1. **Purpose**

MODEL Conflict of interest policy

**Department name and logo**

This policy states the Department’s position on conflict of interest, including the requirement of employees that conflict of interest is avoided wherever possible, or:

* identified and declared; and
* actively managed.

Employees will encounter conflict of interest and the Department acknowledges that conflicts will not always be able to be avoided. They must however be identified and appropriately managed to ensure we earn and maintain the highest levels of integrity and public trust in the Department and broader public sector.

The Department has issued this policy to support behavior consistent with the *Code of Conduct for Victorian Public Sector Employees and Code of Conduct for Victorian Public Sector Employees of Special Bodies* (the Code). All employees are required under clause 1.2 of the Code to comply with this policy.

1. **Application**

This policy applies to all workplace participants. For the purpose of this policy, this includes: employees, contractors[[1]](#footnote-1), consultants and any individuals or groups undertaking activity for or on behalf of the Department.

1. **Policy principles**

The Department is committed to and will uphold the following principles in applying this policy:

Public interest: all employees have a duty to place the public interest above their private interests when carrying out their official functions. One way they do this is by applying the public sector values to their actions and decision-making (set out at section 7 in the *Public Administration Act 2004*).

Accountability: all employees are accountable for avoiding wherever possible or identifying, declaring and managing any actual, potential or perceived conflict of interest that applies to them. Employees with direct reports are accountable for overseeing management of their direct reports’ conflict of interest, modelling good practice and promoting awareness of conflict of interest policies and processes.

Risk-based approach: the Department will take a proactive approach to assessing and managing conflict of interest risks. Employees with direct reports will ensure they are aware of the conflicts inherent in their team’s work and functions and monitor the risks to which their direct reports are exposed.

See *A Guide to Applying the COI Policy Principles* for further guidance.

1. **Definitions**

*Conflict of interest*

A conflict of interest is 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 may be actual, potential or perceived:

**Actual** conflict of interest: there is a real conflict between an employee’s public duties and private interests.

**Potential** conflict of interest: 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** conflict of interest: the public or a third party could form the view that an employee’s private interests could improperly influence their decisions or actions, now or in the future.

*Private interest*

A private interest means anything that can influence an employee. Private interests include **direct** interests, such as an employee’s own personal, family, professional or business interests. They also include **indirect interests**, such as the personal, family, professional or business interests of individuals or groups with whom the employee is, or was recently, closely associated.

Private interests may be **pecuniary** (i.e. financial), which includes any actual, potential or perceived financial gain or loss. They may also be **non-pecuniary**, which includes any tendency toward favour or prejudice resulting from personal or family relationships, such as friendships, enemies or sporting, cultural or social activities.

*Consensual personal relationships*

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.

1. **Process**

Employees must avoid wherever possible or identify, declare and manage conflict of interest in accordance with this policy.

Specific processes have been established to manage consensual personal relationships as a specific category of interest.

1. *Identify conflict of interest*

Employees should regularly consider the relationship between their private interests and public duties in order to identify any conflict of interest (for example, in recruitment, before major projects, tender decisions, legal proceedings or policy development).

Private relationships, including family relationships, business relationships and consensual personal relationships carry a high risk of conflict with public duties.

Additionally, employees with direct reports must consider the risk profile of their team and its functions and ensure direct reports are aware of any increased risks of conflict of interest in their work.

Whilst conflict of interest may occur in any part of the Department, some functions and activities are higher risk than others and may require increased risk mitigation measures.

The following functions are high risk within the Department (not exhaustive):

* recruitment;
* procurement, contract management and tendering;
* internal committee governance;
* [*Department to develop further guidance based on risk profile and having regard to high risk functions – see attached: A guide to applying the COI policy principles for* further information on high risk functions].

1. *Declare conflict of interest*

A conflict of interest **must be declared**.

Employees should discuss any conflict of interest with:

* their manager; or
* a designated disclosure officer (e.g. Human Resources officer); or
* a designated management representative.

Employees are to complete and submit a *Conflict of Interest Declaration and Management* form. The declaration form sets out specific instructions for completing and submitting the form and details a conflict of interest management plan.

Employees should also complete the declaration form in the following circumstances, regardless of whether a conflict of interest is identified:

* They are directly involved in a procurement activity assessed under the Victorian Government Purchasing Board complexity and capability policy as being [TBC: specific complexity rating based on VGPB policy e.g. Focused and Strategic complexity].
* They are on a selection or procurement panel.

Their manager or [TBC] has assessed them as warranting declaration on the basis of potential, perceived or actual conflict of interest risk (this will be decided having regard to the risk based approach set out in the Department’s *A Guide to Applying the COI Policy Principles)*. Employees with direct reports must work with the employee to manage the conflict of interest and related risks and provide completed declaration forms to [TBC] for risk management, reporting and auditing purposes.

