

# Conflict of Interest Policy

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Approved By	Board
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## Purpose

This Policy outlines Westernport Water's (WPW) (the Corporation) processes when dealing with any conflict of interest. All Directors and employees are required to comply with this Policy when carrying out official functions on behalf of Westernport Water.

Westernport Region Water Corporation (Westernport Water) has an obligation under section 7, 61 and 81(1)(f) of the *Public Administration Act 2004* to ensure that processes are in place to manage Director conflicts of interest. The Victorian Government incorporated new lobbying activity restrictions in the Directors Code of Conduct in the 2024 revision.

## Key Principles

The key principles underlying this policy are:

- **Obligations and good practice** – WPW acts in accordance with good governance practice.
- **Public interest** – conflicts of interest are avoided where possible. Where a conflict exists, it is declared and managed in the public interest.
- **Real/actual, potential or perceived** – a conflict exists whether it is real/actual, potential or perceived.
- **Transparent and accountable** – the process for declaring and managing conflicts of interest is transparent, accountable and consistent.
- **Culture of integrity** – WPW fosters a culture of integrity. Directors and employees are supported to declare their own conflicts of interest and voice concerns if they believe that another Director or employee may have an undeclared conflict.

Please refer to the Victorian Public Sector Commission (VPSC)'s [model Conflict of Interest policy and complementary resources](#) for additional examples and context.

## Definitions

### Conflict of Interest

**Conflict of Interest** - conflicts of interest arise where the Westernport Water Director's or employee's duties could be influenced, or reasonably seen to be influenced, by a private interest. Conflicts of interest can include real/actual, potential or perceived conflicts, and may or may not involve financial gain.

### Conflict of Duty

**Conflict of Duty** - In relation to Directors only a 'conflict of duty' (also known as a conflict of role) is a type of conflict of interest that can occur even if a Director does not have any private interest at stake. It is a conflict between a Director's:

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

### Real/actual, potential or perceived

The following applies to all conflicts of interest, including conflicts of duty. A conflict exists whether it is:

- **Real/actual** – there is a real conflict between a Director's or employee's public duties and private interests.
- **Potential** – a private interest that could conflict with a Director's or employee's public duties. This refers to circumstances where it is foreseeable that a conflict may arise in the future and steps should be taken now to mitigate future risks; or
- **Perceived** – members of the public could reasonably form the view that a Director's or employee's private interests may improperly influence the performance of their duty to the Corporation, now or in the future.

### Direct or indirect

An 'interest' can be:

- **direct** - a direct interest is held by the Director or employee; or
- **indirect** - an indirect interest is held by a relative or close associate of the Director or employee, for example:
  - an immediate family member (e.g. spouse, partner, child, parent, sibling);
  - a regular household member (i.e. someone who normally resides with the Director); or
  - another close associate (e.g. friend, relative, business associate, rival, enemy).

### Pecuniary interest or non-pecuniary interest

An 'interest' can be **pecuniary** (involves real/actual, potential or perceived money gain or loss) or **non-pecuniary** (non financial involves positive or negative bias such as favours or enmity), or a mixture of both.

**Pecuniary interests** - Money does not need to change hands. The interest exists if the Director/employee (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 also 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 influence 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.

### Lobbyist

Lobbyist means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client, but does not include:

- charitable, religious and other organisations or funds that are endorsed as deductible gift recipients
- non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients
- individuals making representations on behalf of relatives or friends about their personal affairs
- members of trade delegations visiting Australia
- persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession
- members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision by them of their professional or other services. However, if a significant or regular part of the services offered by any person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm offering those services must register and identify the clients for whom they carry out lobbying activities
- representatives of other Governments, or Government agencies or Inquiries

### Lobbying Activity

Lobbying activity means any contact (including telephone contact, electronic mail contact, written mail contact, or face to face meetings) with a Government Representative in an effort to influence Government decision-making, including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding, but does not include:

- communications with a committee of the Parliament
- communications with a Minister, Cabinet Secretary or Parliamentary Secretary in his or her capacity as a local Member in relation to non-ministerial responsibilities

- communications in response to a call for submissions
- petitions or communications of a grassroots campaign nature in an attempt to influence a Government policy or decision;
- communications in response to a request for tender
- statements made in a public forum
- responses to requests by Government Representatives for information

## Identifying Conflicts of Interest (employee)

Employees should regularly consider the relationship between their private interests and public duties in order to identify any conflicts of interests (for example, in recruitment, before major projects, tender decisions, legal proceedings or policy development).

