

Conflict of Interest Policy – Board Members July 2017

A08



Conflict of Interest – Board Members

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Conflict of Interest – Board Members

1. PURPOSE

This policy sets out the Victorian Planning Authority's procedures for the declaration and management of conflicts of interest by board members. Conflicts of interest may arise where a board member's personal, family, or private interests, loyalties, or commitments conflict with those of the VPA.

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 VPA; and
- harm public perceptions of the VPA and the broader public sector by giving the impression that the VPA has or may have acted improperly.

The specific circumstances in which conflicts of interest arise, and the obligations on board members when they do, are set out in Division 4 of Part 2 of the *Victorian Planning Authority Act 2017* (VPA Act).

The purpose of this policy is to provide guidance on the provisions of the VPA Act and to protect both the VPA and all board members from the risk of breaching their obligations under the VPA Act and, more broadly, any appearance of impropriety.

2. SCOPE

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

3. APPLICATION

This policy applies to all board members at all times in the performance of their duties. A board member is any member of the board of the VPA.

4. OBLIGATIONS AND GOOD PRACTICE

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

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

The Chairperson is the responsible officer for conflict of interest oversight on behalf of the VPA. This officer will be responsible for ensuring that:

- board members are asked to declare all conflicts of interest at each meeting of the VPA;
- any such conflicts are recorded in the minutes;

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- any such conflicts are addressed and managed in accordance with the VPA Act;
- the Register of Interests is kept up to date; and
- they are available as a point of contact for other board members on conflict of interest matters, including this policy.

5. KEY PRINCIPLES

The key principles underlying this policy are as follows:

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

6. DEFINITIONS

Conflict of interest

A conflict of interest can broadly be described as a conflict between a board member's:

- public duty to act in the best interests of the VPA; and
- private interests.

The VPA Act establishes two types of conflict of interest, being a general conflict of interest and a specific conflict of interest.

A general conflict of interest arises when a person could reasonably be taken to have a conflict of interest.

A specific conflict of interests arises when either:

- a close associate of the board member,¹ for example a family member or spouse, would gain a benefit or suffer a loss (whether directly or indirectly and whether of a financial or non-financial nature) from the outcome of the matter; or
- the board member received a gift worth \$500 or more, within 5 years of the consideration of the matter, and the gift was given to the board member by someone who has a relevant interest in the matter or someone who was acting on behalf of a person with a relevant interest in the matter.

How broad is the definition?

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

¹ See section 27(1) of the VPA Act.

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Real, potential or perceived

A conflict of interest exists whether it is:

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

Pecuniary or non-pecuniary

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

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

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

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

Acceptance of gifts - a private interest also exists where a board member has received one or more gifts with a total value of \$500 or more during the last five years from a:

- person with a relevant interest in the matter;
- director, consultant, contractor or agent, or any of their employees, or a person who the board member knows has a relevant interest in the matter; or
- person who gives the gift to the board member on behalf of someone who has a relevant interest in the matter.²

7. ANNUAL DECLARATION OF PRIVATE INTERESTS

Upon appointment to the board, each board member will make a *Declaration of Private Interests*. Declarations will be lodged with the Chairperson, who will ensure that the information provided in relation to a board member's interests is recorded in the *Register of Interests* and that all information provided is stored and used in accordance with the *Privacy and Data Protection Act 2014* (Vic) and the *Public Records Act 1973* (Vic).

² Section 27(2) of the VPA Act.

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

8. REGISTER OF INTERESTS

An up-to-date Register of Interests will be maintained which includes details of both the general and specific interests of each board member that may give rise to a conflict of interest.

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 At the start of the meeting, the Chairperson will ask for all board members to state whether their interests as recorded in the register are complete and correct. If there are no changes, the minutes will note that 'all board members present 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 *Declaration of Private Interests* forms lodged by board members; and
- any additional interests which have been declared and recorded in the minutes of a board meeting.

9. DISCLOSING CONFLICTS OF INTEREST 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 board member present has a general or specific conflict of interest in respect of any item on the agenda. If a board member has a conflict of interest in any item he or she will disclose it prior to the item being considered, including the nature of the interest and the conflict that results, or may result, from it⁴. An interest must be declared even if it is already recorded in the Register.

A board member who becomes aware during the meeting that he or she has an undisclosed interest will disclose it immediately. It is the responsibility of every board member to prevent conflicts of interest, and to be aware whether or not they have a conflict of interest (erring always on the side of caution).

A board member who believes that another board member may have an undisclosed interest will raise this as a query, so as to enable the other board member to disclose the interest, if it exists, noting always that it is for each board member to decide whether they have a conflict of interest.

