



# **Conflicts Policy**

**31 May 2022**

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# Conflicts Policy

## *Policy on conflicts of interest and related party transactions*

### Purpose of Policy

Fawkner Property Ltd (**Fawkner**) acts as the manager of unregistered and registered managed investment schemes. As manager of these schemes, Fawkner is required to hold an Australian financial services license (**AFSL**) to provide financial services as part of its role as manager. In providing products and services under its AFSL, Fawkner is required to develop and implement management policies and procedures appropriate to the size, business mix and complexity of its operations which:

- identify any potential or actual conflicts of interest and related party transactions;
- prescribe methods of avoiding conflicts of interest where required to do so;
- prescribe methods for disclosing conflicts of interest and related party transactions;
- prescribe methods of dealing with and prudently managing conflicts of interest; and
- prescribe the actions to be taken by Fawkner to monitor and control conflicts of interest and related party transactions.

The conflicts of interest may arise wholly, or partially, in relation to the provision of financial services or funds management services by Fawkner or its representatives.

The objectives of this policy are to:

- identify obligations with respect to management of conflicts and transactions with related parties;
- identify regulatory and common law obligations regarding conflicts of interest and related party transactions; and
- prescribe measures for the disclosure, dealing and monitoring of conflicts of interest and related party transactions.

### ASIC regulatory guide 181

ASIC Regulatory Guide 181 requires an Australian financial services (**AFS**) Licensees to develop a conflicts of interest policy and to implement appropriate procedures for the management, monitoring and controlling of conflicts of interest.

### ASIC regulatory guide 76

ASIC Regulatory Guide 76 provides guidance for AFS Licensees operating registered managed investment schemes on entering related-party transactions, whether to seek member approval, what should be included in documentation seeking approval and information about related party transactions that should be included in a disclosure document.

### ASIC regulatory guide 46

Benchmark 5 of ASIC Regulatory Guide 46 requires AFS Licensees operating registered managed investment schemes in the form of unlisted property trusts to maintain and comply with a written policy on related party transactions, including the assessment and approval processes for such transactions and arrangements to manage conflicts of interest.

### Definition of a conflict of interest

For the purposes of this policy, conflicts of interest are circumstances where some or all the interests of people to whom Fawkner has obligations are inconsistent with, or diverge from, some or all of the interests of Fawkner or its related parties. This includes actual, apparent and potential conflicts of interest.

For example: Fawkner derives income based on total assets of a managed investment scheme managed by it, and the acquisition of assets without due diligence would result in higher fees to Fawkner. For other examples of conflict of interest, see Appendix A.

### Statutory obligations

#### **Corporations Act 2001:**

*Chapter 2D - Duties of directors, other officers and employees of companies*

Directors, officers and employees have a duty to:

- act in good faith in the best interests of the company and for a proper purpose, and not recklessly or in an intentionally dishonest way;
- not to improperly use their position or information they obtain as a result of their position to gain an advantage for themselves or someone else or to cause detriment to the company; and
- generally disclose any material personal interest in a matter that relates to the affairs of the company.

*Part 5C.7 – Related Party Transactions in the operation of managed investment schemes*

Fawkner, as an agent of the trustee or as the responsible entity of a managed investment scheme:

- must ensure that a related party of the trustee, responsible entity or Fawkner is not given a financial benefit out of scheme property or that could endanger scheme property other than in compliance with the Act;
- the giving of such a benefit by a related party requires the approval of the members of the scheme, unless the giving of the benefit falls within an exception in the Act; and
- the exceptions in the Act are limited to:
  - the terms of the financial benefit would be reasonable if the parties were dealing at arm's length (or less favourable);
  - the benefit is fees or reimbursement of expenses to which the trustee or responsible entity is entitled to under the trust deed or constitution of the scheme;
  - the benefit is the reasonable remuneration of an officer or employee or the reimbursement of reasonable expenses to an officer or employee;
  - the benefit is by way of a reasonable indemnity for liabilities incurred as an officer or employee or an agreement for such an indemnity or the payment of reasonable legal costs incurred as an officer or employee;
  - the benefit is given to the related party as a member of the scheme; or
  - the benefit is given in accordance with a court order.

