

Infrastructure Victoria

Board policy – Conflicts of interest or duties

1. PREAMBLE

The Infrastructure Victoria board has two types of directors, each with the same set of responsibilities to the board. The four appointed directors – which are selected from outside of government – have specifically been chosen due to their knowledge and experience in policy, strategy and the infrastructure industry. The experience of the appointed directors is essential to ensure that Infrastructure Victoria can fulfil its legislative obligations as effectively as possible. However, this experience may result in an appointed director’s former or current role(s) giving rise to conflicts of interest or duties.

The three statutory directors are *ex-officio* members, being the Secretary of the Department of Premier and Cabinet, the Secretary of the Department of Treasury and Finance and the Secretary responsible to the Minister administering the *Planning and Environment Act 1987*. Secretaries have obligations as a director under the *Infrastructure Victoria Act 2015*, as well as in their role as a Departmental Head under the *Public Administration Act 2004*. As such, there is the potential that Secretaries may be faced with situations where conflicts of duties arise. Secretaries will not be ‘bound’ by decisions of the IV board when they are acting in the role of Departmental Secretaries

The Infrastructure Victoria board recognises the potential for conflicts and is committed to managing conflicts in an open and transparent manner.

2. PURPOSE

The *Conflicts of Interest or Duties Policy* (“the Policy”) sets out the Infrastructure Victoria board’s obligations in relation to managing conflicts of interest or duties. The Policy ensures there is a clear, transparent and accountable process in place for directors to manage conflicts of interest or duties.

The Policy fulfils Infrastructure Victoria’s legislative obligations regarding conflicts of interest or duties under both section 81 of the *Public Administration Act 2004* and section 26 of the *Infrastructure Victoria Act 2015*. The Policy also gives effect to obligations relating to conflicts of interest or duties under the *Infrastructure Victoria Directors’ Code of Conduct* and should be read in conjunction with the *Gifts and Hospitality Policy*.

3. DEFINITIONS

<i>Actual conflict</i>	is where a real conflict of interest or duties exists.
<i>Conflict of interest</i>	is a conflict between a director’s public duty to act in the best interest of Infrastructure Victoria and his or her own private interest(s), and includes actual, potential or perceived conflicts
<i>Conflict of duties</i>	Is a conflict between two or more duties or obligations on the part of a director arising under different pieces of legislation or other legal instrument (e.g. a contract). A conflict of duties can be actual, perceived or potential.
<i>Duty</i>	includes legal obligations and responsibilities, such as legislative duties placed on a director in his or her role with another organisation or as a member of another board.
<i>Financial interest</i>	includes an actual, potential or perceived financial gain or loss.
<i>Interest</i>	includes private financial or non-financial interest(s).
<i>Potential conflict</i>	is where a real conflict of interest or duty could arise.
<i>Perceived conflict</i>	is where a third party could reasonably form the view that a conflict of interest or duty exists, regardless of whether such a conflict exists or not.
<i>Material conflict</i>	is a conflict of interest or duties significant enough that a reasonable person would consider that it may influence a director’s decision-making and conduct. A material conflict can occur in relation to actual, potential or perceived conflicts.
<i>Non-financial interest</i>	includes family, personal or professional relationships and reputation, or involvement in sporting, social or cultural activities.

4. PROCEDURES

A. Declaration of interest or duties

The Board Secretary will maintain a confidential Register of Declared Interests and Duties. The Register will be updated using the Declaration of

Private Interest form, and will contain the details of each director's financial and non-financial interests which may pose a conflict of interest or duty.

Each director will be required to complete the Declaration of Private Interest and Duties Form (Appendix A) upon commencing with the board, as well as update the Register annually or upon becoming aware of a new interest or duty which may give rise to a conflict of interest or duties.

B. Disclosure of conflicts of interest and duties

Under section 26(2) of the *Infrastructure Victoria Act 2015*, a director must disclose an interest in a matter being considered, or about to be considered, to the board as soon as practicable after the relevant facts come to the director's knowledge. Directors should disclose not only their own relevant interests or duties, but also point out any relevant interests or duties which they consider their fellow directors may have. To facilitate this, the

chairperson will include 'Disclosure of Interests and Duties' as a standing agenda item for consideration at the commencement of each board meeting.

Prior to each board meeting, the Board Secretary will review the proposed agenda items against the Register of Declared Interests to consider whether any interests or duties may give rise to a conflict, and inform the chairperson of the outcomes of the review.

If a director becomes aware of an interest or duty that may give rise to a conflict of interest or duties, he or she should investigate relevant details of the interest or duty and any conflict it may raise to allow for more informed discussion of the issue at the next board meeting.

C. Managing conflicts of interest and duties

Once an interest or duty has been disclosed, the board will determine whether a conflict of interest or duties exists and, if so, whether it is a *material conflict*. If the board determines that a conflict is material, then the board will discuss how it will be managed. The main strategies for dealing with a material conflict are as follows.

Exclusion from decision but not discussion

Given directors are appointed for their knowledge and experience, it may be appropriate for a director with a material conflict to participate in board discussions in relation to the relevant matter. However, the director would then be excluded from determining the decision on the relevant matter (e.g. excluded from voting).

Exclusion from both discussion and decision

In some instances, a material conflict may be so significant that the director should be excluded from any discussions or decisions relating to the matter. This is achieved by not circulating the relevant agenda paper to the director, as well requiring the director to leave the room during discussion of the relevant item at board meetings.

If the board determines that the conflict of interest or duties is not material, the board may consider that it is still appropriate for steps to be taken to manage the risk of a material conflict arising.

D. Record keeping

As outlined above, the Board Secretary will maintain a confidential Register of Declared Interests.

If an interest or duty, or a conflict of interest or duties, is disclosed or discussed at a board meeting, the minutes will contain details of the disclosure, discussion and outcome. If the board agrees that a conflict is a material conflict, the minutes will detail the agreed strategy for managing the material conflict.

In addition, the details of any conflict of interest will be disclosed in Infrastructure Victoria's report of its operations under the *Financial Management Act 1994*, as per section 26(3) of the *Infrastructure Victoria Act 2015*. At the board's discretion, any recorded conflict of duties may also be disclosed in the annual report.

E. Breaches of the Policy

If there is any breach of the process regarding conflicts of interest or duties under this Policy, the board will discuss what action is required. In addition, the board will notify the responsible Minister of the breach in writing as soon as practicable after becoming aware of the breach.

F. Privacy

Disclosure of interests, duties and conflicts of interest or duties may involve disclosing personal information. Personal information will be handled in accordance with the Infrastructure Victoria's privacy policy and the *Privacy and Data Protection Act 2014*.