

MANAGING
CONSENSUAL
PERSONAL
RELATIONSHIPS |
PRACTICE GUIDE

VPSC

Victorian Public Sector Commission



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1. PURPOSE

The Victorian Public Sector Commissioner has updated and re-issued the Model Conflict of Interest Policy (Model Policy) to reference management of consensual personal relationships (see Commissioner's Circular 2018-02).

This document provides implementation guidance and sets out high-level processes for management of consensual personal relationships in the workplace.

1.1 Scope

The Victorian Secretaries Board has agreed that compliance with the updated Policy is required for public service departments.

Public sector entities should aim for workplace policies that provide consistency across the sector.

Public sector entities are encouraged to revise their policies and procedures in relation to identifying, reporting and managing conflicts of interest. They should ensure that policies and procedures are informed by the Victorian Public Sector Commissioner's (VPSC) Model Policy and this Practice Guide.

1.2 Context

Victorian Public Sector employees are free to engage in consensual personal relationships. Lawful sexual activity is a protected attribute under Section 4 of the Equal Opportunity Act 2010. Discrimination on these grounds is prohibited in the context of employment.

Employees are required to conduct themselves in a manner consistent with the public sector values and employment principles set out in the Public Administration Act 2004. These values and principles are further defined through the Code of Conduct for Victorian Public Sector Employees and the Code of Conduct for Employees of Special Bodies and Standards issued by the Victorian Public Sector Commissioner. Local policies and procedures may also include specific expectations for staff in particular roles.

1.3 Application of the Conflict of Interest Model Policy

The Model Policy sets out processes for the management of consensual personal relationships between employees to promote clarity and provide consistency. The Model Policy has been written at a high level to accommodate the diverse nature of different organisations while also providing key considerations for managing employee relationships.

Taking a risk-based approach, organisations may wish to tailor the Model Policy to recognise specific requirements to suit their own organisation. For example, to reference specific requirements in relation to residential settings (eg Victoria Police Academy) or a hierarchical power imbalance that may exist in a particular organisational context.

Public sector organisations may wish to consult with employee groups, unions and associations. It is important to note that this is not a requirement but may be considered in specific settings to support the communication and application of policies and processes.

2. CONFLICT OF INTEREST AND RELATIONSHIPS

A conflict of interest arises where an employee has private interests that could improperly influence, or be seen to influence, their decisions or actions in the performance of their public duties.

Conflicts of interest may be actual, potential or perceived:

- **Actual conflicts of interest:** arise where there is a real conflict between an employee's public duties and private interests.
- **Potential conflicts of interest:** arise when an employee has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.
- **Perceived conflicts of interest:** arise when a third party or members of the public form the view that an employee's private interests could improperly influence their decisions or actions, now or in the future.

It is important to note that in the context of personal consensual relationships, the term 'perceived' refers to a perceived conflict, not the perception that a relationship may or may not be occurring.

2.1 Relationships to which the Conflict of Interest Model Policy applies

The Model Policy applies to employees who are in a consensual personal relationship and both have a professional relationship in the same organisation.

2.2 Definition of a consensual personal relationship

Consensual personal relationships include consensual sexual, intimate and/or romantic relationships between adults of any sex or gender identity. Relationships of this kind may be on a casual, periodic or regular basis and may or may not constitute a primary relationship.

A familial relationship of spouse or de facto partner also constitutes a consensual personal relationship.

2.3 Multiple avenues for disclosure

Organisations should provide multiple avenues for employees to disclose a relationship. This includes an employee's manager, a different manager, a designated disclosure officer (e.g. Human Resources officer) or a designated management representative (for ease of reference throughout this document this person is referred to as 'disclosure officer').

Providing multiple avenues for disclosure ensures that employees may confidentially report consensual personal relationships while protecting personal privacy.

