



**Victorian
Public Sector
Commission**

How to manage conflicts of interest and duty as a board director

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Before you start

Who this guide is for

This guide is for new board directors.

It helps you understand your integrity obligations, which is a critical part of good governance.

The integrity obligations in this guide reflect the high standards the community expects of public sector organisations.

What you may see as acceptable in private sector organisations, can bring you, your board, staff and public sector organisations into disrepute.

Further reading

We also encourage you to read the investigation reports of Victoria's integrity agencies to stay in touch with key integrity issues such as:

- [Independent Broad-based Anti-corruption Commission](#)
- [Victorian Ombudsman](#)

How organisations can use this guide

If you're a public sector organisation, you can use this guide to develop board inductions tailored to your needs.

You can give board directors more resources than what is in this guide.

Why we wrote this guide

We wrote this resource in response to the Victorian Ombudsman's [Investigation into allegations of improper conduct by officers at Goulburn Murray Water](#) report.

The report identified integrity risk areas board directors and boards need to be aware of.

Duties and responsibilities of boards and board directors

Your board's responsibilities

Board directors and a chair make up your board.

The core role of the board is governance of the organisation.

The chair must give board directors the relevant policies for the organisation.

The board's responsibilities are to:

- establish a governance framework, including a compliance framework to ensure the organisation meets its obligations
- set the strategic direction to help the organisation achieve its purpose
- oversee financial performance of the organisation
- oversee a risk management strategy and risk management performance
- play an active role in building a culture of integrity by modelling the behaviours based on the public sector values and standards
- oversee the performance and remuneration of the organisation head
- operate within its statutory powers and policies
- oversee the occupational health and safety of the organisation
- manage stakeholders

Your organisation may have a unique or tailored governance arrangement under legislation. It is important that you are aware of any specific governance responsibilities and requirements for your organisation.

Performance management and dispute resolution

In most cases, the board has a responsibility to:

- manage the performance of directors

- resolve disputes between directors
- assess its own performance

In some organisations with a Commissioner, these responsibilities differ.

Policies, procedures and documentation

Boards have a responsibility to keep certain procedures and documentation in order.

For example, boards need to:

- follow their organisation's rules on holding meetings and making decisions
- keep records of meetings
- follow the code of conduct for directors
- have a strong gifts policy for directors
- keep good financial records
- put controls in place to prevent fraud
- set up processes to deal with conflicts of interest in directors
- keep good financial records for at least 3 years for auditing
- have a strong risk management system that relevant ministers and department heads know about
- inform the relevant minister and department head of any known major risks to the operation of the organisation

Your legislated duties as a board director

As a board director, you must act:

- honestly and in good faith
- in the best interests of your organisation
- with integrity
- in a financially responsible manner
- with a reasonable degree of care, diligence and skill



- according to the Act or document that founded your organisation

As a board director, you must not:

- disclose any information you have due to your position, unless you can under the relevant Act
- use your position to gain an advantage for yourself or others
- use your position to cause harm to your organisation

You may have additional legislated duties under the establishing legislation for your organisation.

If you breach your legislated duties

You must perform your duties as a board director, as per the:

- [Code of Conduct for Directors of Victorian Public Entities](#)
- [Public Administration Act 2004](#)

If you fail to perform these duties, you can be removed or suspended from the board.

Further reading

- [Financial Management Act 1994](#)
- Division 2 of Part 5 of the [Public Administration Act 2004](#)

How to manage conflicts of interest and duty as a board director

As a board director, you have a duty to place the public interest above your own interests.

If there is a conflict, you need to declare it so that the board can manage it.

This helps to maintain the public's trust in public sector organisations and their staff.

Some organisations have obligations about conflicts of interest, specific to them.

For example, your organisation may have obligations in:

- their founding Act or terms of reference
- a role, expectations or obligations statement

Types of conflict you can have as a board director

There are 2 types of conflicts you can have as a board director: interest and duty.

Conflict of interest

A conflict of interest is a conflict with your duty as a board director and your private interests.

This conflict exists if your private interests influence, or are seen to influence, your decisions or actions as a board director.

A private interest means anything that can influence you as a board director.

Private interests include direct interests, such as your own personal, family, professional or business interests.

They also include indirect interests, such as the personal, family or business interests of the individuals or groups connected to you.

Examples of private interests



Financial interests

A potential financial loss or gain for yourself or someone you know can create a conflict of interest.

This conflict exists if you or someone connected to you is financially affected by your decisions as a board director.

This could mean you, or someone you know:

- owns property used by a company bidding for government work
- holds shares in a company bidding for government work
- has a position in a company bidding for government work

Money doesn't need to change hands for a financial conflict to exist. It could be you or someone you know getting something from a source related to your organisation, such as:

- concessions or discounts
- gifts
- hospitality

Non-financial interests

Your personal feelings about another person or group, whether you like or dislike someone, can create a conflict of interest. This is because the conflict comes from using your position to help or hinder someone.

