



Australian Government
**Department of Industry,
Innovation and Science**

Assurance Advisory Service

Entrepreneurs' Programme Committee Governance Review

Final Report

February 2019

Engagement team:

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2. Objective

The objective of this assurance advisory engagement was to assess the governance arrangements in place around the EPC including consideration of:

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- Conflict of Interest processes

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3. Scope

The scope of the engagement encompassed processes and arrangements in place from inception of the EPC on 1 July 2015 through to 30 June 2018.

The engagement incorporated a review of arrangements in place and evidence of all processes completed for the following components:

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- Conflict of Interest processes

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4. Summary Outcomes

In summary there are a number of observations identified during this review which have been outlined below.

Summary observations	Recommendations
<p>7.1 Quorum Considerations</p>	<p>Recommendation 1</p> <p>s 42</p> <p>the following improvements should be considered:</p> <ul style="list-style-type: none"> - documentation in the summary of decisions working spreadsheet (next to the application considered), a list of committee members who are conflicted in detailed discussions. It is understood that this process is in the process of being implemented - document in the minutes any movements made from the original deliberation stage, confirming whether discussion included a member who has a declared conflict in place <p>s 22</p> <p>In the event that there were significant changes to the recommendations at the final decision stage where significant conflicts of interest exist (ie all members returning to the room), the committee could seek an endorsement from the ISA Board as the independent oversight. If adopted, this approach could be added to the documented process for managing conflicts of interest and decision making.</p> <p>s 22</p>

Summary
observations

Recommendations

s 22

Summary
observations

Recommendations

s 22

This review has identified a number of strengths, most notably it was identified that there is a robust declaration of interest process followed by both the programme area as well as the EPC members. There was found to be a number of opportunities to declare a conflict of interest at various points, from draft agenda stage, to meeting papers stage, through to the meeting. This is particularly important around the administration of government programs, particularly where significant funds are involved.

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5. Client feedback

The Secretariat and Program Area agree with the recommendations made in this report. Specific feedback against each recommendation has been captured in the table below

**Recommendation
reference and
responsibility**

Additional commentary/feedback

7.1: Quorum
Considerations:
Recommendation 1

Agree/Disagree

Responsibility:
Secretariat

The Secretariat agrees with this recommendation that the current process for managing conflicts of interest **and** making final decisions are strong.

These conflict of interest mechanisms include:

- Including EPC recommendations/financial spreadsheet and member's scoresheets to identify members' conflicts.
- General wording on working scoresheets sheets – noting that has conflicted member/s no participation in any assessment stage of this this application.
- Additional documentation in the minutes, clearly noting any changes in scores from the deliberation stage to the

**Recommendation
reference and
responsibility**

Additional commentary/feedback

recommendation stage of the meeting, confirming no input from any conflicted members.

7.1: Quorum

Considerations:

Recommendation 2

The Program Area and Secretariat agrees with the recommendation and agrees to:

Agree/~~Disagree~~

- Update the EPC Terms of Reference to reflect any/all changes to members' processes. Specifically, the Terms of Reference should reflect that members of the EPC are not to participate in conversations around application during the final recommendation stage, should a previous conflict of interest have been declared.

Responsibility:

Program Area and
Secretariat

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7. Detailed Report

7.1 Quorum Considerations

Background

The EPC's role is to provide merit assessments and merit ranking recommendations on applications under the Accelerating Commercialisation Programme and the Incubator Support Program.

The decision maker for these programmes are:

- Accelerating Commercialisation Programme – Delegate (General Manager, AusIndustry Support for Business)
- Incubator Support Program – Minister for Industry, Science and Technology.

The Delegate and the Minister are provided with the recommendations made by the EPC for use in their final decision making. It is therefore possible for the decision maker to deviate from the recommendations made.

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Observations

Declaration of Interest

There are clear guidelines in place to enable an assessment of whether the conflict of interest is considered to be:

- material and therefore precludes the member from any discussion or decision-making, or
- not material, and therefore the member's declaration is noted in the EPC minutes.

From the testing performed through the review of the minutes, the conflict of interests that are declared are robust in nature and include anything from meeting someone at a conference a number of years ago through to being on the Board of a competitor or an investor in the organisation.

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Quorum considerations

From a review of minutes of all meetings held between 1 July 2015 and 30 June 2018, there were eight instances where a quorum of three EPC members was not in place for discussions held in relation to specific applications.

From a review of the minutes of these meetings, there is no evidence of the final decision process occurring (all attending committee members returning for the deliberation) and no formal determinations made under section 24 of the IR&D Act by either the EPC or Chair that provided an exemption for a member to be present during deliberations for the decision. s 42

It is recognised that the limiting number of members of the Advisory Committee's under section 22(2) of the *Industry Research and Development Act 1986* to seven, has resulted in instances where the conflict of interest process has impacted on the quorum present for discussions about applications. Further impacted by delay's in EPC appointments towards the end of the period reviewed – further impacting on the workload of the remaining committee members.¹

Risk

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Recommendation 1

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the following improvements should be considered:

- documentation in the summary of decisions working spreadsheet (next to the application considered), a list of committee members who are conflicted in detailed discussions. It is understood that this process is in the process of being implemented
- document in the minutes any movements made from the original deliberation stage, confirming whether discussion included a member who has a declared conflict in place

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In the event that there were significant changes to the recommendations at the final decision stage where significant conflicts of interest exist (ie all members returning to the room), the committee

¹ At the time of these decisions the total compliment of EPC members was 5 with 2 outstanding appointments that were in the process of being appointed. Thus when there is a full compliment of 7 EPC members the likelihood of a quorum not being present for the deliberation phase of the assessment process is minimized.