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*. Some parts of the register are likely to be exempt from disclosure under the Act.

⁴ It is a legal requirement for board members to declare conflicts of interest under section 29 of the VPA Act (see Appendix C)

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If the board is considering a matter in the absence of a board meeting, then any board member who has a conflict of interest in the matter must disclose it in writing to the CEO as soon as possible after receiving the proposed resolution in respect of the matter⁵, and must advise the Chair, all other board members, and the board secretary of the conflict. The board member will then be treated as an apology.

10. MANDATED PROCEDURE FOR MANAGING A CONFLICT OF INTEREST

The board will manage all conflicts of interest in accordance with the obligations under the VPA Act and in the public interest. The mandated procedure for managing a conflict of interest is as follows:

1. Disclose

The board member must disclose a conflict of interest by advising the meeting about the nature of the conflict of interest before the relevant matter is considered.

2. Remove

Where the board is considering a matter at a board meeting, the board member must leave the room and not participate at all in consideration of the 'conflicted' matter.⁶

Where a board resolution is to be made outside a meeting of the board, the board member must not sign a document concerning the 'conflicted' matter⁷, and will be treated as an apology.

3. Record

Details of the conflict of interest must be recorded by the Chairperson in the minutes of the board meeting,⁸ including:

- the name of the board member who has disclosed a conflict of interest;
- the nature of the conflict of interest; and
- the names of directors who voted on the matter that gave rise to the conflict of interest.

4. Restrict

The board member cannot:

- take any part in further consideration of the matter; or
- vote on any decision of the board in relation to the matter.⁹

5. Recruit

An impartial third party should be engaged to provide advice (e.g. a probity adviser, lawyer, or governance expert) where necessary.

⁵ This is a legal requirement under section 30 of the VPA Act.

⁶ Section 29 of the VPA Act.

⁷ Section 30 of the VPA Act.

⁸ Sections 30 and 29(5) of the VPA Act.

⁹ Sections 29 and 30 of the VPA Act.

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6. Report

Where a conflict of interest is disclosed at a meeting of the board, it must be recorded in the minutes.

Where a conflict of interest is disclosed in relation to a resolution outside of a board meeting, the CEO must report the conflict to the board, and details of the conflict must be recorded in the minutes of the next board meeting.¹⁰

11. IS THE CONFLICT MATERIAL?

All conflicts of interest must be managed in accordance with Division 4 of Part 2 of the VPA Act.

Sometimes, a conflict of interest will arise from circumstances which are inherently at odds with a board member's duty to the VPA. Such conflicts of interest will be considered to be **material**. In deciding whether a conflict of interest is **material**, the board member will take into account all relevant factors and circumstances, including (but not limited to):

- the **objectives and functions** of the VPA;
- 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 frequency with which the conflict of interest is likely to arise; and
- the **potential effect** of the conflict, including the overall likelihood that the conflict of interest may affect public confidence in the integrity of the board and its decisions.

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

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

If a board member is unsure whether such action is necessary or appropriate in particular circumstances, the board will consider seeking external advice.

12. MANAGING NON-MATERIAL CONFLICTS OF INTEREST

Other, less pervasive, conflicts of interest will also regularly arise. Those are considered to be **non-material** conflicts of interest. In those circumstances, a board member must comply with their obligations under the VPA Act (and outlined at part 10 of his policy) to address the non-material conflict of interest. However, further action will not be required.

¹⁰ Section 30 of the VPA Act.

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13. RECORDING IN MINUTES

If a board member discloses a conflict of interest in a board meeting, including a meeting without physical attendance, the following information must be recorded in the minutes:

- the board member's **name**;
- a **description** of the nature of the conflict of interest (the dollar value of a financial interest does not need to be included);
- the names of directors who voted on the matter that gave rise to the conflict of interest;
- the **action** the board will take to manage the conflict in accordance with the provisions of the VPA Act and in light of the **public interest**;
- if the board member leaves the room during discussion and/or decision-making on the 'conflicted' matter, the time that he/she leaves and returns and the item (or part of the item) for which he or she was absent; and
- if a vote is taken on the matter, full details of who voted.

14. BOARD MEMBERS ACTING AS AGENTS/UNDER THE AUTHORITY OF THE CEO

If a board member is authorised to act on behalf of the VPA, the board member must disclose any conflict of interest:

- to the Chairperson as soon as the board member becomes aware of the conflict; and
- to the board by the time of the next ordinary meeting.¹¹

The Chairperson is obliged to ensure the following details are recorded in the minutes of the meeting:¹²

- the name of the person who made the disclosure; and
- the nature of the conflict of interest.

