

Conflict of Interest – board policy

1. Scope

This policy sets out the board’s procedures for the declaration and management of conflicts of interest.

2. Key principles

- a) **Obligations and good practice:** the board acts in accordance with its obligations and with good governance practice (for details, see item 13 of this policy).
- b) **Public interest:** conflicts of interest are avoided where possible. Where a conflict exists, it is declared and managed in the public interest.
- c) **Real, potential or perceived:** a conflict of interest exists whether it is real, potential, or perceived.
- d) **Transparent and accountable:** the process for declaring and managing conflicts of interest is transparent, accountable, and consistent with the [Directors’ Code of Conduct](#).
- e) **Culture of integrity:** the board fosters a culture of integrity. Board members are supported to raise their own conflicts of interest and to speak up if they believe another board member may have an undeclared conflict.

3. Definitions

Conflict of interest

A conflict of interest is a conflict between a board member’s:

- **public duty** to act in the best interests of the organisation; and
- their **private interests**.

Conflict of duty

A conflict of duty (also known as a conflict of role) is a type of conflict of interest that can occur even if a board member does not have any private interest at stake. It is a conflict between a board member’s:

- **public duty** to act in the best interests of the organisation; and
- their duty to **another public sector or private organisation**. It exists due to the board member’s role with the other organisation (e.g. as a committee member, employee, volunteer, or organisation member).

How broad is the definition?

The following applies to all conflicts of interest, including conflicts of duty:

Real, potential or perceived

A conflict of interest exists whether it is:

- **real** – it currently exists;

- **potential** – it may arise, given the circumstances; or **perceived** – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the board member’s performance of his/her duty to the organisation, now or in the future.

Direct or indirect

A private interest can be direct or indirect. A direct interest is held by the board member. An indirect interest is held by a relative or close associate of the board member, for example:

- an immediate family member (e.g. spouse, partner, child, parent, sibling);
- a regular household member (i.e. someone who normally resides with the board member); or
- another close associate (e.g. friend, relative, business associate, rival, enemy).

Pecuniary or non-pecuniary

A private interest can be pecuniary (financial) or non-pecuniary (non-financial), or a mixture of both. It can arise from a wide range of personal or professional/business-related sources.

Pecuniary interests - include actual, potential, or perceived financial gain or loss. Money does not need to change hands. The interest exists if the board member (or a relative or close associate):

- owns property;
- holds shares, investments or other business interests;
- has a position in a company bidding for government work;
- receives benefits such as concessions, discounts, gifts or hospitality from a particular source;
- holds office in a corporation (public, private or trustee), incorporated association, or other entity; or
- has any other relevant financial interest, for example:
 - is entitled to receive income derived from a contract;
 - is a beneficiary or trustee of a trust; or
 - is entitled to receive income from an office held for payment/reward or from a trade, vocation, or profession.

Non-pecuniary interests - may arise from personal or family relationships or from involvement in sporting, social, or cultural activities, etc. They include a tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group. If personal values are likely to impact on the proper performance of public duty, this can also lead to a conflict of interest. Enmity as well as friendship can give rise to a conflict of interest.

4. Annual Declaration of Private Interests

Upon appointment to the board, each board member will make a *Declaration of Private Interests* using the form specified in Appendix 1. Declarations will be lodged with the chair, who will ensure that:

- the information provided in relation to a board member’s interests is recorded in the *Register of Interests*; and
- all information provided on the form is stored and used in accordance with the *Privacy and Data Protection Act 2014* and the *Public Records Act 1973*.

Board members will update their declaration annually. If a board member’s circumstance change in the meantime, he or she will lodge an updated declaration, unless the change is already adequately recorded in the register as a result of a declaration made at a board meeting (see ‘5’ below).

5. Register of Interests

A *Register of Interests* will be maintained which includes details of both the direct and indirect interests of each board member that may give rise to a conflict of interest. The *Register of Interests* template is set out in Appendix 2.

Confirmation of register at start of board meeting

The chair will ensure that the *Register of Interests* is present for reference at each board meeting.¹ At the start of the meeting, the chair will ask for all board members to state whether their interests as recorded in the register are complete and correct. If there are no changes, the minutes will note that 'all board members present confirmed that their entries in the *Register of Interests* are complete and correct'. If any changes are declared, these will be recorded in the minutes for entry into the register.

