

Conflict of Interest Policy

Version No	V5
Approved By	Board
Approval Date	22 June 2021
Next Review Date	June 2024

Purpose

Westernport Region Water Corporation (Westernport Water) has an obligation under section 81(1)(f) of the *Public Administration Act 2004* to ensure that processes are in place to manage conflicts of interest.

This Policy outlines Westernport Water's (WPW) (the Corporation) processes when dealing with any conflict of interest.

Scope

All employees, including directors are required to comply with this Policy in all dealings with and on behalf of the Corporation.

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, potential or perceived – a conflict exists whether it is real, 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 raise their own conflicts of interest and speak up if they believe that another director or employee may have an undeclared conflict.

Definitions

A 'conflict of interest' is a conflict between a director or employee's public duty to act in the best interests of the Corporation and their private interests (financial or non-financial).

In relation to directors, 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 the organisation; 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).

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

- **Real** – it currently exists;
- **Potential** – it may arise, as a real, sensible possibility of conflict; or
- **Perceived** – members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the person's performance of their duty to the Corporation, now or in the future.

An 'interest' can be **direct** (to the individual) or **indirect** (related/associated to the individual) or both. A direct interest is held by the employee or director. An indirect interest is held by a relative or close associate of the employee or director, 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).

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

Pecuniary interests - Money does not need to change hands. The interest exists if the employee or director (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 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..

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” and regardless of any personal opinion the employee must take accountability under this policy.

Policy Application

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 an employee’s actions may reflect on the Corporation and the conduct must not be called into question.

Declaration and Management

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

- Alert the Corporation, through completion of a Declaration of Conflict of Interest form, to any matters in which the employee or any other employee or director has, potentially has, or may be perceived to have, a conflict of interest; and
- Exclude the conflicted party from the deliberations and decisions on any matter where there is such a conflict; and/or
- Manage the conflict as per the management plan set out in the Declaration of Conflict of Interest form.

If there is any doubt as to whether a conflict arises, all directors and employees are encouraged to disclose such a conflict and seek further advice as to whether or not a conflict exists and how such a conflict should be managed if it does exist.

Section 119 of the Water Act 1989 requires all WPW 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.

In addition to the requirements the Declaration and Management section above all staff members who seek to undertake any secondary employment whatsoever must complete the WPW Secondary Employment form.

All employees who are members of a recruitment panel or a procurement assessment panel for a procurement of an item greater than \$150,000 must complete a Declaration of Conflict of Interest even if no conflict exists.

Employees who are members of recruitment panels and who have a prior working relationship in the same organisation with an applicant should disclose 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.

