MODEL CONFLICT OF INTEREST POLICY

For boards of Victorian public entities

<public entity name and logo>

[The procedures outlined in this model policy will assist:

* public entities to meet their legal obligations under the *Public Administration Act 2004* (PAA) to ensure that processes are in place to deal with conﬂicts of interests;
* public entities that are not subject to the PAA to meet high standards of governance[[1]](#footnote-1), and
* directors to meet their individual obligations under the PAA and the *Code of Conduct for Directors of Victorian Public Entities*.

Your public entity may choose to adopt higher standards or processes that take account of your public entity’s role and functions.]

1. Purpose

This policy sets out the board’s procedures for declaring and managing conﬂicts of interest. Conﬂicts of interest may arise where a director’s personal, family, or private interests, loyalties, or commitments conﬂict with those of the <public entity>.

Such conﬂicts create problems, in that they may:

* inhibit free discussion in board meetings;
* lead to bias or lack of impartiality in decision making;
* result in decisions or actions that are not in the interests of the <public entity>;
* harm public perception of the <public entity> and the broader public sector by giving the impression that the <public entity> has or may have acted improperly.

The purpose of this policy is to protect both the <public entity> and all directors from any appearance of impropriety.

1. Scope

In this policy, the term conﬂict of interest is used to cover both conﬂicts of interest and conﬂicts of duty. These terms are explained in the deﬁnitions section.

1. Application

This policy always applies to all directors in the performance of their duties.

1. Obligations and good practice

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

* the <establishing legislation> and terms of reference,
* the [*Code of Conduct*](http://www.vpsc.vic.gov.au/products/view-products/directors-code-of-conduct-and-guidance-notes.html) *for Directors of Victorian Public Entities* issued by the Victorian Public Sector Commission (VPSC);
* the [duties of directors](http://www.austlii.edu.au/au/legis/vic/consol_act/paa2004230/s79.html) in section 79 of the PAA;
* the [public sector values](http://www.austlii.edu.au/au/legis/vic/consol_act/paa2004230/s7.html) in section 7 of the PAA, particularly section 7(1)(b)(iv) that any real or apparent conflicts of interest are avoided;
* the requirement in section 81(1)(f) of the PAA that [processes be in place](http://www.austlii.edu.au/au/legis/vic/consol_act/paa2004230/s81.html) for dealing with conﬂicts of interest;
* any direction, guideline or statement of obligations or expectations issued by the Minister;
* government policy; and
* all other laws and obligations that bind the <public entity>.

1. Key principles

The key principles underlying this policy are as follows:

* Obligations and good practice: The board acts in accordance with its obligations and with good governance practice.
* Public interest: Conﬂicts of interest are avoided where possible. Where a conﬂict exists, it is declared and managed in the public interest.
* Real, potential or perceived: A conﬂict of interest exists whether it is real, potential, or perceived.
* Transparent and accountable: The process for declaring and managing conﬂicts of interest is transparent, accountable, and consistent with the [*Code of Conduct*](http://www.vpsc.vic.gov.au/products/view-products/directors-code-of-conduct-and-guidance-notes.html) *for Directors of Victorian Public Entities*.
* Culture of integrity: The board fosters a culture of integrity. Directors are supported to raise their own conﬂicts of interest and to speak up if they believe that another director may have an undeclared conﬂict.

1. Definitions

## Conﬂict of interest

A conﬂict of interest is a conﬂict between a director’s public duty to act in the best interests of the <public entity> and his or her private interests.

## Conﬂict of duty

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

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

These conﬂicts may arise because of their membership of multiple boards and are particularly acute for directors appointed as ‘representatives’ of particular interest groups, membership of a profession or employment in the public service.

## 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 director’s performance of his or her duty to the <public entity>, now or in the future.

### Direct or indirect

A private interest can be direct or indirect. A direct interest is held by the director. An indirect interest is held by a relative or close associate of the director, 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 director);[[[2]](#footnote-2)](#_bookmark3) or
* another **close** associate (e.g. friend, relative, business associate, rival, enemy).

### Consensual personal relationships

A consensual personal relationship between a director and a close associate constitutes a potential conﬂict of interest and must be declared.

### 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, professional, or 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 director (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 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 or reward, or 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 may result in prejudice because of friendship, animosity, or other personal involvement with another person or group. If personal values are likely to affect the proper performance of a director’s public duty, then this can lead to a conﬂict of interest. Enmity as well as friendship can give rise to a conﬂict of interest.

1. Annual declaration of private interests

Upon appointment to the board, each director will lodge a declaration of private interests with the chairperson. The chairperson will ensure that the information is recorded in the register of interests and handled in accordance with the *Privacy and Data Protection Act 2014* and the *Public Records Act 1973.*

Directors will update their declaration **annually**. If a director’s circumstances change in the meantime, he or she will lodge an updated declaration (unless the change is already adequately recorded in the register because of a declaration made at a board meeting).

[Other instruments, such as the establishing legislation or terms of reference, may specify additional requirements]

1. Register of interests

Conﬁrmation at start of board meetings that the register is complete and correct

The chairperson will ensure that the register of interests is present for reference at each board meeting[[3]](#footnote-3).At the start of the meeting, the chairperson will ask all directors 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 directors present aﬃrmed that their entry in the register of interests remains complete and correct’. If any changes are declared, these will be recorded in the minutes for entry into the register.

Updating the register

The chairperson will ensure that the register of interests is current and includes:

* all interests declared in all declarations of private interests lodged by directors; and
* any additional interests which have been declared and recorded in the minutes of a board meeting.