In some situations employees may need to disclose a relationship to someone other than their manager. For example, the employee may be in a relationship with their manager or may not feel comfortable discussing the matter with their manager directly. In such instances employees are encouraged to discuss the matter with a designated disclosure officer or designated management representative. Relevant parties, including managers, can then be informed as necessary when required as part of the process of managing the potential conflicts of interest.

2.4 Disclosing a consensual personal relationship

Consensual personal relationships involving people in a direct hierarchical relationship (i.e. in the same reporting line, where one person has supervisory or decision making authority over the other) represent a potential conflict of interest. Where such a relationship exists, the Model Policy requires employees to declare the relationship (case studies are at Appendix 1).

The risks of potential conflict of interests are likely to be heightened for officers in senior leadership positions.

2.5 When no disclosure is required

Consensual personal relationships may, in many cases, occur without any concerns arising around potential or actual conflicts of interest in the workplace, and may continue privately without any need for disclosure.

Employees who are in a consensual personal relationship without a direct hierarchical relationship are, in the first instance, required to manage the risk of a potential conflict of interest arising. Employees in this situation are only required to confidentially disclose a consensual personal relationship where an actual, potential or perceived conflict of interest cannot be appropriately avoided (case studies are at Appendix 1).

Personal consensual relationships in the workplace are complex and can have a range of impacts on the workplace, including on team members, if not managed appropriately. Employees who are in a consensual personal relationship without a direct hierarchical relationship should act professionally at all times and seek to minimise the potential impact in the workplace.

2.6 Privacy

Organisations should ensure that declarations of consensual personal relationships can be made in confidence to protect personal privacy. Relevant persons in an organisation should only be engaged when a conflict of interest arises and their particular services are required to manage it. Representatives of the employer involved in a matter raised under this policy must respect the privacy of personal information provided and the sensitivity of the matters raised. Disclosure of personal information should be limited to a strict 'needs to know' basis.

Disclosure officers should be aware of their obligations under anti-discrimination and privacy legislation. To illustrate the sensitivity of relationship information, it is possible to consider an example where an employee disclosing their relationship with a co-worker also reveals that the employees are same-sex attracted. The employees may not wish for their colleagues to know their sexual orientation and therefore this information must be handled with sensitivity.

Given the sensitive nature of information about an employee's relationship status, the Model Policy does not mandate disclosure to colleagues. Where the relationship is between employees within the same area of the organisation, such that professional interactions are common, disclosure officers may wish to discuss the advantages and disadvantages of the employees disclosing their relationship to their colleagues. Disclosure officers should also discuss steps the employees themselves can take to limit the relationship's impact on the work environment, for example, avoiding public displays of affection.

2.6.1 Requests for information

VPS employers must ensure that their procedures are compatible with the *Equal Opportunity Act 2010*, which prohibits discriminatory requests for information. A person is prohibited from requesting or requiring another person to supply information that could be used to discriminate against the person to whom the information pertains, unless the person requesting the information can show that the information is reasonably required for a purpose that does not involve prohibited discrimination.

An example of a non-discriminatory purpose is using the information to assess the possibility of a conflict of interest arising.

Any relationship information that is received should not be communicated, either directly or indirectly, to any person unless disclosure is necessary for the non-discriminatory purpose. This places limits on the people to whom the relationship can be disclosed. If employees' relationship information is obtained to manage conflicts of interest or to limit the sharing of confidential workplace information, disclosure should be limited to those who have a role to play in preventing such risks from materialising (i.e. a legitimate, non-discriminatory purpose).

3. IMPLEMENTATION

3.1 Employee obligations

Employees are obliged to adhere to the Victorian public sector values and the *Code of Conduct for Victorian Public Sector Employees* and the *Code of Conduct for Employees of Special Bodies*.

Employees are required to declare if they are in a consensual personal relationship if a direct hierarchical relationship is in place. This will enable the conflict of interest to be appropriately managed.

In addition, employees are to declare if they are in a consensual personal relationship where an actual, potential or perceived conflict of interest cannot be appropriately avoided (case studies are at Appendix 1).