If there is any doubt as to whether a conflict arises, employees are encouraged to declare it and seek further advice as to determine if a conflict indeed exists and how to manage it if it does exist.

### Accountability

Employees have obligations to:

- Adhere to all Codes of Ethics, Codes of Conduct and standards of behaviour that apply to employees of the Corporation.
- Recognise that their conduct and actions may reflect on the reputation of the Corporation.

### Reasonableness test

Would a “reasonable person” consider the ‘interest’ (relationship, actions, motivation, etc.) to pose a conflict? If the answer to this question is “yes”, regardless of any personal opinion, the employee must take accountability under this policy. The following are useful questions to ask in order to identify a conflict.

- Does my private interest intersect with my role? If so, could this create a perception of bias or favouritism in the exercise of my duties?
- What would a fair-minded member of the public make of the situation?
- Could my involvement in this matter cast doubt on my integrity or that of the organisation?
- If I saw someone else in this situation, would I think they have a conflict of interest?
- If my actions were covered by the media, could it embarrass me or the organisation?
- In other words, does it pass the public perception test (the ‘pub test’)?

## Declaring & Management of Conflicts of Interest (employee)

A conflict of interest does not automatically mean the employee must avoid or give up their private interests, however, the employee has a duty to place the public interest above their own interests when carrying out official functions on behalf of Westernport Water. It is important that the employee clearly identifies, understands, declares any conflict of interest and, takes appropriate actions to manage it.

A conflict of interest **must** be declared.

### **Declaration and management**

In the case of any conflict of interest, as a minimum, all employees are required to:

- Notify the Corporation, through completion of a Conflict of Interest Declaration & Management form; and
- Manage the conflict as per the management plan set out in the Conflict of Interest Declaration & Management form.

Conflict of Interest Declaration & Management forms identifying a conflict of interest are recorded on the Register of Conflicts of Interests.

## **Procurement, Recruitment & Secondary Employment (employee)**

### **Procurement & recruitment**

Regardless of whether a conflict is identified, employees **must** complete the Conflict of Interest Declaration & Management form in the following circumstances:

- For each separate tender process the employee is a member of a procurement panel for any purchase greater than \$150,000 ex GST.
- For each recruitment the employee is a member of a recruitment panel.

Employees who are members of recruitment panels and who have a prior working relationship in the same organisation with an applicant should declare such a conflict. Where this situation arises the following should be considered:

- Where the known parties have worked within the same organisation previously but have a purely professional relationship a perceived Conflict of Interest may exist and should be declared. This is no different to an employee interviewing an internal applicant for a position. The conflict should be declared and managed appropriately.
- Where the known parties have worked in the same organisation and a degree of personal relationship exists (friendship, etc.) a potential or actual conflict of interest may exist depending on the closeness of the relationship. The conflict should be declared and managed appropriately which may include removal from the panel, inclusion of additional panel members, independent review of the process or any other management option.

It should be noted that neither of the 2 scenarios related to recruitment panels above requires a person to be automatically removed from a recruitment process however that may be an appropriate management option based on the nature of the conflict.

Completed Conflict of Interest Declaration & Management forms must be saved in Content Manager in the relevant contract folder or relevant recruitment folder.

### **Water Act 1989**

Section 119 of the *Water Act 1989* requires all Westernport Water employees (as appointed by the Managing Director) to seek permission from the Corporation before:

- Engaging in any external business; or

- Engaging in the private practice of any profession or trade; or
- Holding any office in any corporation, other than a municipal council; or
- Engaging in any employment other than that connected with the duties of office.

