

# Conflict of interest (model) policy

## (insert name of VOLUNTARY COMMITTEE OF MANAGEMENT OF CROWN LAND RESERVE INCORPORATED)

### Introduction

Our process for declaring and managing conflicts of interest is designed to be transparent, accountable, and consistent with the Code of Conduct for Directors of Victorian Public Entities. Our committee supports members to raise their own conflicts of interest and to speak up if they believe another committee member may have an undeclared conflict.

The policy recognises that there is nothing unusual or necessarily wrong in having a conflict of interest, however it is crucial that all conflicts of interest are managed to protect the public interest.

### 1. Scope

This policy sets out the committee's procedures for the declaration and management of conflicts of interest.

### 2. Definitions

#### Conflict of interest

A conflict of interest is a conflict between a committee member's:

- public duty to manage the reserve in the best interests of the community; and
- their private interests.

#### Conflict of duty

A conflict of duty (also known as a conflict of role) is a type of conflict of interest that can occur *even if a member does not have any private interest at stake*. It is a conflict between a committee member's:

- public duty to manage the reserve in the best interests of the community; and
- their duty to another public sector or private organisation. It exists due to the member's role with the other organisation (e.g. as a committee member, employee, volunteer, or organisation member).

#### How broad is the definition?

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

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 committee member's performance of his/her duty to the committee, now or in the future.

A private interest can be direct or indirect. A **direct** interest is held by the committee member. An **indirect** interest is held by a relative or close associate of the member, for example:

- an immediate family member (e.g. spouse, partner, child, parent, sibling);
- a regular household member; or
- another close associate (e.g. friend, relative, business associate, rival, enemy).

#### *Pecuniary or non-pecuniary*

A private 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 gain or loss. Money does not need to change hands. The interest exists if the committee member (or a relative or close associate):

- 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 from 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.

### 3. Register of Interests

The committee maintains a *Register of Interests* which includes both the direct and indirect interests of each member that may give rise to a conflict of interest. The chair ensures that the register is:

- kept up-to-date;
- brought to each committee meeting; and
- stored in a manner that maintains the confidentiality of members.<sup>1</sup>

At the start of each committee meeting, the chair asks for all members to state whether their interests as recorded in the register are complete and correct. If there are no changes, the minutes note that 'all committee members present confirmed that their entries in the *Register of Interests* are complete and correct'. If any changes are declared, these are recorded in the minutes for entry into the register. The *Register* template is set out in Appendix A.

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<sup>1</sup> Like other documents produced by the committee (e.g. minutes of committee meetings), the register is a public record. However, this does not mean that it is automatically 'open to the public'. Unless the committee agrees, a member of the public who wants to see the register would need to lodge an application under the *Freedom of Information Act 1982*. If this occurs the committee will contact the department, which can provide advice and assist the committee to assess whether the register is exempt from disclosure under the Act.

## 4. Declaring conflicts of interest at the start of a meeting

In addition to checking whether the *Register of Interests* is complete and correct (see above), at the start of each committee meeting the chair asks if any member present has an interest (a private interest or a duty to another organisation) in respect to any item on the agenda. If a member has an interest they must declare it, including the nature of the interest and the conflict that results, or may result, from it. An interest must be declared even if it is already recorded in the *Register*.

A member who becomes aware during the meeting that he/she has an undeclared interest must declare it immediately.

A member who believes that another member may have an undeclared interest should raise this as a query, so as to enable the other committee member to declare the interest, if it exists.

## 5. Options for managing a conflict of interest

The committee manages all conflicts of interest in the public interest (the best interests of managing the reserve for the benefit of the community). Depending on the conflict of interest, options include:

1. **Remove** – the member with the conflict leaves the room and does not participate at all in the ‘conflicted’ matter.
2. **Record** – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.
3. **Restrict** – the member’s involvement in discussion and/or decision-making on the matter is restricted to the extent that matches the public interest. Monitoring occurs to check whether this remains the appropriate option.
4. **Recruit** – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer, or governance expert from the department or the Victorian Public Sector Commission).
5. **Relinquish or resign** – the member relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the member resigns from the committee itself.

The process for determining which option is in the public interest for a particular conflict is set out in items 6 to 8.

## 6. Is the conflict material?

When deciding how to manage a conflict of interest, the committee first determines whether the conflict is material (serious). In doing so, the committee takes into account all the relevant factors and circumstances, including:

- the objectives and functions of the committee;
- the matter that is to be discussed and determined;
- the nature of the conflict (e.g. is it real, potential, or perceived?);
- the severity of the conflict, including:
  - the amount, scope, and likelihood of any expected benefit (e.g. is it a large benefit primarily to the committee member or a small benefit that thousands of people including the member will receive?); and
  - any other relevant circumstances (e.g. if the conflict relates to a member’s partner working at an organisation about which the committee is to make a decision: is the partner currently working there as the CEO? Or did they leave a few years ago from a

large organisation in which their work was not connected to the decision being made by the committee?);

- the potential effect of the conflict, including:
  - the extent to which the member's ability to make an impartial decision in the public interest could be compromised (or could reasonably be seen to be compromised); and
  - the overall likelihood that the conflict of interest may affect public confidence in the integrity of the committee and its decisions.