3.2 Employer responsibilities

Victorian Public Service organisational employment processes adhere to the Victorian public sector employment principles and standards. The following principles are particularly relevant in this context:

- fair and reasonable treatment;
- merit-based employment decisions;
- equal employment opportunity; and
- human rights.

Employers should ensure that a designated disclosure officer (e.g. Human Resources officer) or a designated management representative is available to manage declarations of consensual personal relationships.

Employers are encouraged to provide staff with their local 'Conflict of Interest, Declaration and Management' form (COI form). These forms allow employees to declare a conflict and develop an agreed approach. Organisations may seek to modify their COI forms in line with their organisational requirements, or to manage specific instances of consensual personal relationships. COI forms regarding consensual personal relationships should be recorded/registered, and be made available on a needs-to-know basis in order to protect personal privacy.

It is recognised that some matters are likely to be complex and require a highly nuanced approach. Employers should ensure that those involved in the development of management approaches in relation to consensual personal relationships are experienced in managing complex situations. Employers are encouraged to provide training and support to aid this.

Disclosures must be managed in accordance with privacy considerations (refer to section 4.7 for further information).

3.3 Informing employees about the Conflict of Interest Model Policy

Victorian Public Service employers should communicate the Model Policy to their employees. In addition, employees should be made aware of the requirement to disclose personal consensual relationships. This should occur where a direct hierarchical relationship is present, or a conflict of interest cannot be avoided.

Broad communication of the Model Policy is particularly important as consensual personal relationships involving people in a direct hierarchical relationship are considered to represent a potential conflict of interest. Conflicts of interest are to be declared and managed in line with the *Code of Conduct for Victorian Public Sector Employees* and the *Code of Conduct for Employees of Special Bodies*.

It should be noted that not disclosing a personal consensual relationship where a direct hierarchical relationship is present, or where a conflict of interest cannot be avoided could constitute contravention of the relevant code of conduct.

4. DISCLOSURE OF PROCESS

4.1 Process for disclosing a consensual personal relationship

Some employees may find it difficult to disclose a personal consensual relationship. There may be instances where employees feel concerned about discussing their personal life or anxious that disclosure could have a negative impact upon their career.

Employees should be reassured that all efforts will be made to keep the details of their personal consensual relationship private and confidential. Employers should advise that employee privacy will not be compromised unless other staff need to know particular details. For example, human resource personnel, or a Director, may need to be managed to manage the potential or perceived conflict of interest.

It is recognised that workplaces will have varying processes to manage disclosures in line with resourcing and structural differences. Some suggested steps that could be considered include:

- providing the option for the employee to converse regarding the situation via email as opposed to face-to-face, as they may feel more comfortable;
- having a supportive conversation to respectfully obtain the details of the consensual personal relationship necessary to manage the situation, as well as any concerns that an employee may have (this is not intended to be an exhaustive personal conversation);
- collaboratively identifying risks and their possible impacts;
- collaboratively identifying potential options to manage the conflict of interest; and
- working together to find a consensus approach to manage the conflict of interest.

It is also important to note that family members in a direct hierarchical relationship should also disclose the relationship.

4.2 What happens after a consensual personal relationship is disclosed?

Disclosure of a consensual personal relationship allows arrangements to be put in place to manage the conflict of interest. The measures taken to minimise any relationship-related risks should be determined by the employer and employee in response to the individual circumstances of the relationship and should avoid discrimination or action that unfairly impacts upon a person's employment.

4.3 Consensual personal relationship with a direct hierarchical relationship

Where a direct hierarchical relationship exists between two people in a consensual personal relationship, a number of actions could be considered (case studies are at Appendix 1). These could include development of temporary or permanent alternative supervisory and reporting arrangements, such as:

- the subordinate employee remains in their current role, although reports to an alternative line manager;
- the subordinate employee reports directly to their manager once removed; or
- temporary or permanent changes are made to the reporting line, so that one of the employees is moved to another business unit.