After becoming aware of the conflict of interest, the board member must not perform any functions, duties or powers in relation to the 'conflicted' matter.¹³

15. BOARD MEMBERS ACTING AS ADVISORS

If a board member is acting as an advisor, in that they have been engaged to provide advice or a report to the board, a committee or a delegate of the VPA, the board member must disclose any conflict of interest to the person or body who has engaged them as an advisor.¹⁴

16. BREACH OF THIS POLICY

A board member who may have breached this policy must notify the Chairperson immediately. The Chairperson will report the matter to the board at the next scheduled board meeting. The board will then determine whether a breach has occurred, with the decision being recorded in the minutes.

¹¹ Section 31(5) of the VPA Act.

¹² Section 29(6) of the VPA Act.

¹³ Section 31 of the VPA Act.

¹⁴ Section 32(1) of the VPA Act.

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If the board determines that a breach has occurred, the Chairperson will notify the Minister for Planning and the Secretary to the Department of Environment, Land, Water and Planning in writing as soon as practicable.¹⁵

A board member who believes that another board member 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 board member, who will then notify the Chairperson.¹⁶

A board member who breaches this policy may be liable to pay a fine under the VPA Act in certain circumstances.

17. 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.

18. RELATED POLICIES

Related policies include the following policies:

- Gifts, Benefits and Hospitality Policy
- VPA Charter
- Directors' Code of Conduct, published by the Victorian Public Sector Commission at <http://vpvc.vic.gov.au/resources/code-of-conduct-for-directors/>
- Conflict of Interest Policy for Staff

¹⁵ These requirements are consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*.

¹⁶ If the matter concerns a possible breach by the Chairperson, it should be brought to the attention of the deputy Chairperson or board member nominated by the board to assist the Chairperson with conflict of interest queries.

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APPENDIX A DECLARATION OF INTERESTS FORM

The Department of Premier and Cabinet updates the Declaration of Private Interests form – please see their website for details and a copy of the latest form – www.dpc.vic.gov.au – DPC resources/governance/appointment and remuneration guidelines

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APPENDIX B REGISTER OF INTERESTS

Name	Date of declaration	Description of interest	Nature of conflict	Management plan	TRIM ref

25 Definitions

In this Division—

family member of a person means—

- (a) the person's spouse or domestic partner; or
- (b) a parent or step-parent of the person, or a parent or step-parent of the person's spouse or domestic partner; or
- (c) a grandparent of the person, or a grandparent of the person's spouse or domestic partner; or
- (d) a sibling or step-sibling of the person, or a sibling or step-sibling of the person's spouse or domestic partner; or
- (e) a child or step-child of the person, or a child or step-child of the person's spouse or domestic partner; or
- (f) a grandchild of the person, or a grandchild of the person's spouse or domestic partner; or
- (g) any other relative of the person who resides in the person's household; or
- (h) the spouse or domestic partner of—
 - (i) a parent or step-parent referred to in paragraph (b); or
 - (ii) a grandparent referred to in paragraph (c); or
 - (iii) a sibling or step-sibling referred to in paragraph (d); or
 - (iv) a child or step-child referred to in paragraph (e); or
 - (v) a grandchild referred to in paragraph (f); or
 - (vi) a relative referred to in paragraph (g);

general conflict of interest—see section 26;

specific conflict of interest—see section 27.

26 Meaning of *general conflict of interest*

A person has a ***general conflict of interest*** in a matter if the person could reasonably be taken, from the perspective of an impartial, fair-minded person, to have a conflict of interest in the matter.

27 Meaning of *specific conflict of interest*

- (1) A person has a ***specific conflict of interest*** in a matter if any of the following persons would gain a benefit or suffer a loss (whether directly or indirectly and whether of a financial or non-financial nature) depending on the outcome of the consideration of the matter—
 - (a) the person;
 - (b) a family member of the person;
 - (c) a body corporate of which the person, or the person's spouse or domestic partner, is a director or member of the governing body;
 - (d) a partner in a partnership of which the person is a partner;

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- (e) an employer (other than a public sector body) of the person;
 - (f) a person for whom the person acts as a consultant, contractor or agent;
 - (g) a beneficiary under a trust or an object of a discretionary trust of which the person is a trustee;
 - (h) a member of a prescribed class of persons.
- (2) A person (*first person*) also has a *specific conflict of interest* in a matter if the first person has received one or more gifts with a total value of, or more than, the threshold amount, from any of the following persons in the 5 years preceding the consideration of the matter—
- (a) a person who would gain a benefit or suffer a loss, whether directly or indirectly and whether of a financial or non-financial nature (a *relevant interest*), depending on the outcome of the consideration of the matter;
 - (b) a director, consultant, contractor or agent (or the director's, consultant's, contractor's or agent's employees) of a person that the first person knows has a relevant interest in the matter;
 - (c) a person who gives the gift to the first person on behalf of a person who has a relevant interest in the matter.
- (3) For the purposes of subsection (2), the threshold amount is \$500 or a higher prescribed amount.