*Chapter 7 – Financial Services Licensing*

There are a number of obligations of Fawkner, as an AFS Licensee, which deal with or relate to conduct potentially affected by conflicts of interest, including:

- doing all things necessary to ensure that financial services are provided efficiently, honestly and fairly (s912A(1)(a));
- have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by Fawkner or its representatives in the provision of financial services as part of Fawkner's financial services business (s912A(1)(aa));

- having adequate risk management systems (s912A(1)(h));
- complying with financial services laws and to take reasonable steps to ensure representatives do likewise (s912A(1)(c) and (ca));
- having adequate compliance arrangements in place (reg. 7.6.03(g));
- disclosing all benefits and relationships in a Financial Services Guide before providing services to a retail client (s 941A and 941B);
- disclosing benefits and relationships in a Statement of Advice when providing financial product advice to a retail client (s946A); and
- not engaging in misleading or deceptive conduct, dishonest conduct, unconscionable conduct and insider trading (s1041A-H).

*Australian Securities Investments Commission Act 2001 (ASIC Act) - Conduct*

The ASIC Act contains provisions relating to the conduct of financial service providers.

The provisions principally relate to unconscionable conduct and consumer protection in relation to financial services provided by Fawkner.

## Common law obligations

Common law obligations operate in addition to statutory requirements.

There are instances where Fawkner, as an AFS Licensee will act in a fiduciary capacity and has an obligation to a client where the interest is not covered under a statutory obligation. An example of a common law obligation is where an AFS Licensee acts in a trustee capacity on behalf of a client.

## Requirements in regard to conflicts of interest

Fawkner requires that all directors, employees and contractors disclose any activities they or an associate engage in if these relate to:

- property acquisition and/or management; or
- the provision of goods or consulting services of any type to the public; and
- in the case of contractors, the provision of services to any individual or business undertaking property acquisition or management, or fund management activities.

Such activities are considered potential areas for conflicts

of interest to arise. Details of such services must be submitted to the Board of Fawknor (**Board**) for approval prior to:

- the formal employment or engagement under contract with Fawknor or related entities; or
- the establishment by existing employees or contractors of any activities referred to here.

It is at the Boards' sole discretion whether to approve such applications. Approvals shall be recorded in a register maintained for that purpose.

Where application for approval is unsuccessful and the person does not undertake to not engage in the unapproved activity, then:

- for candidates for employment or engagement on contract, they will not be considered, or
- for persons already employed or engaged on contract, that employment or engagement may be terminated subject to that person's employment or engagement contract.

## Requirements in regard to related-party transactions

Fawknor or a related party routinely provides the following services to the members of managed investment schemes of which it is the manager, trustee or responsible entity:

- property acquisition;
- property disposal;
- custody of cash and real estate;
- temporary financing, by way of subscription for underwriting units or short-term loans;
- arrangement of debt finance;
- property management and leasing;
- accounting and financial control, including business activity statements and tax returns;
- registry and scheme administration; and
- compliance with financial services laws.

These related-party transactions are dealt with in the manner set out in the following table.

Transaction	How Dealt With
<b>Property acquisition</b>	A provision for an additional management fee is set out in the trust deed or constitution and fully disclosed in the disclosure document.
<b>Property disposal</b>	A provision for a property fee is set out in the trust deed or constitution and fully disclosed in the disclosure document.

<b>Custody of assets</b>	While a provision for a fee for a custodian, at industry standard rates, is set out in the constitution, Fawknor holds "Tier \$500,000" assets only and seeks reimbursement for custodial and compliance costs, by way of a fixed charge.
<b>Temporary financing</b>	The possibility of temporary issue of underwriting units to related parties is properly disclosed in the disclosure document. Fawknor needs to be satisfied that the terms are, if anything, less favourable than would be expected for arms-length underwriting. Fawknor needs to be satisfied that the interest rates on any short-term loans are not greater than market rates for unsecured lending in similar circumstances.
<b>Arrangement of debt finance</b>	A licensed finance broker, Garnaut Finance Broking, arranges finance facilities for the managed investment schemes and may receive an establishment fee and trail from the lending institution. Fawknor needs to be satisfied that these fees are at current market rates.
<b>Property management</b>	The fees for property management and leasing must be demonstrably at industry standards for an arms-length transaction. Property management fees must reflect the complexity of the management task. There is no entitlement if an agent is appointed.
<b>Accounting and tax</b>	This fee is properly disclosed in the disclosure document and is consistent with fees charged by professional accountants or less favourable.
<b>Registry and administration</b>	No fee is to be charged for this service.
<b>Compliance</b>	In addition to the costs of an external audit of the compliance plan (registered schemes only), Fawknor seeks reimbursement of the costs of custodial and compliance costs by way of a fixed charge.
<b>Compliance</b>	In addition to the costs of an external audit of the compliance plan (registered schemes only), Fawknor seeks reimbursement of the costs of custodial and compliance costs by way of a fixed charge.