### **Secondary Employment form**

In addition to the requirements the *Water Act 1989* section above, all staff members who seek to undertake any secondary employment must complete the WPW Secondary Employment form and upon completion of the form, submit to the People, Culture & Safety department.

## **Declaring & Management of Conflicts of Interest (Director)**

A Conflict of Interest Declaration & Management form must be completed upon recognition and/or determination of any conflict of interest. The completed form must be submitted to the Corporation Secretary and will be recorded on both the Register of Interests and Register of Conflict of Interests

### **Annual declarations of interests**

Annually, Directors and Executive employees are required to complete the:

- Declaration Certificate for executives of related party transactions (AASB 124) form
- Pecuniary Interest (Water Act 1989, Section 109) form
- Declaration of Private Interests (DOPI) form - (Directors only)

If a conflict is identified in a DOPI then the manager notes this on the DOPI and a Conflict of interest – Declaration and Management Plan form is completed.

### **Recording in minutes**

The Register of Conflicts of Interests is present for reference at each Board meeting. At the start of the meeting, the Chair will ask for all Directors to state whether their interests as recorded in the both registers are complete and correct and confirm they have not engaged in any lobbying activity that may relate to the functions of the Westernport Water. If there are no changes or recordings of lobbying activity, the minutes will note that ‘all Directors present confirmed that their entries in the Register of Interests and Register of Conflicts of Interests are complete and correct and they have not previously engaged in any lobbying activity that may relate to the functions of Westernport Water’. If a Director declares a conflict of interest, the following information will be 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 the Board 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 Director leaves the room during discussion and/or decision-making on the ‘conflicted’ matter, the time that they leave and return and the item, or part of thereof, for which they were absent.

## Agenda items & conflict

If a Director has a conflict of interest with an item listed on the meeting agenda or has engaged in any lobbying activity that may relate to the functions of the Corporation, they must declare it at the start of the meeting, even if it has already been declared and recorded on the Register of Conflicts of Interests or Register of Interests

## Options for Managing a Conflict Of Interest

Westernport Water Directors and employees will manage all conflicts of interest in the public interest. Depending upon the conflict, options include:

- **Restrict** – the Director or employee’s involvement in the matter/decision is restricted to the extent that it matches the public interest. This may involve restriction to certain discussions or forbidding participation in or being present for certain or all decisions. Monitoring occurs to check whether this remains the most appropriate option. **Recruit** – an impartial third party is engaged to oversee part or all of the conflicted matter (a probity advisor, lawyer or governance expert).
- **Remove** – the Director or employee is removed from the conflicted matter and does not participate in any business related to that matter. This includes not taking part in or being present for any discussions or decisions.

**Relinquish or resign** – the Director or Employee relinquishes their private interest or removes themselves from their role at Westernport Water on a permanent or temporary basis, for example by taking leave or performing modified duties or another role as per Westernport Water’s staffing needs or capacity. 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 options above, the individual may consider resigning or else the employment relationship may need to terminate.

## Managing A Conflict of Interest (Board Specific Additional Considerations)

### Is the conflict material?

When deciding how to manage a conflict of interest, the Board will first determine whether the conflict is **material** (serious).<sup>1</sup> In doing so, the Board will take into account all the relevant factors and circumstances, including:

- the **objectives** and **functions** of the organisation;
- the **matter** that is to be discussed and determined by the Board;
- 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 Director or a small benefit that thousands of people including the Director will receive?); and
  - any other relevant circumstances (e.g. if the conflict relates to a Director’s partner working at an organisation about which the Board 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 Board?);

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<sup>1</sup> Consistent with the requirements of s 81(1)(f) of the *Public Administration Act 2004*.

- the **potential effect** of the conflict, including:
  - the extent to which the Director’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 Board and its decisions.

### Managing material conflicts of interest

The Board’s **standard procedure** for managing a material conflict of interest is to **remove** the Director from all participation in the matter. The Director 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 Director (either in the meeting or elsewhere); and
- not participate in any Board decision on the matter.

