

Conflict of Interest Policy - Staff July 2017

D16



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DOCUMENT CONTROL

Date	Version	Author	Nature of Change
December 2014	V1.0	Matthew Thornley	Initial draft
October 2016	V2.0	Matthew Thornley	Updated based on Victorian Public Sector Commission <i>Model Conflict of Interest Policy</i>
June 2017	V3.0	Matthew Thornley	Updated to reflect conflict of interest provisions in the <i>Victorian Planning Authority Act 2017</i> .

Version authorisation	
Authorised by:	Victorian Planning Authority
Date of Authorisation:	14 June 2017
Effective Date:	1 July 2017
Date of Last Amendment:	June 2017
Contact Person:	Matthew Thornley

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1. PURPOSE

This policy states the Victorian Planning Authority's (VPA) position on conflict of interest, including the requirement that conflicts of interest are: avoided by employees wherever possible, or:

- identified and declared; and
- actively managed.

Employees will encounter conflicts of interest and the VPA 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 VPA and broader public sector.

The VPA has issued this policy to support behavior consistent with the *Code of Conduct for Victorian Public Sector Employees* (Code) and the *Victorian Planning Authority Act 2017* (VPA Act). All employees are required under clause 1.2 of the Code to comply with this policy.

2. APPLICATION

This policy applies to all workplace participants. For the purpose of this policy, this includes: employees, contractors¹, consultants and any individuals or groups undertaking activity for or on behalf of the VPA.

3. POLICY PRINCIPLES

The VPA 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 VPA 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 the Victorian Public Sector Commission publication [A guide to applying the COI policy principles](#) for further guidance.

4. DEFINITIONS

Conflict of interest

A conflict of interest exists 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.

¹ Contractors and consultants may be required to declare and manage conflicts of interest under sections 31 and 32 of the VPA Act, particularly where they are acting on behalf of the VPA or providing advice to the VPA. Penalties apply if they fail to do so. 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.

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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, as well as **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, as well as **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.

A private interest also exists if you have received one or more gifts with a total value of \$500 or more during the last five years from a single source². The giver is considered to be your associate, and a conflict of interest should be declared if you are involved in any decision that directly or indirectly affects the pecuniary or non-pecuniary interests of the giver.

Conflicts of interest for delegates

When an employee is delegated powers, functions or duties of the VPA or the CEO, or is otherwise authorised to act on behalf of the VPA or the CEO, they must observe the requirements of the VPA Act with respect to any conflict of interest. The VPA 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 employee,³ 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 employee 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.

In those circumstances, the employee must not exercise the relevant delegated power, function or duty and must immediately report the conflict of interest to the CEO.

² See section 27 (2) of the VPA Act.

³ See section 27 (1) of the VPA Act.

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5. RESPONSIBILITIES

DIRECTOR, CORPORATE & STATUTORY SERVICES

The Director, Corporate & Statutory Services is responsible for overseeing the VPA's approach to conflict of interest. In addition to the responsibilities listed below for other Directors and staff, the Director, Corporate & Statutory Services will:

- Ensure the Conflict of Interest policies remain current;
- Provide a point of contact for anyone wanting assistance in identifying or managing a conflict of interest;
- Receive and investigate reports of possible breaches of policy;
- Ensure staff are made aware of this policy; and
- Maintain records of disclosed conflicts, including a register of interests declared.

DIRECTORS

Directors are responsible for ensuring that potential conflicts of interest disclosed by their staff are managed effectively. In addition to the responsibilities listed below for staff, Directors will:

- Be aware of the risks of conflicts of interest inherent in the work of their staff;
- Ensure that staff who report to them are aware of this policy;
- Help staff to determine whether a conflict of interest exists;
- Determine whether interests declared by their staff constitute a conflict of interest;
- Help to develop conflict of interest management plans for their staff;
- Approve conflict of interest management plans for their staff.

