

Conflict of interest

(4) Employee membership of incorporated associations

Guidance note for employees of major DELWP agencies

This guidance note is for use by **employees** 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

Public sector employees have a duty to act in accordance with the public sector values and the [Code of Conduct for Victorian Public Sector Employees](#) (the code). This includes a duty to avoid any real, potential, or perceived conflicts of interest.

A conflict of interest arises if a public sector employee is a member of an incorporated association that could be affected by a decision which he/she may make or influence as part of his/her job.

This could result in serious personal and organisational risks and must be avoided.

What is an incorporated association?

An incorporated association is a not-for-profit community group or club that is registered and incorporated under the *Associations Incorporation Reform Act 2012* (AIRA).

Incorporation means that the group or club becomes a separate legal entity that can, for example, enter into contracts or borrow money. Incorporation also protects the association's members from most individual liabilities.

For these reasons, many community groups and clubs (e.g. land care groups, golf clubs, art societies, conservation management networks, historical societies) have chosen to become incorporated associations.

Avoid private memberships that create conflicts of interest

Public sector employees often join incorporated associations as part of their private life (e.g. they may be a keen golfer or conservationist). Preferably, a public sector employee should avoid membership of any incorporated association that could be affected by a decision which he/she may make or influence as part of his/her job (e.g. a decision whether to grant funding to the association).

Public sector employees must perform their duties in a clear, transparent and accountable manner. Clarity of role, including the ability to champion government policy without interference from conflicting interests, is essential.

Any conflict of interest that arises due to a public sector employee's membership of an incorporated association must be identified, declared, and managed in accordance with their employer's *Conflict of Interest* policy (e.g. by eliminating or restricting their participation in the relevant decision-making process).

In the 2008 report into *Conflict of Interest in the Public Sector* (pages 32 - 33), the Victorian Ombudsman states that:

'Individuals should remove themselves from engagement in matters where they have a conflict of interest. It is not sufficient to assert that they would not or did not allow such interests to intervene ...

Public officers should not be involved at executive or committee membership levels in organisations where there are inherent conflicts of interest with their official duties.

Membership of community groups and organisations should be disclosed to employing agencies, and officers should be prohibited from acting in any capacity for their groups and organisations in relation to their public duties. In the case of very large agencies, this provision may be specific to the officer's portfolio area to avoid needless restrictions on unrelated private activity ...

'Managing this area is difficult, but necessary. The protection of the public interest and the maintenance of public confidence in the integrity of the public sector and its employees must be the primary concern.'

Avoid joining an incorporated association as 'part of the job'

A public sector employee's role may include:

- advising one or more incorporated associations on public policy or programs
- improving communication and relationships with an incorporated association
- collaborating with an incorporated association to implement government policy and achieve common goals.

A public sector employee's role should *never* include joining an incorporated association to achieve these objectives, as doing so may result in serious personal and organisational risks, including:

- inadvertent breaches of laws, codes of conduct, and/or duties to their employer or to the incorporated association
- probity issues (e.g. if the employee is involved in a decision to grant money to the association)
- the assumption of personal risks (e.g. personal liabilities).

Possible adverse consequences

A range of adverse consequences may result if conflicts of interest arise between a person's public sector employment and their membership of an incorporated association, including:

Loss of public sector employment indemnity

Membership of an incorporated association is *always* in an individual's personal capacity. Even if a public sector employee purports to join an incorporated association 'as part of their job' they are deemed by law to be acting in their personal capacity.

As a result, the indemnities provided by government to public sector employees who are acting in good faith in the discharge of their duties may not apply.

Associations Incorporation Reform Act

Section 46 of the AIRA states that 'the rules of an incorporated association are taken to constitute the terms of a contract between the association and its members'. A public sector employee could breach their contract with the association if, in the discharge of their work duties, he/she uses information that has been gained as a member of the association.

In addition, section 83 of the AIRA prohibits association committee members from using information gained by virtue of their committee membership to their own advantage or to the disadvantage to the association.

If a public sector employee provides information gained from the incorporated association to their employer, he/she could breach their duty of confidentiality to the association.

Code of Conduct for Victorian Public Sector Employees

The *Code of Conduct for Victorian Public Sector Employees* requires that when appearing in their personal capacity at a public forum or making public comment, a public sector employee must ensure it is clear that any opinion he/she expresses is their own, not that of their employer.

Any opinion that a public sector employee expresses in the course of their membership of an incorporated association must clearly be stated as their own, even if it is the same as their employer's. Otherwise, it could be a breach of their duty of confidentiality to their employer.

Constitution Act 1975

Section 95 of the *Constitution Act 1975* prohibits public sector employees from using information gained in their job for any purpose except in the discharge of their official work duties.

If a public sector employee discloses information to the association that he/she has gained in their work role, it could be a breach of their duty to their employer, even if it benefits the employer.

Clarity of role

Clarity of role enables a public sector employee to engage effectively with colleagues and stakeholders in an unambiguous, empathetic, and ethical manner. Role clarity also helps to establish and sustain realistic expectations when a public sector employee is engaging with an incorporated association to implement policy, undertake project work, or for any other work-related purpose.

Further information

- This guidance note is available from the [Conflict of Interest](#) support module on On Board.

Related guidance on this and other key governance topics (e.g. model policies and guidance notes) is also available from On Board (www.delwp.vic.gov.au/onboard).

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

- [Consumer Affairs Victoria](#), which has oversight of associated incorporations.
- [Victorian Public Sector Commission](#), which has information on the role and accountabilities of public sector employees - e.g. sample policy: public comment.

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

13 July 2015 (version 2.05) – 50.03

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ISBN 978-1-74287-744-0 (online - set)

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