## 7. Managing material conflicts of interest

The committee's standard procedure for managing a material conflict of interest is to remove the member from all participation in the matter. The member will:

- leave the room at the start of the relevant agenda item and not return until the start of the next agenda item;
- not discuss the matter at all with any other member (either in the meeting or elsewhere); and
- not participate in any committee decision on the matter.

The standard procedure will be followed unless the committee determines and records in the minutes clear reasons why it is not in the public interest.

### **Stronger option for managing a material conflict**

If the public could reasonably form the view that a material conflict is of unacceptable frequency and/or duration then to maintain public confidence and protect the reputation of the committee it may be necessary, in the public interest, for the 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 committee.

If the committee is unsure whether a stronger option is in the public interest the department will be contacted for advice.

### **Lesser options for managing a material conflict**

A lesser option (record, restrict or recruit) will not usually be in the public interest for managing a material conflict of interest. If the committee is unsure whether a lesser option is in the public interest it will err on the side of caution.

If the committee decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring occurs to ensure that the lesser option remains appropriate.

### **Examples**

Examples of where a lesser option may be in the public interest, taking into account all the relevant circumstances, are:

- Discussion: If the member with the conflict was appointed on the basis of their knowledge of the matter then it may be in the public interest for them to be present for part of the committee's discussions. (However, if an 'unconflicted' member is absent who also has this expertise then it will usually be in the public interest for discussion to occur at the next meeting instead.)

- Decision: If the recommended procedure of ‘remove’ would mean that there is no quorum for the decision even if all ‘unconflicted’ members are present then a lesser option will be in the public interest.<sup>2</sup> (However, if ‘unconflicted’ member/s are absent then it will usually be in the public interest for the decision to be held over to the next committee meeting instead.)

## 8. Managing non-material conflicts of interest

For a non-material conflict of interest, there is more likelihood that a lesser option (record, restrict or recruit) will be in the public interest. In making its decision, the committee will take into account all relevant factors and circumstances - e.g. the lower the severity of the conflict, the more likely that a lesser option will be in the public interest.

If the committee decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring occurs to ensure that it remains appropriate – e.g. the committee may initially decide to only ‘record’ the conflict but after monitoring may decide instead to ‘restrict’ the member by allowing them to participate in some aspects of the discussion but removing them from others and from all decision-making on the issue.

If the committee is unsure whether a lesser option is in the public interest it will err on the side of caution and decide on the standard procedure of remove (i.e. the member leaves the room and does not participate in any discussion or decision-making on the matter).

## 9. Recording in minutes

If a committee member declares a conflict of interest, the following information is recorded in the minutes:

- a description of the interest and the conflict (the dollar value of a financial interest does not need to be included);
- whether the conflict is material;
- the action that the committee will take to manage the conflict in the public interest;
- if a lesser option or stronger option is to be taken, why it is in the public interest; and
- if the 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 thereof, for which he or she was absent.

## 10. Breach of this policy

A committee member who may have breached this policy will notify the chair immediately:

If the chair is of the view that a breach has not occurred, the committee determines at the next scheduled committee meeting, and records in the minutes, whether a breach has occurred.

If the chair is of the view that a breach has occurred, the chair arranges for the committee to determine on an urgent basis, and record in the minutes, whether a breach has occurred.

If the committee decides that a breach has occurred, the chair notifies the department (i.e. the Regional Director) in writing as soon as practicable, including whether the breach relates to a material conflict.

A member who believes that another member may have breached this policy but not yet notified the chair will either approach the other member, who will then notify the chair, or will notify the

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<sup>2</sup> If this is a common occurrence, the department should be notified.

chair directly. (In the case of a possible breach by the chair, the member nominated by the committee to assist the chair with conflict of interest queries is notified instead).

## 11. Review of this policy

The committee ensures that this policy is up to date with current laws, government policy and any guidelines or advice issued by the department.

## 12. Policy agreement date

This policy was agreed to by the committee of management on        /        /

## Appendix A: Register of Interests template

Name of committee member	Description of interest	Interested parties	Is the interest current?
[e.g. John Smith]	[e.g. sister-in-law co-owns a company which could potentially become a contractor to this committee.]	[e.g. sister in law]	[e.g. Yes]
[e.g. Lorna James]	[e.g. Owner of eco-lodge business]	[e.g. committee member]	[e.g. Yes]