ALL STAFF

All staff are responsible for identifying and disclosing their own conflicts of interest, and ensuring these are managed effectively to protect the public interest. Staff will:

- At all times ensure that the VPA's confidentiality requirements are closely adhered to in relation to all information obtained as a result of their employment at the VPA;
- Consider on an ongoing basis whether their private and personal interests may have the potential to conflict with their official duties, or whether there may be a perception of such a conflict;
- Take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise, their impartiality;
- Disclose any conflicts of interest, including potential or perceived conflicts, as described in the procedures below;
- Abstain from involvement in official decisions or actions that could reasonably be seen to be compromised by their private interests and affiliations;
- Avoid private action in which they could be seen to have an improper advantage from inside information they have access to because of their official duties;
- Not use their official position or VPA resources for private gain;
- Ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties; and
- Not take improper advantage of their official position or privileged information gained in that position when seeking employment outside the public sector.

6. GUIDELINES

Preventing conflicts of interest is the responsibility of every employee. Therefore, employees should:

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- Take responsibility for being aware whether or not they are conflicted in a particular matter (erring always on the side of caution); and
- Declare their interest at the earliest opportunity.

Some examples of possible conflicts of interest are provided below. This list is not exhaustive, and other situations may also arise.

Planning	
Property ownership (including property owned by family members or close friends, where this is known to the employee)	If the property is within an area where the VPA may be making planning decisions, and you may be involved in this work, then you must disclose this.
Family members or close friends who are developers or who work for developers	If you are likely to be involved in planning decisions that affect that developer, then you must disclose this.
Owning shares in a development company	If you are likely to be involved in planning decisions that affect that developer, then you must disclose this.
Procurement	
Family members or close friends who own or work for a potential supplier	If you are likely to be involved in evaluating quotes from this supplier, then you must disclose this.
Owning shares in a company that may supply products or services to the VPA	If you are likely to be involved in evaluating quotes from this supplier, then you must disclose this.
Recruitment	
Family members or close friends applying for a job	If you are on the selection panel, then you must disclose this.
Former work colleagues applying for a job	If you are on the selection panel, then you must disclose this.

7. PROCESS

Employees must avoid wherever possible or identify, declare and manage conflict of interest in accordance with this policy. Under the VPA Act, penalties apply in some circumstances for failing to declare a conflict of interest, and for not removing yourself from a matter where you are conflicted. Appendix A contains extracts of the most relevant sections of the Act.

IDENTIFYING CONFLICTS 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, before major projects, decisions or policy development).

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 VPA, some functions and activities are higher risk than others and may require increased risk mitigation measures.

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

- land use planning
- procurement, contract management and tendering; and
- recruitment.

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DECLARING CONFLICTS OF INTEREST

All employees are required to complete an annual declaration at the start of the financial year, on appointment to the VPA, or whenever a conflict arises. There are three classes of declarations that may be required:

- All Directors *must* complete the *Declaration of Private Interests* form;
- All other staff *must* complete the *Conflict of Interest and Confidentiality Declaration* form; and
- Contractors *may* be required to complete the *Conflict of Interest and Confidentiality Declaration* form if they are providing advice or participating in decision making processes.

The declaration form sets out specific instructions for the employee and their manager for completing and submitting the form and details their conflict of interest management plan.

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

- They are on a selection panel; or
- They are on a procurement panel for a procurement that exceeds the open tender threshold (\$150,000 inc GST).

Employees with direct reports must work with their direct reports to manage the conflict of interest and related risks and provide completed declaration forms to the Governance & Corporate Information Manager for risk management, reporting and auditing purposes.

MANAGING CONFLICTS 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.

Where an employee is exercising a power or performing a function or duty under delegation from the VPA or the CEO and a conflict of interest arises in relation to the matter, then the employee *must*:

- Not perform the relevant function or duty or exercise the relevant power in relation to the matter; and
- Disclose the conflict of interest to the CEO as soon as they become aware of it.

A failure to do so constitutes an offence and may attract a monetary penalty⁴.

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

⁴ See section 31 (1) of the VPA Act.

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The VPA Board will receive a report at least annually on the administration and quality control of the conflict of interest declaration process.

8. DECLARATION AND MANAGEMENT OF PRIVATE INTERESTS

All Directors must complete the VPA'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).

The declaration form sets out specific instructions for the employee and their manager for completing and submitting the form.

