

Board committees

(4) 'Other' members of CMA committees

Guidance note for boards of catchment management authorities

This guidance note is for use by the boards of catchment management authorities (CMAs).

Guidance notes and model policies for CMAs and other agencies in the Department of Environment, Land, Water and Planning (DELWP) portfolio can be downloaded from DELWP's governance website, *On Board* (www.delwp.vic.gov.au/onboard).

Overview

The board of a CMA may establish committees under the *Catchment and Land Protection Act 1994* (CALP Act) that include members who are neither board members nor CMA officers – i.e. it can include '**other**' members.

This guidance note focuses on how the board's policies on *Conflict of interest* and *Gifts, benefits and hospitality* should be applied to 'other' committee members.

Establishing committees

Under section 19J of the CALP Act, the board of a CMA may establish committees.¹ The membership of a committee can include:

- board members
- CMA officers
- people with relevant expertise who are neither board members or CMA officers ('**other**' members).

Terms of reference

Under s 19J(2)(d) of the Act, the board may determine the rules which a committee must comply with, including: quorum, voting powers of committee members, and other procedural requirements. Usually, a CMA committee is chaired by a member of the board.

¹ Section 83 of the *Public Administration Act 2004* (PAA) also gives boards the power to establish (sub)committees.

When establishing a committee, it is basic good governance practice for the board to develop written Terms of Reference for the committee.

It is also good practice for the board to specify, as part of the terms of reference, the policies and procedures that the committee must follow.

Policies and procedures

As a general rule, the board should require a committee to follow the same policies and procedures as the board itself.

In some instances, however, the board may need to vary this rule – e.g. depending on the nature of delegations, if any, made to the committee as a whole or to individual committee members.

Overall, the policies and procedures that apply to a committee:

- must be consistent with the principles of good public sector governance practice in the *Public Administration Act 2004* (PAA)
- must be consistent with the CALP Act and other binding obligations
- should be consistent with DELWP's [model policies](#), located on DELWP's governance website, [On Board](#).
Note: the requirements in DELWP's model policies (e.g. Conflict of interest; Gifts, benefits and hospitality; Meeting and decisions) are based on requirements in the PAA and related *Directors' Code of Conduct* and good public sector governance practice.

‘Other’ members

The attached summary chart sets out how to apply the board’s *Conflict of interest* and *Gifts, benefits and hospitality* policies to ‘other members’.

The chart contains recommended minimum requirements. The board should consider the nature and functions of each proposed committee to determine whether to impose more stringent requirements on it.

The chart looks at three scenarios:

Scenario 1 – no delegation

- A committee is established pursuant to s 19(1)(a) of the CALP Act. It may include ‘other’ members.
- The committee is advisory only. There is no power under the CALP Act to delegate any of the board’s functions, powers and duties to the committee or any member of it.

No decisions can be made on behalf of the board.

Scenario 2 – delegation to some members

- A committee is established pursuant to s 19J(1)(b) of the CALP Act. It may include ‘other’ members.
- Under s 19F(a), delegations are made to individual member(s) of the committee who are also board members and/or CMA officers.

If there are ‘other’ members on the committee, they never take part in delegated decisions.

Scenario 3 – delegation to ‘whole’ committee

- A committee is established pursuant to s 19J(1)(b) of the CALP Act. It may include ‘other’ members.
- Under s 19F(c) and s 19J(2)(f), with the consent of the minister, delegation is made to the committee as a whole.

If there are ‘other’ members on the committee, they take part in delegated decisions.

Further information

- CALP Act, in particular s 19J (committees) and s 19F (delegations); also see s 18K (ordinary/primary returns), s 19G to s 19I (pecuniary interests), and s 18M (register of interests).
- DELWP’s governance website, [On Board](#), in particular:
 - [Board committees](#) (‘overview’ guidance note)
 - [Conflict of Interest](#) (model policy, ‘overview’ guidance note, Annual Declaration of Private Interests template)
 - [Gifts, Benefits and Hospitality](#) (model policy, ‘overview’ guidance note).
- PAA, in particular: ss 7, 8, 79, 80, 81, 83, 85 and related *Directors’ Code of Conduct* and frameworks (e.g. Gifts, benefits and hospitality).
- [Appointment and Remuneration Guidelines](#) (issued by the Department of Premier and Cabinet).

DELWP also offers support to its agencies through DELWP divisions and regional offices. Please contact your agency’s usual DELWP relationship manager or governance team or phone the Customer Service Centre on 136 186.

Note: committees comprised solely of board members/CMA officers

Under s19F(b), the board can delegate certain of its powers, functions and duties to a committee established under s 19J(1)(b) that is comprised solely of board members and/or CMA officers (i.e. there are no ‘other’ members). Delegation is made to the committee ‘as a whole’. This type of committee should follow the usual processes in the board’s *Conflict of Interest* and *Gifts, Benefits and Hospitality* policies.