Updating the register

The chair will ensure that the *Register of Interests* is current and includes:

- all interests declared in *Declaration of Private Interests* forms lodged by board members; and
- any additional interests which have been declared and recorded in the minutes of a board meeting.

6. Declaring conflicts of interest at the start of a meeting

In addition to checking whether the *Register of Interests* is complete and correct (see above), at the start of each board meeting the chair will ask if any board member present has an interest (i.e. a private interest or a duty to another organisation) in respect to any item on the agenda. If a board member has an interest he or she will declare it, including the nature of the interest and the conflict that results, or may result, from it. An interest must be declared even if it is already recorded in the *Register*.

A board member who becomes aware during the meeting that he or she has an undeclared interest will declare it immediately.

A board member who believes that another board member may have an undeclared interest will raise this as a query, so as to enable the other board member to declare the interest, if it exists.

7. Options for managing a conflict of interest

The board will manage all conflicts of interest in the **public interest**. Depending on the conflict, options include:

1. **Remove** – the board member leaves the room and does not participate at all in the 'conflicted' matter.
2. **Record** – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.
3. **Restrict** – the board member's involvement in discussion and/or decision-making on the matter is restricted to the extent that matches the public interest. Monitoring occurs to check whether this remains the appropriate option.
4. **Recruit** – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer, or governance expert from the department or the Victorian Public Sector Commission).
5. **Relinquish or resign** – the board member relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the board member resigns from the board itself.

¹ Like other documents produced by the board (e.g. minutes of board meetings), the register is a public record. However, this does not mean that it is automatically 'open to the public'. Unless the board agrees, a member of the public who wants to see the register would need to lodge an application under the *Freedom of Information Act*. If this occurs, the department can provide advice and assist the organisation to assess whether the register is exempt from disclosure under the Act.

8. Is the conflict material?

When deciding how to manage a conflict of interest, the board will first determine whether the conflict is **material** (serious).² In doing so, the board will take into account all the relevant factors and circumstances, including:

- the **objectives** and **functions** of the organisation;
- the **matter** that is to be discussed and determined by the board;
- the **nature** of the conflict (e.g. is it real, potential, or perceived?);
- the **severity** of the conflict, including:
 - the amount, scope, and likelihood of any expected benefit (e.g. is it a large benefit primarily to the board member or a small benefit that thousands of people including the board member will receive?); and
 - any other relevant circumstances (e.g. if the conflict relates to a board member's partner working at an organisation about which the board is to make a decision: is the partner currently working there as the CEO? Or did they leave a few years ago from a large organisation in which their work was not connected to the decision being made by the board?);
- the **potential effect** of the conflict, including:
 - the extent to which the board member's ability to make an impartial decision in the public interest could be compromised, or could reasonably be seen to be compromised; and
 - the overall likelihood that the conflict of interest may affect public confidence in the integrity of the board and its decisions.

9. Managing material conflicts of interest

The board's **standard procedure** for managing a material conflict of interest is to **remove** the board member from all participation in the matter. The board member will:

- leave the room at the start of the relevant agenda item and not return until the start of the next agenda item;
- not discuss the matter at all with any other board member (either in the meeting or elsewhere); and
- not participate in any board decision on the matter.

The standard procedure will be followed unless the board determines and records in the minutes clear reasons why it is not in the public interest.

Stronger option for managing a material conflict

If the public could reasonably form the view that a material conflict is of unacceptable frequency and/or duration then to maintain public confidence and protect the reputation of the organisation it may be necessary, in the public interest, for the board member to:

- relinquish their private interest;
- resign or stand down on a temporary basis from the other organisation to which he/she has a duty; or
- resign from the board.

If the board is unsure whether a stronger option is in the public interest the department will be contacted for advice.

Lesser options for managing a material conflict

A lesser option (i.e. record, restrict or recruit) will not usually be in the public interest for managing a material conflict of interest. If the board is unsure whether a lesser option is in the public interest it will err on the side of caution.

² Consistent with the requirements of s 81(1)(f) of the *Public Administration Act 2004*.

If the board decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring will occur to ensure that the lesser option remains appropriate.