9. RELATED POLICY, LEGISLATION AND OTHER DOCUMENTS

- *Public Administration Act 2004*
- *Victorian Planning Authority Act 2017*
- Code of conduct for Victorian public sector employees 2015
- Victorian Public Sector Commission Managing conflicts of interest: a guide to policy development and implementation
- Victorian Public Sector Commission Gifts, benefits and hospitality management guide
- Declaration and management of private interests form
- Declaration and management of conflict of interest form
- Victorian Public Sector Commission A guide to applying the COI policy principles⁵
- A08 Conflict of Interest Policy – Authority Members
- D06 Recruitment Policy
- D12 Gifts & Hospitality Received Policy
- D14 Probity Guidelines
- E02 Procurement Policy and Procedures

10. 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. In some circumstances a failure to declare or manage a conflict of interest is also a breach of the VPA Act, which is punishable by a fine⁶.

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

- breaches of the binding *Code of conduct for Victorian public sector employees*, such as sections of the Code 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

⁵ Published at <http://vpvc.vic.gov.au/resources/conflict-of-interest-guidance-for-organisations/>

⁶ See sections 31 and 32 of the VPA Act.

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- employees making improper use of their position.

For further information on managing breaches of this policy, please contact the Director, Corporate & Statutory Services.

11. SPEAK UP

Employees who consider that conflicts of interest within the VPA may not have been declared or are not being appropriately managed should speak up and notify their manager or the Director, Corporate & Statutory Services.

The VPA will take decisive action, including possible disciplinary action, against employees who discriminate against or victimise those who Speak Up in good faith.

12. 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 the Governance & Corporate Information Manager for advice.

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APPENDIX A: EXTRACTS FROM VPA ACT

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.

31 Delegates and agents

- (1) A person who has a specific conflict of interest or general conflict of interest in a matter and who has been delegated a function, duty or power of the Authority or the chief executive officer under this Act or under any other enactment must not perform the function or duty or exercise the power in relation to the matter.

Penalty: 120 penalty units.

- (2) A person authorised to act for and on behalf of the Authority in relation to a matter must not act in relation to the matter if the person has a specific conflict of interest or general conflict of interest in the matter.

Penalty: 120 penalty units.

- (3) A person who has a specific conflict of interest or general conflict of interest in a matter in respect of which the person has a delegated function, duty or power of the Authority or the chief executive officer under this Act or under any other enactment, must disclose the conflict of interest in accordance with subsection (5).

Penalty: 120 penalty units.

- (4) A person authorised to act for and on behalf of the Authority in relation to a matter, and who has a specific conflict of interest or general conflict of interest in the matter, must disclose the conflict of interest in accordance with subsection (5).

Penalty: 120 penalty units.

- (5) A person must disclose the nature of the conflict of interest in writing—

- (a) if the person is a director (other than the chairperson of the board) or the chief executive officer—

- (i) to the chairperson of the board as soon as the director or chief executive officer becomes aware of the conflict of interest in the matter; and

- (ii) to the board by no later than the next ordinary meeting of the board; or

- (b) if the person is the chairperson of the board—

- (i) to the chief executive officer as soon as the chairperson becomes aware of the conflict of interest in the matter; and

- (ii) to the board by no later than the next ordinary meeting of the board; or

- (c) in any other case, to the chief executive officer as soon as the person becomes aware of the conflict of interest in the matter.

- (6) Subsections (1) to (4) and (5)(a) do not apply to the chief executive officer if the chief executive officer has a specific conflict of interest or general conflict of interest in a matter and the matter only relates to—

- (a) the adoption or amendment of a policy relating to the Authority's staff generally; or

- (b) a decision to delegate a function, duty or power to an employee of the Authority or a seconded staff member.

- (7) The chief executive officer must keep a record of conflicts of interest disclosed to the chief executive officer under this section.

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- (8) A reference in this section to a person who has been delegated a function, duty or power includes a person who has been sub-delegated a function, duty or power.

32 Advisors

- (1) A relevant person who is providing advice or a report to a person or body specified in subsection (2) and who has a specific conflict of interest or general conflict of interest in a matter to which the advice or report relates, must disclose the nature of the conflict of interest to that person or body before the person or body considers that advice.

Penalty: 120 penalty units.

- (2) For the purposes of subsection (1), the following persons and bodies are specified—

- (a) the board;
- (b) a committee;
- (c) a person who has been delegated a function, duty or power of the Authority under this Act or under any other enactment.

- (3) A reference in this section to a person who has been delegated a function, duty or power includes a person who has been sub-delegated a function, duty or power.