

POLICY

Pecuniary interests in the regulated sector

Policy statement

The Resources Regulator operates in a highly-specialised and technical regulatory environment where inspectors are generally sourced directly from the regulated (mining and petroleum) sector, and exercise significant regulatory powers.

Personal pecuniary interests in the regulated sector present potential integrity and legal risks to employees and the Department, including potential findings of corrupt conduct under the *Independent Commission Against Corruption Act 1998* and judicial review challenges to regulatory decisions and actions on grounds of a reasonable apprehension of bias, amongst other legal consequences.

Where personal pecuniary interests are not appropriately mitigated there is the potential for such interests to significantly undermine the Resources Regulator's credibility as an effective high-hazards regulator; it is critical that pecuniary interests in the mining and petroleum sector are managed in a transparent and consistent manner, proportionate to the degree of risk.

This policy applies to all current and future employees, and contractors engaged for greater than three months, assigned to roles within the Resources Regulator. The Executive Director Resources Regulator may elect to apply this policy to a consultant.

Purpose and principles

The purpose of this policy is to:

- set additional requirements to the Department's *Disclosing Interests and Managing Conflicts of Interest* policy, to address identified integrity risks particular to the Resources Regulator; and
- establish rules for the consistent management of personal pecuniary interests associated with regulating under the *Mining Act 1992* (Mining Act), *Petroleum (Offshore) Act 1982*, *Petroleum (Onshore) Act 1991* and *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (WHS (MPS) Act).

This policy is underpinned by the following principles:

- obligations to act ethically and in the public interest, and to observe standards of behaviour prescribed by the *Government Sector Employment Act 2013* (GSE Act), the NSW Public Service Commission's *Code of Ethics and Conduct for NSW government sector employees*, and all other policies under 'Related documents'; and

- developing and advancing the trust of Government, the regulated sector and NSW communities in the Resources Regulator's integrity.

Key requirements

Legislation

Mining Act 1992

Under section 364 of the Mining Act the Minister, all employees and inspectors of the Department who exercises any judicial or official functions under the Mining Act or *Petroleum (Onshore) Act 1991*, must comply with a prohibition. Section 364 prohibits a person, while holding office in an official capacity for the purposes of the Mining Act and while exercising any function under the Mining Act in that capacity, from holding either directly or indirectly a beneficial interest in an authority or a small-scale title. Beneficial interest is not defined in the Mining Act.

However, this policy intends to incorporate additional requirements to the prohibition in section 364 of the Mining Act that apply to roles in the Resources Regulator. For example, this policy prohibits the holding of titles and shares in certain circumstances (refer to Policy section below). And for the purposes of this policy, the term 'beneficial interest' is defined and some examples are provided in Appendix 2 to this policy.

Note, amongst other things, section 364 does not prevent:

- the Secretary of the Department from being the holder, on behalf of the Crown, of an exploration licence for an allocated mineral in respect of land within a mineral allocation area or for a controlled release mineral in respect of land within a controlled release area;
- a person from holding an authority or a small-scale title; or
- a person from holding shareholdings in mining-related companies that hold an authority or a small-scale title.

However, with the exception of the Secretary, this policy intends to make it clear that the above situations are prohibited in certain circumstances as outlined in the 'Policy' section.

Work Health and Safety (Mines and Petroleum Sites) Act 2013

Section 20 of the WHS (MPS) Act requires an appointed government official to give written notice to the Resources Regulator of all interests (including pecuniary interests) that they have, or acquire, that conflict or could conflict with the proper exercise of the government official's functions. If the Resources Regulator considers there is a potential conflict of interest, the Resources Regulator must give a direction to the government official to not to deal or no longer deal with the matter. The scope of the interests under section 20 are not defined in the WHS (MPS) Act.

Note, section 20 only applies to "appointed government officials". An "appointed government official" defined under section 18 of the WHS (MPS) Act, includes a person appointed as an inspector (including chief inspectors), mine safety officer, investigator, and consultant engaged by a public authority.