The standard procedure will be followed unless the Board 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 organisation it may be necessary, in the public interest, for the Director to:

- relinquish their private interest;
- resign or stand down on a temporary basis from the other organisation to which they have a duty; or
- resign from the Board.

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

### Lesser options for managing a material conflict

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

If the Board decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring will occur 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 Director with the conflict of interest was appointed on the basis of their knowledge of the matter, it may be in the public interest for them to be present for part of the Board’s discussions. (However, if an ‘unconflicted’ Director is absent who also has this expertise, 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’ Directors are present, then a lesser option will be in the public interest.<sup>2</sup> (However, if ‘unconflicted’ Director(s) are absent then it will usually be in the public interest for the decision to be held over to the next Board meeting instead.)

### Managing non-material conflicts of interest

For a non-material conflict of interest, there is more likelihood that a lesser option (i.e. record, restrict or recruit) will be in the public interest. In making its decision, the Board 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 Board decides on a lesser option then, in addition to minuting why it is in the public interest, careful monitoring will occur to ensure that it remains appropriate - e.g. the Board may initially decide to only ‘record’ the conflict but after monitoring may decide instead to ‘restrict’ the Director 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 Board is unsure whether a lesser option is in the public interest then it will err on the side of caution and decide on the standard procedure of **remove** (i.e. the Director leaves the room and does not participate in any discussion or decision-making on the matter).

## Register of Interests and Register of Conflict of Interests

A Register of Interests and Register of Conflict of Interests are both maintained by the Strategy, Performance and Governance team and is presented to the Board and Committees as part of the standing conflict of interest item on the agenda.

## Breach of this Policy

### Employee

Westernport Water will respond to alleged breaches of this policy consistent with the Act, the code, this policy and any other obligations that apply.

We will take a graduated approach. Our response will be fair, reasonable and proportionate. In some instances, no action will be taken. In others, we will deal with the matter:

- on an informal basis, for example, through education or counselling
- through a performance management process or similar, or
- if other methods are not appropriate, through a misconduct process.

A finding of misconduct may amount to a breach of the code of conduct. Serious misconduct can result in termination of employment. Contractors may be subject to contract renegotiation or termination.

If a criminal offence may have occurred, the Victorian or Federal police may investigate and prosecute.

### Director

A Director who may have breached this policy must notify the Chair immediately:

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

- If the Chair is of the view that a breach has not occurred, the Board will determine at the next scheduled Board meeting, and record in the minutes, whether a breach has occurred.
- If the Chair is of the view that a breach has occurred, the Chair will arrange for the Board to determine on an urgent basis, and record in the minutes, whether a breach has occurred.
- If a breach has occurred, the Chair will notify the Minister and the Secretary of DEECA in writing as soon as practicable, including whether the breach relates to a material conflict of interest.<sup>3</sup>

### Speak Up

It will help to build Westernport Water's culture of integrity if you 'speak up' about conflicts of interest. Our graduated approach to breaches means conflicts may be addressed informally or by education. If you believe there may be a conflict of interest affecting Westernport Water that:

- has not been declared, or
- is not being properly managed.

We encourage you to speak up if you believe that a breach of this policy:

- has happened
- is happening
- might be about to happen.

You can speak up by notifying your manager or the Strategy, Performance and Governance team directly at [spg@westernportwater.com.au](mailto:spg@westernportwater.com.au).

### IBAC and the Victorian Ombudsman

Alternatively, if you believe corrupt or improper conduct is occurring, you can make a complaint directly to the [Independent Broad-based Anti-corruption Commission \(IBAC\)](#) or the [Victorian Ombudsman](#). Sometimes this can occur on a whistle-blower basis as a [public interest disclosure](#).

### Review Date

This policy is to be reviewed every three years or more frequently if required by changes to law or government policy. This Policy will continue in operation until replaced by a subsequent version or rescinded.

### Responsible Officer

Policy Owner – Managing Director

Responsible Policy Officer – General Manager Corporate & Customer

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<sup>3</sup> Consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*.