This conflict exists if your feelings about a person or group could influence, or be seen to influence, your decisions or actions as a board director.

This includes:

- family or friends
- personal contacts
- your social, recreational or cultural activities

Consensual personal relationships

Your personal relationships with people who could be affected by your role can create a



conflict of interest.

This conflict exists if you have a relationship with someone who could influence or be seen to influence, your decisions or actions as a board director.

For example, a board director may have a relationship with their CEO.

This could be a conflict of interest, as the board makes decisions about the CEO's performance.

Conflict of duty

A conflict of duty is a conflict between your duty as a board director and your duty to another public or private organisation.

This conflict exists if you have 2 or more roles that have competing priorities.

Conflict with a public organisation

You may have a duty to another public sector organisation.

For example, you may be on the board of another public sector organisation or have a role with a government department or local council.

Conflict with a private organisation

You may have a duty to another private organisation.

For example, you may be a director of a private company, a member of a professional organisation, or an office bearer or volunteer at a local club.

Actual, potential and perceived conflicts

A conflict can be actual, potential and perceived:

Nature	What this is
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Actual	There is a current conflict with your duties as a board director and your private interests or duties.
Potential	There is a potential conflict with your private interest or other duty and your duties as a board director.
Perceived	The public could believe your private interests or other duties may influence your performance as a board director.

If you think you have a conflict of interest, ask yourself:

'Would a reasonable person make the same decision in light of the same facts and circumstances?'

Your loyalty to the board

If you're a member of an industry group or another organisation, you may experience a conflict of loyalty.

As a board director, your first loyalty is to the organisation that appointed you.

You have a duty to help it fulfil its functions.

You have this duty even if an industry group or another organisation appointed you first.

How to declare a conflict of interest

As a board director, you should declare any conflict of interest using your organisation's register of interests.

As a board director, you must:

- declare any interests that could create a conflict of interest
- update the register if your interests change
- review and update your entries in the register each year

What your organisation's register should include

Your organisation's register of interests should include:

- all employment you still have an interest in
- all paid or unpaid appointments and memberships of organisations
- investments in unlisted companies, partnerships and other forms of business, major shareholdings and beneficial interests
- accepted or declined non-token offers of gifts, benefits or hospitality made by external bodies from the past 12 months
- if you or someone you care for uses the organisation's services
- any contractual relationships with the entity or its subsidiaries

How to use the register in your board meetings

As a board director, at the start of a board meeting you have 2 obligations when it comes to conflicts of interest.

Obligation 1: confirm your interests

You must confirm your interests in your organisation's register of interests are correct.

If they're not, you must update the register as soon as you can.

Obligation 2: declare interests on the agenda

Even if you record your conflict of interest in the register, you must still declare any interest you have if it's an item on the agenda.

The board will decide if you can take part in the agenda item and how to manage your conflict of interest.

How to manage a conflict of interest

Your board has a duty to have and enforce a process to manage board directors' conflicts of interest.



Your board's process must:

- ask directors to disclose all interests at meetings
- record all disclosures in the meeting's minutes
- have the board decide if a conflict of interest will affect the board's duties

Your board's process should let the board:

- ask a board director with a conflict of interest be absent from meetings while the board considers the conflict
- ban the board director from taking part in any board decisions that relate to the conflict
- notify the Minister as soon as it can after it is aware of any breach of the board's conflict of interest process

What happens if you declare a conflict

If you declare a conflict of interest with an agenda item, your board must decide how to manage the conflict.

You can't take part in this decision.

The board has 5 ways it can deal with your conflict:

What the board can do	What this means
Restrict	The board can restrict your involvement in the matter. This may mean you leave the room during the agenda item and do not take part in any discussion or decision-making on the issue either during the meeting or elsewhere.
Recruit	The board can appoint a third party that doesn't have a conflict to oversee part or all the matter.

Remove	The board can remove you so you can't take part in the matter.
Relinquish	The board can recommend that the board director relinquish the private interest concerned.
Resign	The board can ask you to step down. This can be temporary or permanent.

Your board may decide to manage the conflict in a different way. The reasons for doing this should be recorded in the minutes.

If your board doesn't have a process

If your board doesn't have a process for managing conflicts of interest, use our [conflict of interest model policy](#).

If you breach your obligations

If you don't declare a conflict of interest, you may be in breach of the [Code of Conduct for Directors of Victorian Public Entities](#).

A breach of the code could result in disciplinary action or your removal from the board. If a serious breach occurs, the chair should talk with the department that oversees and supports your organisation.

They may need to notify the minister in writing.

