged to satisfy minimum standards of behaviour consistent with that relationship; and
  - (b) to give the public, including members, donors, employees, volunteers and benefit recipients of a registered entity, confidence that the registered entity:
    - (i) is acting to prevent non-compliance with the duties imposed on responsible entities; and
    - (iii) if non-compliance with the duties imposed on responsible entities occurs—will act to identify and remedy non-compliance with the duties imposed on the entity.

#### *Standard*

- (2) A registered entity must take reasonable steps to ensure that its responsible entities are subject to, and comply with, the following duties:
- (a) to exercise the responsible entity's powers and discharge the responsible entity's duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible entity of the registered entity;
  - (b) to act in good faith in the registered entity's best interests, and to further the purposes of the registered entity;
  - (c) not to misuse the responsible entity's position;
  - (d) not to misuse information obtained in the performance of the responsible entity's duties as a responsible entity of the registered entity;
  - (e) to disclose perceived or actual material conflicts of interest of the responsible entity;
  - (f) to ensure that the registered entity's financial affairs are managed in a responsible manner;
  - (g) not to allow the registered entity to operate while insolvent.

Note: A perceived or actual material conflict of interest that must be disclosed includes a related party transaction.

Note 1: Governance standard 5 sets out some of the more significant duties of responsible entities. Other duties are imposed by other Australian laws, including the principles and rules of the common law and equity.

Note 2: Some of the duties imposed by other Australian laws may require a responsible entity to exercise its powers and discharge its duties to a higher standard.

Note 3: For paragraph (f), ensuring that the registered entity's financial affairs are managed in a responsible manner includes putting in place appropriate and tailored financial systems and procedures.

The systems and procedures for a particular registered entity should be developed having regard to the registered entity's size and circumstances and the complexity of its financial affairs.

The systems and procedures may include:

- (a) procedures relating to spending funds (for example, the approval of expenditure or the signing of cheques); and
- (b) having insurance that is appropriate for the registered entity's requirements.

- (3) For paragraph (2)(e), a perceived or actual material conflict of interest must be disclosed:
- (a) if the responsible entity is a director of the registered entity—to the other directors (if any); or
  - (b) if the registered entity is a trust, and the responsible entity is a director of a trustee of the registered entity—to the other directors (if any); or
  - (c) if the registered entity is a company—to the members of the registered entity; or
  - (d) in any other case—unless the Commissioner provides otherwise, to the Commissioner, in the approved form.

Note 1: **Company** is defined in section 205-10 of the Act, to include a body corporate or any unincorporated association or body of persons (but not a partnership).

Note 2: Paragraph (c) applies in situations where paragraph (a) cannot apply, for example, if there is only one director or all the directors have a similar conflict.

Note 3: Part 7-6 of the Act provides for the approval of forms.

Note 4: A responsible entity may disclose a conflict of interest in the form of a standing notice with ongoing effect.

(4) If the responsible entity's conduct is consistent with Subdivision 45-C, the responsible entity is taken to have complied with the duties mentioned in subsection (2).

(5) In this section:

**insolvent** has the meaning given by subsection 95A (2) of the *Corporations Act 2001*.