*[Departments should specify how and where COI declaration forms are recorded – ensuring that a report goes to the Audit and Risk Management Committee at least annually on the administration and quality control of the conflict declaration process]*

1. *Manage conflict of interest*

Employees’ conflict of interest management plans will ensure conflicts are managed and resolved in favour of the public interest rather than that of the employee and will be based on the following mitigation strategies:

**Restrict:** restrictions are placed on the employee’s involvement in the matter.

**Recruit**: a disinterested third party is used to oversee part or all of the process that deals with the matter. In most circumstances, a subordinate would not be considered a disinterested third party.

**Remove:** the employee removes themselves, or is removed, from the matter.

**Relinquish or** **Resign:** the employee relinquishes the private interest that is creating the conflict. Where relinquishing the interest is not possible (e.g. relationship with family) and the conflict cannot be managed in the public interest using one of the other options above, the employee may consider resigning.

Employees with direct reports should review management plans regularly to ensure they remain effective (for example, annually, before recruitment decisions are made, major projects, tender decisions or policy development).

The Department’s Audit and Risk Management Committee will receive a report at least annually on the administration and quality control of the conflict of interest declaration process.

1. *Process for managing consensual personal relationships in the Victorian Public Service*

The Department has a responsibility to ensure a safe and fair workplace for all employees. Lawful sexual activity, gender identity, marital status and sexual orientation are protected attributes under the Equal Opportunity Act 2010. Discrimination on these grounds is prohibited in the context of employment.

Consensual personal relationships between Victorian Public Service employees within the same organisation may occur. Consensual relationships are not prohibited and are private in nature, but they may give rise to an actual, potential or perceived conflict of interest.

The Department considers any 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) to represent a potential conflict of interest. The risks of potential conflicts of interest are likely to be heightened for officers in senior leadership positions.

Employees who are in a consensual personal relationship with a direct hierarchical relationship, must disclose the relationship to their manager, a designated disclosure officer (e.g. Human Resources officer) or a designated management representative. This disclosure will allow any necessary arrangements to be put in place to manage the conflict of interest, which may include temporary or permanent changes to reporting or supervisory arrangements.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.

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

Declarations of consensual personal relationships can be made in confidence to protect personal privacy, with only relevant persons in the Department being advised of the conflict of interest and any arrangements necessary to manage it. Representatives of the Employer involved in a matter raised under this policy are required to 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.

The <insert organisation> provides multiple avenues for disclosure to ensure that officers may confidentially report consensual personal relationships while protecting personal privacy.

Appendix A, *Managing Consensual Personal Relationships within the Victorian Public Service,* provides further detail.

1. **Declaration and management of private interests**

The following employees must complete the Department’s *Declaration and Management of Private Interests Form* upon appointment, annually after appointment and within five working days after the employee’s circumstances change (i.e. their circumstances as they relate to the topics covered in the declaration form):

* All Executive Officers.
* Public entity board appointees.
* Employees holding a financial delegation of [TBC] or more.
* Employees assessed by [TBC] as warranting declaration of private interests on the basis of potential, perceived or actual conflict of interest risk (this will be decided having regard to the risk based approach set out in the Department’s *A guide to applying the COI policy principles*).

The declaration form sets out specific instructions for the employee and their manager or authorised representative for completing and submitting the form. It also provides instructions and guidance to employees, including that an employee is only required to record family interests that are known to them and that may reasonably raise an expectation of a conflict of interest. Where family members are in a direct hierarchical relationship, this relationship must be disclosed.

1. **Related policy, legislation and other documents**

* *Public Administration Act 2004*
* *Code of Conduct for Victorian Public Sector Employees 2015*
* *Code of Conduct for Directors of Victorian Public Entities 2016*
* *Code of Conduct for Victorian Public Sector Employees of Special Bodies 2015*
* *Victorian Public Sector Commission Gifts, Benefits and Hospitality Management Guide*
* *Victorian Public Sector Commission Managing Conflicts of Interest: a Guide to Policy Development and Implementation*
* *Equal Opportunity Act 2010*
* *Charter of Human Rights and Responsibilities Act 2006*
* *Privacy and Data Protection Act 2014*
* *Fair Work Act 2009 (CT)*
* *Declaration and Management of Private Interests Form*
* *Declaration and Management of Conflict of Interest Form*
* *A Guide to Applying the COI Policy Principles.*

*[Other legislation as relevant – e.g.: Petroleum Act 1998]*

*[Other departmental policies as relevant – e.g.: conflict of interest framework, outside employment or procurement policies].*

1. **Authorising Officer**

This policy is issued under the authority of [TBC] and is subject to annual review.