Examples

Examples of where a lesser option may be in the public interest, taking into account all the relevant circumstances, are:

- **Discussion:** If the board member with the conflict of interest was appointed on the basis of their knowledge of the matter, it may be in the public interest for them to be present for part of the board's discussions. (However, if an 'unconflicted' board member is absent who also has this expertise, it will usually be in the public interest for discussion to occur at the next meeting instead.)
- **Decision:** If the recommended procedure of 'remove' would mean that there is no quorum for the decision even if all 'unconflicted' board members are present, then a lesser option will be in the public interest.³ (However, if 'unconflicted' board member(s) are absent then it will usually be in the public interest for the decision to be held over to the next board meeting instead.)

10. Managing non-material conflicts of interest

For a non-material conflict of interest, there is more likelihood that a lesser option (i.e. record, restrict or recruit) will be in the public interest. In making its decision, the board will take into account all relevant factors and circumstances - e.g. the lower the severity of the conflict, the more likely that a lesser option will be in the public interest.

If the board decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring will occur to ensure that it remains appropriate - e.g. the board may initially decide to only 'record' the conflict but after monitoring may decide instead to 'restrict' the board member by allowing them to participate in some aspects of the discussion but removing them from others and from all decision-making on the issue.

If the board is unsure whether a lesser option is in the public interest then it will err on the side of caution and decide on the standard procedure of **remove** (i.e. the board member leaves the room and does not participate in any discussion or decision-making on the matter).

11. Recording in minutes

If a board member declares a conflict of interest, the following information will be recorded in the minutes:

- a description of the interest and the conflict (the dollar value of a financial interest does not need to be included);
- whether the conflict is material;
- the action the board will take to manage the conflict in the public interest;
- if a lesser option or stronger option is to be taken, why it is in the public interest; and
- if the board member leaves the room during discussion and/or decision-making on the 'conflicted' matter, the time that he/she leaves and returns and the item, or part of thereof, for which he or she was absent.

12. Breach of this policy

A board member who may have breached this policy must notify the chair immediately:

- If the chair is of the view that a breach has not occurred, the board will determine at the next scheduled board meeting, and record in the minutes, whether a breach has occurred.
- If the chair is of the view that a breach has occurred, he/she will arrange for the board to determine on an urgent basis, and record in the minutes, whether a breach has occurred.

³ If this is a common occurrence, the department should be notified.

- If a breach has occurred, the chair will notify the Minister and the Secretary of DELWP in writing as soon as practicable, including whether the breach relates to a material conflict of interest.⁴

A board member who believes that another board member may have breached this policy but not yet notified the chair will bring this to the attention of the chair or will approach the other board member, who will then notify the chair.⁵

13. Obligations and good practice

The board will act in accordance with its obligations and with good public sector governance practice, including:

- the establishing Act, being *[insert]*;
- the public sector values in section 7 of the *Public Administration Act 2004* (PAA);⁶
- the 'duties of directors' (board members) in section 79 of the PAA;
- the requirement in section 81(1)(f) of the PAA that certain processes be in place for dealing with conflicts of interest;
- the [Directors' Code of Conduct](#) issued by the Victorian Public Sector Commission (VPSC);
- government policy;
- any directions, guidelines and/or statements of obligation or expectation issued by the Minister; and
- all other laws and obligations that bind the organisation.

14. Regular review of this policy

The board will review this policy on an annual basis to keep up-to-date with changes to laws, government policy, etc.

15. Related policies

- Gifts, Benefits and Hospitality
- Meetings and Decision-making
- Code of Conduct

⁴ Consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*.

⁵ Or if the matter concerns a possible breach by the chair, to the attention of the deputy chair. *[If there is no deputy chair insert instead: 'the board member nominated by the board to assist the chair with conflict of interest queries']*.

⁶ The public sector values are: integrity, impartiality, accountability, respect, responsiveness, human rights, and leadership.

Appendix 1: Declaration of Private Interests (DOPI)

The board will ensure that its *Declaration of Private Interests* form has the same content as the template published in the [Conflict of Interest](#) support module on DELWP's governance website, On Board (www.delwp.vic.gov.au/onboard).

Appendix 2: Register of Interests template

Name of board member	Description of interest	Interested parties	Is the interest current?
[e.g. John Smith]	[e.g. sister-in-law co-owns a company which could potentially become a contractor to this organisation.]	[e.g. sister in law]	[e.g. Yes]
[e.g. Lorna James]	[e.g. Owner of eco-lodge business]	[e.g. board member]	[e.g. Yes]