28 Circumstances in which a person does not have a conflict of interest

For the purposes of this Division, a person does not have a specific conflict of interest or general conflict of interest in a matter in the following circumstances—

- (a) the person—
 - (i) does not know the circumstances that give rise to the conflict of interest; and
 - (ii) would not reasonably be expected to know the circumstances that give rise to the conflict of interest;
- (b) the conflict of interest is so remote or insignificant that it could not reasonably be regarded as capable of influencing any actions or decisions of the person in relation to the matter;
- (c) the conflict of interest only arises because of an interest held by the person or another person—
 - (i) in common as a resident, ratepayer, taxpayer or voter and does not exceed the interests generally held by other residents, ratepayers, taxpayers or voters; or
 - (ii) in common with another large class of persons and does not exceed the interests generally held by members of the class of persons;
- (d) the conflict of interest only arises because the person, or a family member of the person, is a member of a religious group;
- (e) the conflict of interest only arises because the person, or a family member of the person, is a member (other than an office holder) of a community group, sporting club or similar organisation;
- (f) the conflict of interest only arises because the person—
 - (i) holds the interest in a prescribed circumstance; or

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- (ii) is a member of a prescribed organisation or group, or is a member of an organisation or group that is a prescribed class of organisation or group.

Subdivision 2—Managing conflicts of interest

29 Board meetings

- (1) A director of the Authority who has a specific conflict of interest or general conflict of interest in a matter to be considered by the board at a meeting and who is attending the meeting must disclose that conflict of interest by advising the board at the meeting of the nature of the conflict of interest before the matter is to be considered.

Penalty: 120 penalty units.

- (2) A director of the Authority who has disclosed a specific conflict of interest or general conflict of interest in accordance with subsection (1)—

- (a) must not take any further part in consideration of the matter; and
- (b) must not vote on any decision of the board in relation to the matter.

Penalty: 120 penalty units.

- (3) A director of the Authority who has disclosed a specific conflict of interest or general conflict of interest under subsection (1) must leave the room while the matter is being considered.
- (4) If a director of the Authority who has a specific conflict of interest or general conflict of interest in a matter votes or purports to vote on any decision of the board in relation to the matter, the director's vote must be disallowed.
- (5) If a director of the Authority discloses a specific conflict of interest or general conflict of interest in accordance with subsection (1), the person chairing the meeting must ensure the following details are recorded in the minutes of the meeting—
 - (a) the director's name;
 - (b) the nature of the conflict of interest, as described by the director;
 - (c) which directors voted on the matter that gave rise to the conflict of interest.
- (6) If a person discloses a specific conflict of interest or general conflict of interest to the board in accordance with section 31(5), the person chairing the meeting must ensure the following details are recorded in the minutes of the meeting—
 - (a) the name of the person who made the disclosure;
 - (b) the nature of the conflict of interest, as described by the person who made the disclosure.

Note

See also Part 5 of the **Public Administration Act 2004**.

30 Board resolutions without meetings

- (1) A director of the Authority who has a specific conflict of interest or general conflict of interest in a matter to be decided by resolution under section 19 must disclose that conflict of interest by advising, in writing, the chief executive officer of the nature of the conflict of interest as soon as possible after receiving a copy of a document containing the proposed resolution.

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Penalty: 120 penalty units.

- (2) A director of the Authority who has disclosed, in accordance with subsection (1), a specific conflict of interest or general conflict of interest in a matter to be decided by resolution under section 19 must not sign a document containing a statement that the director is in favour of the resolution.

Penalty: 120 penalty units.

- (3) If a director of the Authority discloses a specific conflict of interest or general conflict of interest in accordance with subsection (1)—
- (a) the chief executive officer must report the disclosure to the board by no later than the next ordinary meeting of the board; and
 - (b) at the meeting, the person chairing the meeting must ensure the following details are recorded in the minutes of that meeting—
 - (i) the director's name;
 - (ii) the nature of the conflict of interest, as described by the director;
 - (iii) which directors signed a document containing a statement in favour of a resolution on the matter that gave rise to the conflict of interest.

Note

See also Part 5 of the **Public Administration Act 2004**.