1. **Breaches**

An employee’s failure to avoid wherever possible or identify, declare and manage a conflict of interest in accordance with this policy could lead to disciplinary action including dismissal (consistent with the relevant industrial instrument and legislation). Contractors may be subject to contract re-negotiation, including termination.

Additionally, actions inconsistent with this policy may constitute misconduct under the *Public Administration Act 2004,* which includes:

* breaches of the binding Code*,* such as sections covering conflict of interest (section 3.7), public trust (section 3.9), gifts and benefits (section 4.2), and use of official information (section 3.4); and
* employees making improper use of their position.

For further information on managing breaches of this policy, please contact [TBC].

1. **Speak up**

Employees who consider that conflict of interest within the Department may not have been declared or is not being appropriately managed should speak up and notify their manager or authorised representative.

The Department will take decisive action, including possible disciplinary action, against employees who discriminate against or victimise those who speak up in good faith.

1. **Contacts for further information**

A conflict of interest is not always clear to those who have them. Employees who are unsure about a possible conflict of interest, or the application of this policy, should ask their manager or authorised representative for advice.

Policy issued on: \_\_/\_\_/\_\_

Review date: \_\_/\_\_/\_\_

**Appendix A**

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| **MANAGING CONSENSUAL PERSONAL RELATIONSHIPS WITHIN THE VICTORIAN PUBLIC SERVICE** |

**Purpose**

The Department recognises that many people have consensual personal relationships that start at work. However, it is important to be aware of and to manage the impacts that these relationships may have in the workplace, especially where these give rise to actual, potential or perceived conflicts of interest.

This document is intended to promote clarity and to support the Department and its employees to have a consistent approach to the management of consensual personal relationships and any related risks.

The Department has issued this advice to ensure compatibility with the *Equal Opportunity Act 2010*, *Privacy and Data Protection Act 2014* and the *Fair Work Act 2009* (Cth), and to support behaviour consistent with the Code.

**Application**

This advice applies to all employees of <name of organisation>.

**Definitions**

***Consensual personal relationship***: 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.

***Direct hierarchical relationship***: a relationship where employees are of different levels of seniority in an organisation with the same reporting line. The senior employee may not have direct management or supervision of the subordinate employee but has some level of decision power or other authority over their role.

***Professional relationship***: a relationship between employees within an organisation that involves professional interactions.

***Direct supervision***: where there is an immediate reporting, management or supervisory line between employees.

***Indirect supervision***: where the line of supervision is mediated by one or more employees.

**Principles**

Employees who work for the Department who are in a consensual personal relationship and who also have a professional relationship, are required to ensure that the risk of an actual, potential or perceived conflict of interest is managed appropriately.

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

While a conflict of interest can arise between employees of the same level of seniority, the risk may be heightened for hierarchical relationships where the employees are of differing levels of seniority, particularly if there is a direct line of supervision.

Employees in positions of senior 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 in place between different staffing levels.

***Employees in consensual personal relationships with a direct hierarchical relationship***

The <insert organisation> considers any consensual personal relationship 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) to represent a potential conflict of interest.

Where such a relationship exists, employees are to declare the relationship to their manager, a designated disclosure officer (e.g. Human Resources officer) or a designated management representative. This will allow appropriate arrangements to be put in place to manage the conflict of interest, which may include temporary or permanent changes to reporting or supervisory arrangements.

The Secretary and Deputy Secretaries of <name of organisation> can disclose any consensual personal relationships in which they are involved to the Secretary, Department of Premier and Cabinet, the Victorian Public Sector Commissioner, or the Deputy Victorian Public Sector Commissioner.

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 to manage a conflict must avoid discrimination or action that unfairly impacts upon a person's employment and should be commensurate with the seriousness of the identified risk.

***Employees in consensual personal relationships without a direct hierarchical relationship***

Where a consensual personal relationship exists without direct reporting or supervisory lines, employees are, in the first instance, required to manage the risk of a conflict of interest arising as a result of the 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. Confidential disclosure of consensual personal relationships provides the opportunity for the risk to be managed.

***Privacy***Declarations of consensual personal relationships can be made in confidence to the Department in order to protect an employee’s personal privacy. Only relevant persons in the Department will be advised of the declaration and any arrangements necessary for the purpose of recording and managing the conflict of interest. At the time a disclosure is made the Department should notify the parties who within the organisation may be privy to this information.

This advice supplements the Department’s Conflict of Interest Policy and employees’ obligations under the Code.

Further information on the Department’s disclosure process can be found on <intranet web page> or by contacting <title> on <phone> or <email>.

1. Note the application of clause 1.4 of the *Code of Conduct for Victorian Public Sector Employees* to the engagement of contractors and consultants. Contractors and consultants are only bound by the code if explicitly required by their contract for services. [↑](#footnote-ref-1)