1. Declaring conflicts of interests at the start of meetings

In addition to checking whether the register of interests is current and correct, at the start of each board meeting the chairperson will ask if any director 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 director 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 director who becomes aware during the meeting that he or she has an undeclared interest will declare it immediately.

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

1. Options for managing a conflict of interest

The board will manage all conﬂicts of interest in the public interest. Options for managing a conﬂict of interest include:

**Remove** – the director leaves the room and does not participate at all in the ‘conﬂicted’ matter.

**Record** – details of the conﬂict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.

**Restrict** – the director’s involvement in discussion 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.

**Recruit** – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer, or governance expert from the <portfolio department>).

**Relinquish or resign** – the director relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the director resigns from the board itself.

[The process for determining which option is in the public interest is set out below. If the establishing legislation or terms of reference have speciﬁc requirements for managing conﬂicts of interests it may be necessary to adjust the options.]

1. Is the conflict material?

When deciding how to manage a conﬂict of interest, the board will determine whether the conﬂict is material.[[4]](#footnote-4) In doing so, the board will consider all the relevant factors and circumstances, including (but not limited to):

* the objectives and functions of the <public entity>;
* the matter that is to be discussed and determined by the board;
* the **nature** of the conﬂict (i.e. 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 director or a small beneﬁt that thousands of people including the director will receive?);
  + any other relevant circumstances (e.g. if the conﬂict relates to a board decision about an organisation where the director’s partner works. Is the partner the current CEO or is his or her work unconnected to the decision being made?);
* the **potential eﬀect** of the conﬂict, including:
  + the extent to which the director’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.

1. Managing material conflicts of interest

The board’s **standard procedure** for managing a material conﬂict of interest is to **remove** the director from all participation in the matter. The director 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 director (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.

More stringent options for managing a material conﬂict

If the public could reasonably form the view that the conﬂict is of unacceptable frequency or duration then to maintain public conﬁdence and protect the reputation of the <public entity> it may be necessary, in the public interest, for the director to:

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

If the board is unsure whether a more stringent option is in the public interest the <portfolio department> will be contacted for advice.

Less stringent options for managing a material conﬂict

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

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

Examples of where a less stringent option may be in the public interest, considering all the relevant circumstances, include:

* **Discussion**: If the ‘conﬂicted’ director was appointed based on their knowledge of the matter, it may be in the public interest for him or her to be present for part of the board’s discussion. (However, if an ‘un-conﬂicted’ director 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 would mean that there is no quorum for the decision even if all ‘un-conﬂicted’ directors are present, then a less stringent option would be in the public interest.[[5]](#footnote-5) (However, if ‘un-conﬂicted’ directors are absent then it would usually be in the public interest for the decision to be held over to the next board meeting instead.)

1. Managing non-material conflicts of interest

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

If the board decides on a less stringent 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 determine to only record the conﬂict but after monitoring may decide instead that the director can participate in part of the discussion but must be removed from all decision making on the matter).

If the board is unsure whether a less stringent option is in the public interest it will err on the side of caution and decide that the director be **removed** from the room and not participate in any discussion or decision making on the matter).

1. Recording in minutes

If a director declares a conﬂict of interest, the following information must 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;
* why the chosen action is in the public interest; and
* if the director leaves the room during discussion or decision making on the ‘conﬂicted’ matter, the time that he or she leaves and returns and the item (or part of the item) for which he or she was absent.

[Other instruments, such as the establishing legislation or terms or reference, may also include additional requirements about the minutes.]

1. Breach of this policy

A director who may have breached this policy must notify the chairperson immediately. If the chairperson 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 chairperson is of the view that a breach has occurred, he or she will arrange for the board to determine on an urgent basis, and record in the minutes, whether a breach has occurred. If a breach has occurred, the chairperson will notify the Minister and Secretary in writing as soon as practicable, including whether the breach relates to a material conﬂict of interest.[[6]](#footnote-6)

A director who believes that another director may have breached this policy but not yet notiﬁed the chairperson will bring this to the attention of the chairperson or will approach the other director, who will then notify the chairperson.[[7]](#footnote-7)

1. Regular review of this policy

The board must review their policies on an annual basis or more frequently, if required, to keep up-to-date with changes to laws, government policy, etc.

1. Related policies

Related policies include the following:

* *Code of Conduct for Directors of Victorian Public Entities*
* [*Conﬂict of Interest Policy*](https://vpsc.vic.gov.au/resources/conflict-of-interest-guidance-for-organisations/)
* [*Gifts, Beneﬁts and Hospitality*](https://vpsc.vic.gov.au/resources/gifts-benefits-and-hospitality-resource-suite/) *Policy*
* <Meetings and Decision Making Policy>

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

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

1. These provisions only apply to directors of public entities established on or after 1 July 2005. [↑](#footnote-ref-1)
2. Including a person paying rent or board or providing ‘in kind’ support. [↑](#footnote-ref-2)
3. Like other documents produced by the board (e.g. minutes of board meetings), the register is a public document. 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 portfolio department can provide advice and assist to assess whether the register is exempt from disclosure under the Act. [↑](#footnote-ref-3)
4. Determining whether a conﬂict of interest is material is consistent with the requirements of s 81(1)(f) of the *Public Administration Act 2004* [↑](#footnote-ref-4)
5. If this is a common occurrence, the relevant portfolio department should be notiﬁed. [↑](#footnote-ref-5)
6. These requirements are consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*. [↑](#footnote-ref-6)
7. If the matter concerns a possible breach by the chairperson, it should be brought to the attention of the deputy chairperson or director nominated by the board to assist the chairperson with conﬂict of interest queries. [↑](#footnote-ref-7)