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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Attachment: Summary chart - application of the board's Conflict of Interest and Gifts policies to 'other' members of CMA committees

	Scenario 1 – no delegation	Scenario 2 - delegation to some members	Scenario 3 – delegation to committee 'as a whole'
	Advisory committee only (no delegations).	Individual committee members who are also board members/CMA officers have a delegation - s 19F(a).	With the minister's consent, a committee (including its 'other' members) has a delegation 'as a whole' - s 19F(c).
	<ul style="list-style-type: none"> An advisory committee is established pursuant to s 19J(1)(a) of the CALP Act . Membership includes board members and/or CMA officers. It may include 'other' members. No delegations are made – i.e. the committee is advisory only. No decisions can be made on behalf of the board. 	<ul style="list-style-type: none"> A committee is established pursuant to s 19J(1)(b) of the CALP Act. Membership includes board members and/or CMA officers. It may include 'other' members. Delegation is made under s 19F(a) to individual board members and/or CMA officers. Delegated decisions are made by the board members and/or CMA officers who have received the delegation. 'Other' members (and any board members/ CMA officers who did not receive a delegation) are usually included in discussion on delegated issues but never take part in the decision itself. 	<ul style="list-style-type: none"> A committee is established pursuant to s 19J(1)(b) of the CALP Act. Membership includes board members and/or CMA officers. It may include 'other' members. Delegation is made, subject to the consent of the Minister, under s 19F(c) to the committee as a whole. Section 19J(2)(f) also requires the Minister's consent and (g) provides that the Minister may specify procedural rules for the committee. Delegated decisions are made by the committee as a whole.
Conflict of Interest			
Pre-appointment	<p>Prior to deciding whether to appoint a person as an 'other' member of a committee, the board should:</p> <ul style="list-style-type: none"> be advised in writing by the person whether he/she has any interests (pecuniary or non-pecuniary) that may result in a conflict of interest; consider whether any such interests are likely to cause a material conflict and, if so, whether the conflict can be managed in the public interest; record the board's decision in its minutes, noting the relevant interests and, where appropriate, how it is proposed that conflicts will be managed. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> The board should require the proposed 'other' member to provide it with an Annual DOPI and Primary Return for consideration (see next page). Then apply scenario 1. <p>Note: the process needs to be stronger than for scenarios 1 and 2 because 'other' members take part in delegated decisions on behalf of the board. However, the DOPI form in Appendix 1 of the Appointment & Remuneration Guidelines need not be used, since the board is the appointer and the Annual DOPI and Primary Return provide sufficient information on conflict of interest and probity issues that may affect a person's suitability to be appointed.</p>

Attachment: Summary chart - application of the board's Conflict of Interest and Gifts policies to 'other' members of CMA committees

	Scenario 1 – no delegation	Scenario 2 - delegation to some members	Scenario 3 – delegation to committee 'as a whole'
Annual DOPI (post appointment)	<ul style="list-style-type: none"> Not required. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> Required. Adapt the Annual DOPI form used for board members (available from DELWP's Conflict of Interest support module) to require the board, as appointer, to be advised of probity issues.
Primary return	<ul style="list-style-type: none"> Not required. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> Required.
Ordinary return	<ul style="list-style-type: none"> Not required. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> Required.
<i>Register of Interests</i>	<ul style="list-style-type: none"> No requirement to record into the <i>Register of Interest</i> any interests which the person has that may result in a conflict of interest. No requirement to confirm at the start of a committee meeting that their interests in the register are current and complete. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> The 'other' members interests that may give rise to a conflict of interest are recorded in the Register of Interests.
Declare interests in relation to any item on the agenda	<ul style="list-style-type: none"> At the start of the meeting, the person must declare any interest (pecuniary or non-pecuniary) relating to any item on the agenda. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> See scenario 1.
If an 'other' member has an interest in relation to an item on the agenda, who decides how the conflict will be managed?	<ul style="list-style-type: none"> Non-conflicted committee members (including 'other' members) determine whether the conflict is material and how it will be managed in the public interest. If the conflict is material the standard procedure is that the person with the conflict should be removed from all discussion and decision-making on the issue. However, sometimes a lesser option may be in the public interest (for details, see board policy). The committee's minutes record the interest and how the conflict of interest was managed. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> See scenario 1. However, note that because in scenario 3 'other' members are part of the delegated decision-making process, a 'lesser option' would rarely, if ever, be in the public interest.
If a board member or CMA officer has an interest in relation to an item on the	<ul style="list-style-type: none"> Yes, same process as above. 	<ul style="list-style-type: none"> If the board member/CMA officer has a delegation, only other board members/CMA officers with that delegation decide how to manage the conflict. 'Other' members do not 	<ul style="list-style-type: none"> See scenario 1.

Attachment: Summary chart - application of the board's Conflict of Interest and Gifts policies to 'other' members of CMA committees

	Scenario 1 – no delegation	Scenario 2 - delegation to some members	Scenario 3 – delegation to committee 'as a whole'
agenda, do 'other' members take part in deciding how the conflict will be managed?		<p>participate in the decision. At times, it may be appropriate to refer the matter back to the board.</p> <ul style="list-style-type: none"> If the board member/CMA officer has no delegation, see scenario 1. 	
Gifts			
Ban on soliciting gifts	<ul style="list-style-type: none"> Soliciting gifts is banned. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> See scenario 1.
Certain gifts must be refused	<ul style="list-style-type: none"> Certain gifts (e.g. money) must be refused. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> See scenario 1.
Nominal gift offers	<ul style="list-style-type: none"> If a nominal gift is accepted, the chair of the committee is notified (preferably by email). 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> See scenario 1.
Reportable gift offers	<ul style="list-style-type: none"> If a reportable gift is offered, a gift declaration form is completed, provided to the chair, and attached to the minutes of the committee meeting. If a reportable gift is accepted, it belongs to the CMA. It is provided to the chair of the committee to be dealt with in accordance with board policy. The gift is recorded in the <i>Gifts Register</i> and, if appropriate, the <i>Assets Register</i>. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> See scenario 1.
<i>Gifts register</i>	<ul style="list-style-type: none"> No requirement to confirm at the start of a committee meeting that the register is current and complete. 	<ul style="list-style-type: none"> See scenario 1. 	<ul style="list-style-type: none"> Yes, at the start of a committee meeting, 'other' members must confirm that the register is current and complete.