With the above in mind, the following considerations should be taken into account:

- Any decision to move one of the individuals concerned should not automatically preference the senior individual and each case should be considered on its own merits.
- Any process must avoid discrimination or action that unfairly impacts upon a person's employment and should be commensurate with the seriousness of the identified risk.
- Where an employee is moved to another business unit, they are to do so at level (with the same opportunity to shifts should they currently hold a shift worker position) and priority should be given to ensure that disruption to the workplace and the employee is minimised.

- Relocation to an alternative site should be avoided where possible. However, where required, relocation expenses are to be provided in line with the workplace agreement.
- At minimum, employers should impress upon employees that the standard prohibitions on sharing confidential work-related information apply.
- It is important that employers ensure that complaint reporting arrangements do not result in any complaints or investigations, in respect to one party to the relationship being heard/undertaken, or influenced by the other.

4.4 Consensual personal relationship without a direct hierarchical relationship

Employees without a direct hierarchical relationship are only required to confidentially disclose a consensual personal relationship where an actual, potential or perceived conflict of interest cannot be appropriately avoided.

In some instances where two employees are in a relationship without a direct hierarchical relationship a perception of a conflict of interest could arise. For example, if one person has responsibility for providing approval to attend events, authorising travel, confirming office and desk locations, or professional development opportunities. In these instances employees and/or employers may consider involvement of a third party who can objectively review and moderate decisions. This would assist in mitigating the risk of any favouritism (case studies are at Appendix 1).

4.5 Risk-based approach

Any measures taken to manage consensual personal relationships in the workplace should be practicable and informed by a risk-based approach. This means measures should be:

- proportionate to the level of risk posed;
- designed to have minimal impact on the careers and personal lives of the individuals concerned; and
- compatible with anti-discrimination legislation.

For example, a risk-based approach should be taken in the instance where two people are in a consensual personal relationship within the same reporting line, but are significantly removed in terms of day-to-day operations. To illustrate this point, it is useful to consider the situation where an Executive Director, with a high number of staff dispersed over a number of offices, may be in a relationship with one of their staff with whom they have no day-to-day work contact with.

The relationship should be disclosed in this instance. However, given the low-risk of a conflict of interest, the management plan may not necessitate any active intervention. Instead, it might ensure that contact is highly limited, especially regarding work allocation and progression.

It is recognised that an instance could arise where a staff member can't be moved or different reporting lines can't be put into place. Should this occur an organisation should seek to reduce the conflict of interest to the greatest possible degree. This could include (but is not limited to) ensuring that work allocation or progression discussions are conducted with the advice of an independent third party.

5. ADDITIONAL CONSIDERATIONS

5.1 Individual responsibility

Each employee, regardless of seniority, is responsible for managing their own conflict of interest risk within the relationship.

5.2 Leadership

The risks of potential conflicts of interest are likely to be heightened for officers in senior leadership positions. Employees in positions of leadership should in particular be mindful of their responsibility to model appropriate behaviour in line with the public sector values. They should also be cognisant of the power imbalance that exists between different staffing levels.

5.3 Where only one person discloses a consensual personal relationship

In the instance where only one person in a relationship makes a declaration, a disclosure officer should seek to have a supportive conversation with both employees (either together or separately). This discussion should clearly outline whether the relationship is considered to constitute a conflict of interest and the requirement for employees to disclose a relationship.

The discussion should highlight that any measures taken will not discriminate or unfairly impact upon a person's employment.

Should only one employee assert that a relationship is in place, a management plan should be collaboratively prepared that seeks to remove the conflict of interest identified for this person. The management plan should avoid adverse impacts (case studies are at Appendix 1).

5.4 A third party reports a relationship

A third party may report a personal consensual relationship in the workplace. A report of this kind should be managed in the same way as any other potential conflict of interest report – This includes that the identity of the third party be limited to a strict 'needs to know' basis.

An organisation should seek to meet with both employees (either together or separately) and through a supportive discussion clearly outline the conflict of interest policy and the requirement for employees to disclose consensual personal relationships where a direct hierarchical relationship is in place.