If a supplier of a service other than those listed in the table is a related party, this engagement will need to be approved by the Board, which must be satisfied that the terms of the engagement are such that approval from the members of the scheme is not required. The criteria to be taken into account by the Board are set out in RG76.71.

## Reporting actual or potential conflicts of interest

The following parties must not be a related party (as defined in s288 of the Act) of Fawknor, the trustee or responsible

entity of any managed investment scheme which Fawkner manages:

- the auditor or reviewing accountant;
- the auditor of the compliance plan; or
- the valuer of any of the real estate assets.

At the time of engagement by Fawkner, the trustee or responsible entity of a managed investment scheme, Fawkner may be required to provide a declaration that the providers of these services are not related to the directors of Fawkner or the Asset Manager.

Any director or officer of Fawkner, the trustee or responsible entity is required to report any actual or potential conflict of interest at a Board meeting if the director or officer has an interest in the matter being dealt with at that Board meeting. The conflict will be recorded in the minutes of the relevant Board. If the directors consider it appropriate, they may request the consideration of the conflict of interest to be made by the Board in the absence of the director that has disclosed the conflict of interest. The remaining directors will determine how to deal with the disclosed conflict of interest in a manner that satisfies the interests of clients, the directors, the trustee and responsible entity, which may include a determination that disclosure of the conflict of interest be made to the trustee, responsible entity and/or clients.

All employees and contractors are required to report any conflict of interest to the Fawkner Executive Director in the first instance. The Executive Director shall report and arrange for details to be submitted to the Board for consideration. The Board minutes shall record the result of the applications and the Executive Director will record the outcome in the Conflicts of Interest Register.

The onus is on a director to declare their interest in any transaction at the monthly Board meetings.

Where the Executive Director has a conflict of interest, they shall report the conflict in writing to the Chairman of the Board and record the conflict in the Conflicts of Interest Register.

Annually the directors will review the register of creditors to confirm that the parties who may not be related entities are not related entities and this will be documented in the Board minutes.

If the Board is unable to effectively determine the action to be taken in relation to any disclosed conflict of interest, the Board will refer the matter to Fawkner's external advisers for assistance.

## Conflicts of Interest Register

The Compliance Officer will maintain a Conflict of Interest Register (**Register**) and enter all conflicts of interest related to Fawkner into the Register.

The Register shall record any special incentives that are offered to directors or representatives for the distribution of a Fawkner product, or a product of another AFS Licensee.

The Register will also contain details of inter-company relationships that may provide a source of conflict, either now or in the future, for ongoing review.

Details of directors and senior employee share or unit holdings in all Fawkner managed entities shall be reported in a standing report to the Board.

## Disclosure of Conflicts

Where Fawkner determines that a conflict exists but can be managed through appropriate disclosure to clients, Fawkner must ensure that adequate disclosure is made. This requires providing a clear, concise and effective form of disclosure to allow clients to make an informed decision about how the conflict may affect the service being provided to them.

Typically, the disclosure would be made in the offer or disclosure document for the relevant financial product. However, where appropriate, disclosure can be made by a specific communication to clients on its website or by letter.

Fawkner must ensure that disclosure about a conflict of interest:

- is timely, prominent, specific and meaningful to the client;
- occurs before or when the relevant financial service is provided, but in any case, at a time that allows the client a reasonable time to assess its effect; and
- refers to the specific service to which the conflict relates.

In situations in which a conflict of interest arises that is confidential, Fawkner must assess whether any disclosure can be given and whether the conflict can be adequately managed through other mechanisms. In such circumstances, it may be appropriate that the conflict be avoided altogether.

## Controlling Conflicts of Interest

The Board will:

- Identify conflicts of interest relating to the business of Fawkner;
- Assess and evaluate those conflicts of interest; and
- Decide upon and implement an appropriate response to those conflicts of interest.

Depending on the circumstances and the nature of any conflicts of interest, it may be appropriate to:

- Disclose the conflict of interest;
- Provide an alternative source of service to a client or member;
- Decline to provide services to the client; or
- Initiate internal disciplinary action.

In considering Fawkner's obligations in response to any actual or potential conflict, Fawkner should consider, amongst other things, the following questions:

- Is Fawkner providing its financial service in a manner that unfairly puts the interests of Fawkner or any of its directors ahead of the members of the scheme?
- Is Fawkner providing financial services in a way that unfairly puts the interests of one member ahead of the interests of other members?
- Is Fawkner using knowledge about the members in a way that is likely to advance the interests of Fawkner without sufficient disclosure to those affected?