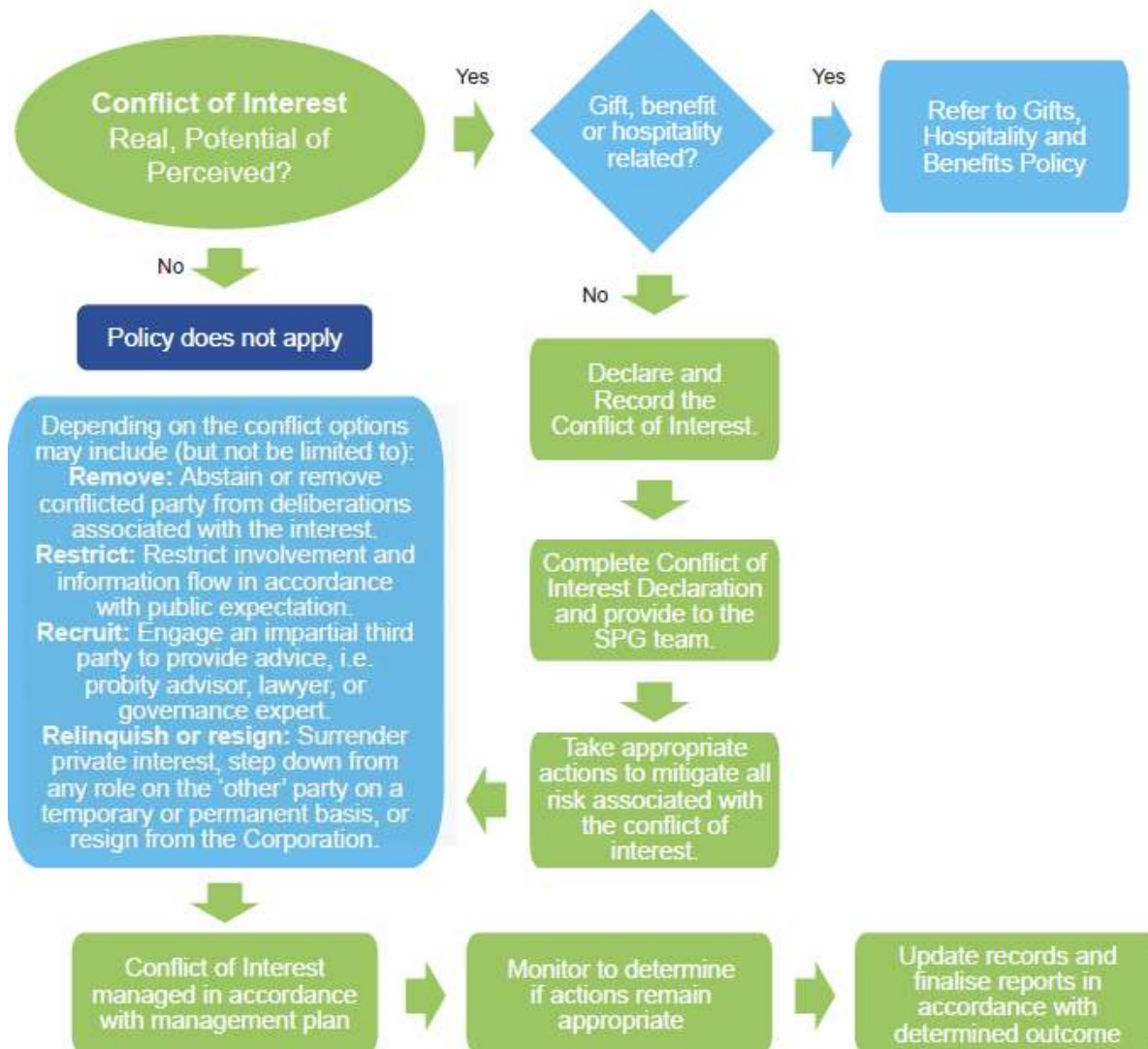
A Declaration of Conflict of Interest must be completed upon recognition and/or determination of any conflict of interest. In addition, directors and key management personnel are required to complete a Declaration Certificate for executives of related party transactions (AASB 124) and Pecuniary Interest (Water Act 1989, Section 109) form annually. Additionally directors must also complete a Declaration of Private Interests (DOPI) annually.

An up to date Register of Interests will be 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.

All Declaration of Conflict of Interest forms are to be provided to the Strategy, Performance and Governance team in order for them to be listed on the Register of Interests.

Process

The following outlines the process for addressing any Conflict of Interest within the Corporation.



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:

- Remove – the director / employee is removed from the conflicted matter and does not participate in any business related to that matter.
- Restrict – the director / employee's involvement in the matter / decision is restricted to the extent that it matches the public interest. Monitoring occurs to check whether this remains the most appropriate option.
- Recruit – an impartial third party is engaged to provide advice (a probity advisor, lawyer or governance expert).

- Relinquish or resign – the director or employee relinquishes their private interest or removes themselves from their role at WPW on a permanent or temporary basis.

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).¹ 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?);
- 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.

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

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 DELWP 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.² (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.

² If this is a common occurrence, DELWP should be notified.

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).

Recording in Minutes

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.

Breach of this Policy

A director who may have breached this policy must notify the chair immediately:

- 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 DELWP in writing as soon as practicable, including whether the breach relates to a material conflict of interest.³

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 & People

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