

# TASMANIA DEVELOPMENT AND RESOURCES

## Conflict of Interest Policy

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## 1. Background

The *Tasmanian Development Act 1983* (the Act) established the Tasmanian Development Authority, which was subsequently renamed, Tasmania Development and Resources (TDR), and which is governed by a Board of Directors known as the Tasmania Development and Resources Board (the Board).

The Act establishes the duties and responsibilities of its directors in the conduct of its business. This policy reflects the Board's commitment to ensuring that conflicts of interest, both real and perceived, are identified and managed appropriately. The Board promotes an open and transparent approach in the management of conflicts.

## 2. Application

This policy applies to all directors, office holders and authorised officers, or as identified in the Act.

## 3. Applicable Law

The Act and its Regulations<sup>1</sup> create obligations on directors to raise conflicts of interest in every situation (in particular section 42 of the Act and Regulations 5 and 8). These obligations under the legislation reflect similar obligations under corporations' law and fiduciary relationships generally.

In very broad terms, section 42 of the Act applies when a director is relevantly *interested* in a contract, grant, or recommendation made, or proposed to be made, by TDR. A director is considered *interested* if they possess something the nature of which, whether directly or indirectly, imposes a detriment or confers a benefit, advantage, opportunity to profit or to act out of self-interest.

Regulation 8 provides further guidance on directors' duties in raising a conflict of interest. Regulation 5 provides guidance on what is a *material personal interest* but is not an exclusive set of circumstances.

Directors and relevant office holders must also provide particulars of shares held in any company in which the director has any interest, *and* any other interests in a company that is held by the director, and the nature and extent of any such interest.

Non-disclosure or presence at deliberations can have significant consequences for the director and the Board – offences may apply to the director and the Board, and the Board may be exposed to broader legal action or its decisions being challenged. Failure or refusal to report will be considered a major breach of the director's duty and appropriate action will be taken following legal advice.

These obligations mean that a director must err on the side of disclosure in raising *any* conflict, whether direct or indirect, real or perceived.

Directors must remind themselves regularly of the Act and Regulations and that they act in the best interests of the Board.

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<sup>1</sup> Tasmanian Development Regulations 2012

## 4. Notification procedure

### 4.1 Director self declares

The Act requires a director to disclose a potential conflict of interest to the Board in every situation in which a conflict or perceived conflict arises. The onus rests on the director to notify the Chair in the first instance. This initial discussion may include the Chief Executive and/or Corporate Secretary. Ultimately the Board will be involved in the deliberations to determine whether a conflict exists and what action to take.

### 4.2 Chair identifies potential conflict

Where the Chair is of the view that a conflict could arise by the content of a proposed paper for the Board, the Chair will circulate a precis of the paper in lieu of a full board paper to the director concerned. The director and Chair will discuss initially, and then the Board will discuss and make a decision as to whether a conflict exists. The affected director will be absent from the Board's discussion.

In the event that a director fails or refuses to declare an interest which the Board has objectively determined to exist in that director, the Board must deliberate on the matter in the absence of the conflicted director.

In this situation, the Chair will call an out-of-session meeting of all directors but for the conflicted director. The Board will deliberate on the information before it and if necessary, through the Chair, may ask for further information to make a determination. In the absence of a majority decision, the Chair will make the decision that binds the Board. The decision will be recorded in the Minutes and the Chair will advise the affected director of the Board's decision.

## 5. Chair or Chief Executive Conflict

In the event that the Chair or Chief Executive raises a conflict, usually through becoming aware from the proposed Agenda, the Board will be notified immediately.

If the Chair is the conflicted person, the remaining directors will elect an alternative Chair (other than the Chief Executive<sup>2</sup>), and that director will preside over that part of the meeting. Should the matter be considered urgent, an out-of-session meeting may be convened to determine whether a conflict exists.

## 6. Assessment and discussion by Board

The following process applies for each Board meeting:

- i. At the commencement of each meeting, each director must declare any conflict(s).
- ii. If none are declared, the Minutes will reflect nil.
- iii. Once the extent of the conflict is disclosed, the Board is to determine (in the absence of the director) whether or not that director is to avoid any involvement in the matter(s). This view is based on what is in the best interests of the Board.
- iv. If the Board determines that the person is to avoid any involvement in the matter(s) then the Board must consider the subject matter without the affected director present.
- iv. The Minutes will record the declared conflict of interest and subsequent proceedings.

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<sup>2</sup> See clause 4(2) of Schedule 2 of the Act

Where required, the Chair, through the Chief Executive and Corporate Secretary will seek legal advice on the particular circumstances to guide and assist the Board in making its decision.

## 7. Management – Ongoing Identification, Monitoring and Controls

All directors note that the Act places obligations regarding the confidentiality and nondisclosure of information received while acting as a director.

A determination by the Board will be resolved in the favour of the Board. *The best interests of the TDR are paramount.*

The Board, not the director, makes the determination as to whether a conflict exists.

Minutes must document that a conflict has arisen and the Board's decision.

Directors must provide regular updates of their share interests in any company and any other interests in a company.

Where a director has failed or refused to declare an interest which the Board has objectively determined to exist for that director, the Board must deliberate on the matter in the absence of the conflicted director.

## 8. Policy Responsibility and Review

The Corporate Secretary is responsible for updating and oversight of this policy and framework and maintaining the Register of disclosure of interests.

The Chair, Chief Executive, directors and relevant office holders are also responsible for complying with this policy.

This policy will be reviewed and resubmitted to the Board 24 months after endorsement.