Further reading

As a board director, we recommend you read:

- Sections 2.5 and 3.12 of the [Code of Conduct for Directors of Victorian Public Entities](#)
- [Conflict of interest and duty for directors of public entities guide](#)

Gifts, benefits and hospitality as a board director

Your obligations

If you accept gifts from a person or organisation, you may give the impression you'll favour them with board decisions.

To help you, we've listed your minimum accountabilities.

Your board may wish to adopt stricter guidelines.

Your minimum accountabilities

You must not seek gifts, benefits and hospitality for yourself or others.

You must refuse all offers of gifts, benefits and hospitality that:

- are money, items used like money, or items you could convert to money
- cause an actual, potential or perceived conflict of interest
- may affect your standing as a board director
- may bring your organisation or the public sector into disrepute
- are non-token offers without a real business benefit

You must also:

- refuse all bribes or inducements
- report inducements and bribery attempts to the board's chair

How to accept and offer gifts, benefits and hospitality



Token offers

Token offers are of little value to you and the person making the offer.

Token offers cannot be worth more than \$50.

You can accept them if they don't create a conflict of interest or reputational damage.

Examples of token gifts are:

- promotional items, such as pens
- modest hospitality, such as light refreshments

Non-token offers

Non-token offers include anything worth more than \$50.

Examples of non-token offers include:

- tickets to events not related to your duties
- non-token hospitality you get with new products or services
- offers worth more than \$50

You can only accept non-token offers if they help your organisation, the public sector or the Victorian government achieve its goals.

Offering gifts, benefits and hospitality

You can offer gifts, benefits and hospitality:

- when you welcome guests
- to help you develop business relationships
- to achieve your organisation's goals
- to celebrate achievements

If you want to offer gifts, benefits or hospitality, you must follow the [Code of Conduct for Directors of Victorian Public Entities](#).



This means your gifts, benefits or hospitality must:

- be offered for a business reason
- have proportionate costs to the benefits Victorians will gain
- not give rise to an actual, potential or perceived conflict of interest

How to declare and record gifts, benefits and hospitality

For all non-token gifts, benefits and hospitality, you must:

- declare and record any accepted or declined non-token offers on your organisation's register
- if you're on more than one board, declare non-token offers on the register of the board to which the offer relates

Use your organisation's form or process to do this.

If your board doesn't have its own form, you can use our [declaration of gifts, benefits and hospitality form](#).

If you breach your minimum accountabilities

If you breach your minimum accountabilities, you could face criminal charges or disciplinary action.

If you see corrupt conduct, report this to your board's chair.

You can also [make a public interest disclosure](#) to the Independent Broad-based Anti-Corruption Commission (IBAC).

Further reading

As a board director, we recommend you read the [Gifts, Benefits and Hospitality Policy Guide](#).

Employing staff as a board director

As a board director, you must comply with the public sector employment principles and policy requirements.

Employment of the CEO must also comply with the relevant requirement of the enabling legislation of the public entity.

In most cases, the board will ask the CEO to take responsibility for employing staff under them.

The board must always hold the CEO accountable for following the public sector employment principles and the organisation's employment policies.

Public sector employment principles and standards

All organisations must comply with the employment principles and standards in the [Public Administration Act 2004](#).

These principles and standards say organisation heads must have employment processes that:

- base employment decisions on merit
- treat public sector employees fairly and reasonably
- give equal employment opportunity
- uphold the Charter of Human Rights and Responsibilities
- give public sector employees a way to resolve claims of unfair or unreasonable treatment

Role of the Victorian Independent Remuneration Tribunal

The role of the Remuneration Tribunal is to:

- decide on the remuneration bands for public sector executives
- issue guidelines on the placement of executives in the bands
- at the request of the Minister, decide on the remuneration for an organisation head



- review and analyse public sector remuneration trends
- oversee the [Public Entity Executive Remuneration Policy](#) (known in government as the PEER Policy)

You must be aware of the obligations on boards in relation to executive employment, which are included in the PEER Policy. These include the requirement to make a submission to the Tribunal in some circumstances.

Role of the Victorian Public Sector Commission

Standard Executive Employment Contract & Mandatory Terms

We publish a [standard executive employment contract](#).

This has the mandatory terms for an executive's contract when employed in the public sector.

It is recommended that your organisation also adopt the non-mandatory clauses in the standard contract and vary them if needed.

Public Entity Executive Employment Handbook

We also publish the [Public Entity Executive Employment Handbook](#).

The handbook acts to:

- promote clear executive employment arrangements
- ensure the transparent and appropriate use of public funds
- minimise integrity risks
- help organisations manage executive employment contracts, remuneration and employment

If you breach your obligations

You must meet the obligations set out in the:

- Public Administration Act 2004
- PEER policy

If you breach these obligations, you could be removed or suspended from your role as board director.