## Monitoring Conflicts of Interest

The Board will monitor all conflicts of interest on a routine basis to ensure all conflicts of interest are identified and disclosed where necessary.

Conflicts of interest will form part of the Fawkner Compliance Plan for each registered managed investment scheme which Fawkner operates. This policy and its enforcement will form part of the Risk Register of Fawkner, reviewed by the Board.

## Custodial staff

The assets of registered managed investment schemes operated by Fawkner are almost entirely investment property and cash held in bank accounts.

The Board has adopted procedures for dealing with both these classes of assets in the Board approved Holding

Scheme Property Policy. The Compliance Manual contains additional measures to address likely conflicts of interest (see Section 5.9 – *Scheme property*).

These procedures mean that staff involved in advising the Board on acquisitions and disposals do not have the capacity to execute documentations and ensure that there is separation between authorisation, management and payment for capital works.

The key conflict in invoicing for Fawkner fees and reimbursement of expenses is dealt with by ensuring the invoices are authorised by a director not involved in creating the invoice.

## Compliance Measures

The Board will monitor all conflicts of interest and the Compliance Manager will maintain the Register.

Where a conflict of interest has not been adequately disclosed it will be recorded in the Fawkner Breach Register and referred to the Board in the first instance and tabled at the Board meetings where the conflict relates to the operation of a managed investment scheme which Fawkner manages.

## Policy Review

This policy will be reviewed on an annual basis. As appropriate, that review may be carried out with the assistance of external compliance advisers and/or the auditor of Fawkner.

Date of most recent management review: 31 May 2022

Date of approval by the Fawkner Board: 31 May 2012

## Contact

Unit holders or advisers who have any questions or would like to request more information available to existing or potential investors, are invited to contact Fawkner investor relations:

Fawkner Property Ltd ACN 147 265 281  
AFSL 437334

Level 8,  
468 St Kilda Road  
Melbourne Vic 3004

(03) 9856 4577  
[info@fawknerproperty.com.au](mailto:info@fawknerproperty.com.au)  
[www.fawknerproperty.com.au](http://www.fawknerproperty.com.au)



## Appendix A

### Examples of Conflict of Interest Activities and Relationships

The following activities illustrate types of potential or actual conflicts of interest that should be avoided and disclosed, as applicable, in accordance with this policy. The list is not all inclusive and is intended to provide guidance only.

- **Conflicting duties:** Participating in decisions relating to another party that may conflict with the interests of Fawkner.
- **Self-benefit:** Using your position or relationship within Fawkner to promote your own interests or those of your family, including using confidential or privileged information gained during your participation or employment at Fawkner for personal benefit or gain or for the personal gain or benefit of family members.
- **Conflicting relationships:** Where outcomes may benefit others rather than Fawkner.
- **Influence peddling:** Soliciting benefits for yourself or your family from outside organisations in exchange for using your influence to advance the interests of that organisation within Fawkner.
- **Other business relationships and dealings:** Approving contracts with organisations in which you or your family have a significant financial or other interest or relationship, particularly if you are in a position to influence major decisions, are responsible for review, negotiation and approval of contracts, or otherwise direct Fawkner business dealings with that entity or business.
- **Intellectual Property:** Inappropriate or unauthorised use of resources/materials developed under the guidance of Fawkner or potential conflicts relating to the development and use of resources.
- **Outside commitments:** Participating in social or political activities is not restricted if you participate as an individual and not as a representative of Fawkner.
- **Business transactions:** Directly or indirectly leasing, renting, trading, or selling real or personal property to Fawkner.
- **Use of Fawkner property for personal advantage:** Using or taking Fawkner resources, including facilities, equipment, personnel, and supplies, for private use or other unauthorised non- Fawkner activities.
- **Recording or reporting false information:** Misrepresenting, withholding, or falsifying relevant information required to be reported to external parties, or used internally for decision making purposes, to derive personal benefits.
- **Gifts:** Personally accepting anything of value (unless nominal), including without limitation, payments, gifts, or loans from organisations or individuals that have dealings with Fawkner.



The logo consists of a white circle centered on a dark blue background. Inside the circle, the words "FAWKNER" and "PROPERTY" are stacked vertically in a black, serif, all-caps font. A thin horizontal line separates the two words.

FAWKNER  

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PROPERTY