This approach provides the opportunity for an employer to re-affirm the conflict of interest policy to employees and for employees to respond in a confidential and supportive environment.

5.5 Relationships across organisations

Employees who work in different organisations (for example, in different departments) are not required to disclose a consensual personal relationship. However, it is important for employees in this situation to be mindful of their obligations under the code of conduct. Personal interests (including the interests of family members, friends or associates) must not influence, or be perceived as influencing, the role of public sector employees.

5.6 Former consensual personal relationships

A risk-based approach should be taken when considering a situation where an employee works with someone they once had a relationship with that has now ended. Where a direct hierarchical relationship exists, employees should declare the former relationship as it could represent a perceived conflict of interest.

The management plan developed should be risk-based and recognise that as the relationship was historical a lower level of risk would be

likely. While each relationship should be considered on its own merits former relationships should not generally require changes to reporting or supervisory arrangements.

Former consensual personal relationships without direct hierarchical reporting lines do not need to be disclosed. However, should the risk of conflict not be manageable, discloser should still be required.

5.7 Reducing the likelihood of adverse consequences

Keeping relationship information confidential where possible will reduce the likelihood of employees experiencing adverse responses from colleagues. This is important in light of research indicating that hierarchical workplace relationship can negatively impact the more subordinate employee's career advancement. Since the subordinate employee in the relationship is commonly female, this will likely have implications for equal employment opportunity.

A disclosure officer to whom a relationship is disclosed should communicate to the employee that they are available to discuss any issues as they arise. They should also be mindful of professional problems that may arise if the personal relationship breaks down e.g. the potential for negative bias.

5.8 Sexual harassment

Victorian Public Service employers are under a continual duty to prevent sexual harassment and to respond swiftly and appropriately to any allegations that concern matters relating to sexual harassment, discrimination or bullying. For information on Victorian Public Service employers' obligations in this regard, see the Victorian Equal Opportunity and Human Rights Commission's [Guideline: Sexual harassment – complying with the Equal Opportunity Act 2010](#).

5.9 Consent

A relationship is not considered consensual if the subordinate employee feels compelled to consent to a personal relationship because of the inherent power imbalance in the professional relationship. Departments should have robust policies and procedures in place to prevent, report and respond to sexual harassment.

5.10 Discrimination

In accordance with the *Equal Opportunity Act 2010* discrimination is prohibited in the context of employment. An employer must not discriminate against an employee by, inter alia:

- denying or limiting access to opportunities for promotion, transfer, training or any other benefit connected with employment;
- dismissing or otherwise terminating the employee's employment; or
- subjecting the employee to any other detriment.

Discrimination is prohibited in relation to a range of attributes including lawful sexual activity. In devising policies for minimising risks associated with personal relationships, Victorian Public Service employers must comply with the *Equal Opportunity Act 2010*.

5.11 Contractors and consultants

The Model Policy applies to all workplace participants. This includes: employees, contractors, consultants, labour hire and any individuals or groups undertaking activity for or on behalf of the organisation.

Contractors, consultants and labour hire are required to disclose a personal consensual relationship with a direct hierarchical relationship to a disclosure officer in line with the policy. It is important to note however, that contractors, consultants and labour hire are not organisational employees. As such, they should also discuss the matter with their employer (i.e. Hudson or Hays recruitment services)

where a proposed management plan can be prepared to remove a conflict of interest. All management plans should be agreed with the organisation before they are enacted.

6. SUPPORTING RESOURCES

Organisations to include as required.