Under this policy an appointed government official has additional obligations to those under section 20 of the WHS (MPS) Act, including that they must provide written notice on having or acquiring certain interests as set out in this policy and the Department's *Disclosing Interests and Managing Conflicts of Interest* policy.

Government Sector Employment Act 2013

Part 2 of the GSE Act sets out the ethical framework for the government sector. Section 7 of the GSE Act defines the principles of the **government sector core values**, including:

CORE VALUE	PRINCIPLES THAT GUIDE IMPLEMENTATION
Integrity	Place the public interest over personal interest
Accountability	Provide transparency to enable public scrutiny

Policy

In addition to the above legislative requirements, employees and contractors assigned to roles in the Resources Regulator shall:

1. not hold an authorisation as defined by the Mining Act;
2. declare all shareholdings (via the Department's conflicts of interest register) held or controlled by them in mining-related companies that operate in NSW, irrespective of monetary value; and
3. not hold or control substantial shareholdings in mining-related companies that operate in NSW.

For the purposes of this policy, the term "hold or control" is defined (non-exhaustively) in Appendix 2 to this policy.

Effective date of key requirements

These key requirements, except policy requirement number three, take effect 30 days after the date this policy is approved. Policy requirement number three takes effect 90 days after the date this policy is approved.

Breaches of the policy

Failure to comply with section 364 of the Mining Act is a breach of that Act.

Failure to comply with the key requirements of this policy is a breach of the policy, which will be managed in accordance with the Department's *Managing Misconduct and Serious Misconduct* policy and section 69 of the GSE Act.



Further information

For further information on this policy please contact the Regulatory Integrity team via email: rr.integrity@planning.nsw.gov.au.

Related documents

Other policies that should be read in conjunction with this policy:

- [Code of Ethics and Conduct for NSW government sector employees](#) (Public Service Commission)
- [Code of Ethics and Conduct policy](#) (Department)
- [Disclosing Interests and Managing Conflicts of Interest policy](#) and [procedure](#) (Department)
- [Fraud and Corruption Control policy](#) (Department)
- [Secondary Employment and Private Interests policy](#) (Department)

Other documents that should be read in conjunction with this policy:

- [Developing trust and confidence: White Paper on the case for an integrity framework](#) (Resources Regulator)
- [Integrity Framework](#) (Resources Regulator)

Approval

NAME	DATE	APPROVAL
ANTHONY KEON Executive Director, Resources Regulator	20/08/2019	Approved in CM9
ANISSA LEVY Coordinator-General, Environment, Energy & Science	10/09/2019	Approved in CM9
JIM BETTS Secretary	12/09/2019	Approved in CM9

Version control

VERSION NUMBER	DATE ISSUED	CHANGES
0.1	7/02/2019	Draft document for review by the Department's Governance, Legal and Employee Relations branches
0.2	31/07/2019	Draft document for staff and union consultation
0.3	12/08/2019	Final draft document for the Secretary's approval
1.0	3/10/2019	Approved policy issued

Document control

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THIS DOCUMENT APPLIES TO:

All staff	✓	Major Safety Investigations	✓
Regulatory Operations	✓	Mining Act Inspectorate	✓
Regulatory Programs	✓	Mine Safety Inspectorate	✓

Appendices

REF	DESCRIPTION
Appendix 1	Relevant legislation
Appendix 2	Definitions

Appendix 1

Relevant legislation

LEGISLATION	RELEVANT SECTIONS OR CLAUSES
<i>Government Sector Employment Act 2013</i>	Part 2: Ethical framework for the government sector Section 3: Definitions – Public Service senior executive and Public Service employee Section 69: Misconduct
<i>Independent Commission Against Corruption Act 1998</i>	Part 3: Corrupt Conduct
<i>Mining Act 1992</i>	Section 13(3A): Application for exploration licence by the Secretary on behalf of the Crown Section 364: Minister or official not to be interested in authority or small-scale title Dictionary: Authorisation
<i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i>	Section 20: Accountability of government officials