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could seek an endorsement from the ISA Board as the independent oversight. If adopted, this approach could be added to the documented process for managing conflicts of interest and decision making.

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7.4 Documentation of the Minutes of the EPC

Background

Section 4.1.2 of the ISA Handbook states:

“The minutes of the meeting will record the member disclosing the interest; the nature of the interest (if it is judged material or immaterial by the Board or Committee) and if considered material, the time of the departure of member(s) from the room for the relevant discussion and the time of their return.

If the conflicted person is the Chair of the meeting, it should be noted who the acting Chair is for that part of the discussion.

Discussions regarding an item against which a member has disclosed an interest will be deleted from the member’s copy of the minutes,..”

Observations

From the 18 February 2016 EPC meeting, the documentation of the specific time that members with a declared “material” interest had left the room was no longer present. Whilst the conflicted member was recorded as leaving the room for the discussion of the application, there was no reference to time at which they left the room and then when they returned for the next agenda item.

Where the chair was conflicted for specific applications, at times the minutes referred to an appointed chair in their absence, however there were a number of instances where this was not recorded. It is noted that there was reference to an acting chair in the official sign off of on the EPC recommendations, however this decision was not recorded in the approved minutes.

Meeting	Decision impacted
10 December 2015	Minutes do not reference an acting chair being appointed to preside over the application s 47G, s 47E(d)
18 February 2016	Minutes do not reference an acting chair being appointed to preside over the application. s 47G,
20 May 2016	Minutes do not reference an acting chair being appointed to preside over the application s 47G, s 47E(d)
25 October 2016	Minutes do not reference an acting chair being appointed to preside over the application s 47G, s 47E(d)

Meeting	Decision impacted
8 February 2017	Minutes do not reference an acting chair being appointed to preside over the s 47G, s 47E(d) and s 47G, s 47E(d) applications.
11 May 2017	Minutes do not reference an acting chair being appointed to preside over the s 47G, s 47E(d) or s 47G, s 47E(d) applications
21 June 2017	Minutes do not reference an acting chair being appointed to preside over the s 47G, s 47E(d) and s 47G, s 47E(d) applications
3 August 2017	Minutes do not reference an acting chair being appointed to preside over the s 47G, s 47E(d)
14 September 2017	Minutes do not reference an acting chair being appointed to preside over the s 47G, s 47E(d) and s 47G, s 47E(d)

Refer to observation 7.1 regarding evidence of the final decision process and no formal determinations made under section 24 of the IR&D Act by either the EPC or chair that provided an exemption for a member to be present during deliberations for the decision.

Risk

Without robust documentation of minutes of committee meetings there is a risk that the conflict of interest processes are not adequately documented or decisions appropriately authorised.

Recommendation 6

The Secretariat should consider updating internal guidance on what needs to be documented in the minutes of the EPC meetings – linking to the requirements currently outlined in the ISA Handbook, the IR&D Act and Recommendation 1.

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Attachment B – Declaration of Interest

Context

Legislative requirements

Section 24 of the IR&D Act outlines the requirements for Disclosure of interests by members of committees specifically:

(1) **A member of a committee who has a direct or indirect pecuniary interest** in a matter being considered or about to be considered by the committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, **disclose the nature of that interest** at a meeting of the committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the committee and a member of a committee **shall not, unless the Minister or the committee otherwise determines:**

- (a) be present during any deliberation of the committee with respect to that matter; or
- (b) take part in any decision of the committee with respect to that matter.

(3) For the purpose of the making of a determination by the committee under subsection (2) in relation to a member of a committee who has made a disclosure under subsection (1), a member of a committee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a) be present during any deliberation of the committee for the purpose of making the determination; or
- (b) take part in the making by the committee of the determination.

ISA Handbook

ISA Handbook (the handbook) outlines all the key policies and processes undertaken by the EPC. The handbook itself whilst approved in Feb 2016 – contains a robust description of the required processes for the declaration of any conflicts of interest.

Disclosure of interest (DOI) process occurs at a number of levels, namely:

- Proposed Agenda outlines which applications will be available for the committee meeting. Each application listed in the proposed agenda includes an **AC Disclosure of Interest Form** – which outlines any relationships or context that can guide a member in knowing whether they have a conflict of interest to declare.
 - The member prepares a Disclosure of interest – Consolidated Statement outlining any potential conflicts.
 - Secretariat will then list each declared interest and assess whether it is material or not. Where DOI is material – no further information is provided to the EPC member and

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they are asked to leave the room when the application is being assessed. **Attachment B in meeting papers.**

- There is also an opportunity where the applicant (with further information) believes that there is a conflict of interest, can raise it as soon as they become aware before the meeting. **Attachment C in meeting papers.**
- There is also an opportunity to declare any conflicts not previously declared at the beginning of the meeting. **This is recorded in the minutes.**

If the Committee has no quorum as a consequence of disclosures of interest of members, then the matter shall be referred to the Board for determination.

Consideration of a Quorum

Section 1.3.1 of the ISA Handbook states that “*Committee members are appointed by the Minister and are drawn from industry and academia and operate under delegation from the Board. Members have qualifications and experience in commercial and technical fields. Each Committee has specific functions and can comprise of a Chair and up to six members, with three members required for a quorum.*”

Section 4.1.3 of the ISA Handbook states matters which shall be referred to the Board for Determination. “*If a Committee has no quorum as a consequence of disclosures of interest of members, then the matter shall be referred to the Board for determination.*”

Where the Committee agrees that, because of disclosure of interest issues, the matter is of a particularly sensitive nature, that matter shall be referred to the Board for determination.”

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