

Conflict of interest

(2) About the model policy

Guidance note for boards of major DELWP agencies

This guidance note is for use by board members of the over 100 major public entities and other statutory boards, committees, councils, panels, etc. in the Department of Environment, Land, Water and Planning (DELWP) portfolio, including large (category 1 and 2) committees of management of crown land reserves

Overview

Your board is expected to have a *Conflict of Interest* policy that complies with its governance obligations and with good public sector governance practice.

The board's policy should:

- require board members to declare at the start of a board meeting whether their entries in the *Register of Interests* are complete and correct and whether they have any interest (private interest or duty to another organisation) in relation to any item on the agenda
- set the board's standard procedure for managing material (serious) conflicts of interest as **remove** – i.e. the board member with the conflict leaves the room and does not take part in any discussion or decision-making on the issue.

DELWP model policy

DELWP offers a model policy on *Conflict of Interest*.

Your board's policy should be consistent with the DELWP model policy.

If your agency's establishing Act includes specific requirements in relation to conflict of interest, adapt the model policy accordingly.

Terms used

The model policy uses generic terms. Your board can substitute its own terms, for example:

- *board* - committee, council, panel, etc.
- *board member* - director, committee member, etc.

Governance obligations and good practice

The model policy is based on governance obligations that are binding on most DELWP agencies – e.g. requirements in the *Public Administration Act 2004* (PAA).¹

Even if these obligations are not legally binding on your agency, they are **basic good governance practice** for all DELWP agencies.

Overview of model policy

- A conflict of interest is a conflict between a board member's:
 - public duty to act in the best interests of the agency; and
 - his/her private interests or duty to another organisation.

¹ Almost all DELWP agencies are public entities and are therefore subject to the PAA and related codes – e.g. [Directors' Code of Conduct](#). Most, except usually small 'category 3' committees of management of crown land reserves, are bound by Divisions 2 and 3 of Part 5 of the Act (s 79 to 85) – e.g. the requirements in s 81(1)(f) in relation to conflicts of interest.

Sections 79 to 85 bind public entities that were established after 1 July 2005 OR have had their establishing Act amended to deem that the agency is subject to such provisions (e.g. CMAs and water corporations) OR are included in an Order made by the Governor in Council under section 75(a) of the PAA and published in the Government Gazette.

Conflict of interest – (2) About the model policy

- A conflict of interest exists whether it is **real**, **potential**, or **perceived**.
- Conflicts of interest should be avoided where possible. If a conflict exists, it must be declared and managed in the **public interest**.
- The board's *Register of Interests* should include all interests of board members that **may give rise to a conflict of interest**. Each board member is responsible for ensuring that their interests as recorded in the register are correct and complete.
- *Declaration of Private Interest* forms are used to update the register. The form is filled in and provided to the chair upon (re)appointment and is updated on an annual basis, or sooner if the board member's circumstances change in the meantime.
- At the start of each board meeting the chair asks all board members present to confirm that their information in the register is correct and complete, so that this can be confirmed in the minutes. If a board member needs to do so, he or she provides new information for recording in the minutes and subsequent entry into the register.
- At the start of each board meeting the chair also asks all board members to declare any interest (private interest or duty to another organisation) in relation to any item on the agenda.
- The standard option for dealing with a **material** (serious) conflict of interest is for the board member with the conflict to **remove** – i.e. leave the room and abstain from any discussion or decision-making on the issue. A lesser option will not usually be in the public interest if the conflict is material. Sometimes a stronger option may be required.
- For a **non-material** conflict of interest, a lesser option is more likely to be appropriate.
- The minutes should record a description of the interest and the conflict (the \$ value of a financial interest does not need to be included); whether the conflict is material; how it will be managed in the public interest; and the item/times when the board member is absent from the room due to the conflict (or if a lesser/stronger option is decided upon, why).

Specific requirements in establishing Act

Sometimes, an agency's establishing Act includes requirements as to how conflicts of interest must be dealt with. These are *minimum* requirements, which the board's policy must meet or exceed.

Example

The *Catchment and Land Protection Act* prohibits board members of catchment management authorities from voting on issues in which they have a pecuniary interest, but does not prohibit them from discussion on the 'conflicted' issue - s 18G(3).

However, it is now regarded as good governance practice for all public sector boards to **remove** board members with a material (serious) conflict of interest from all discussion and voting on the issue, unless it is clearly in the public interest to do otherwise.

The board of a catchment management authority can specify **remove** as its standard procedure for managing material conflicts.

Further information

On Board (www.delwp.vic.gov.au/onboard), in particular, the [Conflict of Interest](#) support module.

This document is available from the internet at www.delwp.vic.gov.au/onboard

For more information contact the DELWP Customer Service Centre 136 186

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