APPENDIX 1: CASE STUDIES

#	Situation	Response
1	Sally is John's Director. While she does not manage him directly, she does make decisions regarding his role, progression and work allocation.	<p>Sally and John should disclose that they are involved in a consensual personal relationship. This is because Sally makes decisions regarding John's role, progression and work allocation.</p> <p>Sally and John should seek to have a discussion with a disclosure officer. This person will guide and advise Sally and John on a number of options that can be taken to minimise the risk of potential negative outcomes. This could include moving either Sally or John to an alternative role.</p>
2	Pippa and Liz work in the same department. Pippa is a Policy Officer while Liz is an Executive Director. They work in different branches and have different Deputy Secretaries.	<p>There is no requirement for either Pippa or Liz to disclose that they are involved in a consensual personal relationship. This is because they have an indirect working relationship. Pippa and Liz are required to manage the risk of an actual, potential or perceived conflict arising and to confidentially disclose this relationship if it cannot be managed.</p> <p>Pippa and Liz may need to disclose their relationship if circumstances were to change. For example, if Pippa was to be offered a secondment to Liz's branch.</p> <p>Because Liz is in a position of leadership, she should be particularly mindful of her responsibility to model appropriate behaviour in line with the public sector values.</p>
3	Alex and Mary are married. They work in the same branch, although in different teams. Mary is a Manager and Alex is a Senior Project Officer.	<p>A familial relationship of spouse or de facto partner also constitutes a consensual personal relationship. However, as Alex and Mary do not have a direct hierarchical relationship, they are not required to disclose their relationship.</p> <p>Alex and Mary are required to manage the risk of an actual, potential or perceived conflict arising and to confidentially disclose this relationship if it cannot be avoided. They may need to disclose their relationship if circumstances were to change. For example, if Mary was to act as Alex's manager, or the branch was restructured and Alex was moved into Mary's work unit.</p>
4	Christine is David's manager. Because there is very little pay difference between their wages, David and Christine are not sure whether they need to disclose a conflict of interest.	<p>David and Christine should disclose that they are involved in a consensual personal relationship. Although there may be very little difference in terms of wages, Christine's position comes with supervisory and decision making authority over David.</p> <p>As such, David and Christine should seek to have a discussion with a disclosure officer who will guide them through a number of options to minimise the conflict of interest. This could include either David or Christine moving to a different branch or reassigning David to a different manager.</p>

#	Situation	Response
5	<p>Omar and Samantha work in the same organisation but not in the same branch. They work on separate matters reporting to different Deputy Secretaries. Omar is a Director and Samantha is a Principal Policy Officer. Omar is on a recruitment panel for a position reporting to him in his area and Samantha applies for the job.</p>	<p>In the first instance, Omar and Samantha are not required to disclose that they are involved in a consensual relationship. However, as Samantha has applied for a job in his area, Omar should remove himself from the recruitment panel. Omar does not need to declare the relationship at this stage as he has avoided a conflict by negating the possibility of influencing the panel's deliberations over the candidates.</p> <p>Should Samantha be successful, Omar and Samantha should then declare the relationship to a disclosure officer. In discussion with the disclosure officer, they should seek identify a strategy to remove the direct hierarchical relationship.</p> <p>Also, because Omar is in a position of leadership, he should be particularly mindful of his responsibility to model appropriate behaviour in line with the public sector values.</p>
6	<p>Chris is Xi's manager. Chris is married to a third party and has also entered into a consensual personal relationship with Xi. Xi has disclosed the personal consensual relationship to a designated disclosure officer. Chris maintains that no relationship exists.</p>	<p>Chris and Xi are each responsible for managing their own consensual personal relationship.</p> <p>A designated disclosure officer meets with Chris after Xi highlighted that the two were in a personal consensual relationship.</p> <p>The designated disclosure officer has confirmed with Chris that employees in a direct hierarchical relationship are required to confidentially disclose their relationship. This is because this represents a potential conflict of interest. Chris confirms he is aware that failure to disclose a personal consensual relationship, where a direct hierarchical relationship is present, may constitute a contravention of the code of conduct.</p> <p>It is confirmed that any management plans to remove such a conflict will not discriminate or adversely impact either person. Chris maintains that this personal relationship does not exist.</p> <p>The designated disclosure officer works with Xi to identify alternative reporting lines so that she no longer has a direct reporting line to Chris.</p>