Appendix 2

Definitions

TERM	DEFINITION
Authorisation	Has the same meaning as in the <i>Mining Act 1992</i>
Beneficial interest	<p>A legally recognised interest in property (e.g. an authority within the meaning of the <i>Mining Act 1992</i>) other than full legal ownership. Examples may include:</p> <ul style="list-style-type: none"> the interest of a beneficiary in property held on trust; the interest of a lender in property held on security (for example, under a mortgage, charge or lien); the interest of a purchaser where a contract for sale of property has been executed but the property is yet to be transferred; the interest of a partner in assets of the partnership.
Consultant	A person or company engaged to deliver consultancy or technical services for a discrete project or program
Contractor	A person engaged via a third-party labour-hire provider to fill a temporary role vacancy.
Department	Is the Department of Planning, Industry and Environment.
Employee	Has the same meaning as a 'Public Service employee' or a 'Public Service senior executive' in section 3 of the <i>Government Sector Employment Act 2013</i> , who is assigned to a role in the Resources Regulator.
Government official	Has the same meaning as in section 18 of the <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> .
Holding office in an official capacity	Means the persons listed in section 364(1A) of the <i>Mining Act 1992</i> .
Hold or control	<p>In relation to shareholdings, includes (but is not limited to):</p> <ul style="list-style-type: none"> shares registered individually or jointly in the person's name, shares registered in the name of a company: <ul style="list-style-type: none"> of which the person is a director; of which the person holds or controls more than 50% of the shares.

- shares registered in the name of a trust (including self-managed superannuation funds):
 - of which the person is a trustee;
 - if the trustee is a corporation, where the person is a director of that trustee;
 - of which the person is a member;
 - of which the person is named as a beneficiary, potential beneficiary, or member (in the case of self-managed superannuation funds).
- shares in which the person has a beneficial interest (as defined above).

Note: For the avoidance of doubt, a person does not “hold or control” shares that are held in investment portfolios, such as non-self-managed superannuation funds.

Mining-related companies	Includes, but is not limited to, companies that hold an authorisation under the <i>Mining Act 1992</i> or petroleum titles under the <i>Petroleum (Onshore) Act 1991</i> or <i>Petroleum (Offshore) Act 1982</i> ; or are a mine or petroleum site operator under the <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> and <i>Work Health and Safety (Mines and Petroleum Sites) Regulation 2014</i> ; or companies engaged in engineering or environmental consultancy work that serve the mining and petroleum sector
Pecuniary interest	Has the same meaning as ‘pecuniary interest’ in the Defined Terms at Appendix 1 to the Department’s <i>Disclosing interests and managing conflicts of interest</i> policy.
Roles in the Resources Regulator	Means all roles in the Department that ultimately report to the Executive Director Resources Regulator, including the Executive Director Resources Regulator.
Senior executive	Has the same meaning as ‘ <i>Public Service senior executive</i> ’ in section 3 of the <i>Government Sector Employment Act 2013</i> . The Secretary of the Department is excluded from this definition for the purposes of sections 13(3A) and 364(2) of the <i>Mining Act 1992</i> .
Shareholdings	Means shares held in a proprietary company or public company set out in the table under section 112(1) of the <i>Corporations Act 2001</i> .
Substantial financial shares	Means shares in a single company with an estimated monetary value in excess of AUD \$50,000 or volume value of 20% or greater of total shares issued in the company. The value is the employee’s share of total shareholdings (for example, if an employee has a 25% share in a self-managed superannuation fund that holds shares with an estimated monetary value of AUD \$100,000 in a single company, the employee’s share for the purpose of this policy is AUD \$25,000).

Note: the above monetary value may fluctuate due to market forces and as such the defined monetary value may need to be re-evaluated and revised on occasion.