

TASMANIA DEVELOPMENT AND RESOURCES

Conflict of Interest Policy

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Tasmanian
Government

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I. Introduction

I.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.

I.2 Purpose

The purpose of this policy is to provide a framework for the TDR Board to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of TDR.

This policy is designed so that all material personal interests are disclosed. This will support the identification and management of conflicts of interest in a rigorous and transparent way that ensures the integrity, legitimacy, impartiality and fairness of the TDR Board. Management of conflicts of interest in this way is designed to maintain public confidence in TDR's processes and ensure that outcomes are directed to the greatest advantage of the people of Tasmania.

The policy is supported by a procedure statement.

I.3 Objective

The objective of this policy is to set out a framework for the TDR Board and other relevant persons to identify, disclose, manage and monitor conflicts of interest in a transparent way.

It is not always possible to avoid a conflict of interest and a conflict of interest is not necessarily unethical or wrong. However, it is important that any actual, perceived or potential conflict of interest is identified, disclosed and effectively managed (including avoided if possible). Management of conflicts of interest must be fair, transparent, accountable and free from bias.

I.4 Application

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

I.5 Applicable Law

The following legislation is relevant to this policy:

- The *Tasmanian Development Act 1983* (in particular section 42) (the Act)
- The *Tasmanian Development Regulations 2012* (in particular Regulations 5 and 8) (the Regulations)

Both the Act and the Regulations create obligations on directors to raise conflicts of interest in every situation. These obligations under the legislation reflect similar obligations under corporations' law and fiduciary relationships generally.

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

1.6 Definitions

A **Conflict of interest** is a situation arising from a conflict between the performance of a public duty and a private or personal interest. A conflict of interest may be actual, perceived or potential:

- **Actual:** a situation in which someone has competing professional or private interests. Such competing interests could make it difficult for an individual to fulfil their duties impartially and could improperly influence the performance of their official duties and responsibilities.
- **Perceived:** exists where it could be reasonably perceived that an individual's professional or private interests could improperly influence the performance of their duties and responsibilities. Individuals should be conscious that perceptions of conflict of interest may be as important as an actual conflict.
- **Potential:** means where a person has a personal interest that could conflict with their official duties in the future.

A **personal interest** includes the personal, professional, or business interests of a person or of the individuals or groups with whom that person may have a close association, such as relatives, friends, or those with whom that person may have a negative relationship. Personal interests may be pecuniary or non-pecuniary:

- **Pecuniary:** a pecuniary interest refers to an actual or potential financial gain or loss for the person, their family, friends, or close associates arising from (but not limited to) ownership of shares, trusts, partnerships, real estate, directorships, other assets, other substantial sources of income, liabilities, and memberships.
- **Non-pecuniary:** a non-pecuniary interest refers to an interest that is not financial or monetary but arises from such things as personal relationships, beliefs, or involvement in social, cultural, religious, or sporting activities. Dislike for someone as well as friendship can give rise to a conflict of interest.

Regulation 5 of the Regulations provides guidance on what is a **material personal interest** but is not an exclusive set of circumstances. A material personal interest, in respect of a TDR director, includes –

- a direct or indirect interest; and
- a pecuniary or non-pecuniary interest; and
- the interest of a relative of the director; and
- the interest of an associated entity; and
- an interest in a corporation, within the meaning of the Corporations Act; and
- the director's employment by a person with a direct or indirect interest in the Authority; and
- the holding by the director of an office where there arises or may arise a conflict between his or her duties in that office and his or her duties as director; and
- the holding by the director of the office of member in another statutory authority or in the governing authority of another statutory authority; and
- any other interest that does, or may, give rise to a conflict of interest.

Some additional examples of **material personal interests** include, but are not limited to, situations where a director:

- has had a contractual or employment arrangement with any organisation that is named in a current application, evaluation process, or other documentation relating to any business under consideration
- owns shares in, or exercises control in a company or other organisation named in any current application or evaluation process that is under their consideration, or in which they have direct involvement

- is involved in any other committee process where they may have a direct or indirect involvement in the matters being considered
- has a professional relationship with an individual who is named in an application or whose work forms a significant part of the material under review in an assessment process
- has a close personal relationship (including enemy) with an individual who is named in an application or whose work forms a significant part of the material under review in an assessment process

A material personal interest may also exist where an individual's partner or immediate family member has any of the interests listed above. The term 'partner' may refer to personal or business partners. It should be noted that enmity as well as friendship can give rise to a real or perceived conflict of interest.

The timeframe from when a conflict has ceased and when it is no longer generally considered a conflict of interest, is three years.

2. Disclosing Interests

2.1 Disclosure of Material Personal Interests

Section 42 of the Act provides guidance on when a director should disclose interests (as defined in previous section). A director who is in any way directly or indirectly *interested* in a contract, grant, or recommendation made, or proposed to be made, by TDR, should declare the nature of the interest prior to a meeting of the Board as soon as practicable after the relevant facts have come to their knowledge.

Board members should clearly disclose any material personal interests that may impact, or be perceived to impact, their ability to perform the role for which they have been engaged.

The overriding principle for a declaration of a material personal interest is, if in doubt, the individual should declare the interest. This is to ensure that the TDR is able to take account of varied individual circumstances to ensure conflicts of interest are managed appropriately and consistently. This also ensures that, should any issues or queries arise, the individual can demonstrate that they have taken appropriate action.

In relation to the to the declaration of financial interests, the concept of a materiality threshold should be considered, taking into account control and influence considerations.

2.2 Disclosure of Shareholdings

Section 44 of the Act states that the *"TDR shall keep a register showing, with respect to each director and authorised officer, particulars of (a) Shares in any company in which the director or authorised officer has any interest; and (b) any other interest in a company that is held by the director or authorised officer; and the nature and extent of any such interest."*

A Disclosure of Shareholdings is required to be completed upon a director's commencement and subsequently reviewed quarterly. Disclosures are managed by the Corporate Secretary and their delegate and are not shared with any other person.

2.3 Register of Interests

A Register of Interests will be maintained and made available on the Board portal which provides restricted access.

3. Director Responsibilities

Directors are responsible to:

- declare all pecuniary and non-pecuniary interests quarterly and declare conflicts of interest as they arise
- refrain from involvement in official decisions and actions which could be compromised by other private interests and affiliations
- ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties
- refrain from taking improper advantage of their official position or confidential/privileged information gained in that position when seeking employment outside of TDR, or provide such advantage to others with whom they have an association
- support, endorse, and review the conflict of interest policy, procedures and related guidance
- ensure there are systems to educate, train, and induct persons to whom the policy, procedures or guidance applies about their meaning and how to apply them, in a practical sense
- monitor, analyse and report upon relevant personal interests and conflicts of interest that have been disclosed, avoided, or managed
- ensure that declarations of conflict of interest are stored centrally and securely in an electronic records management system
- create and maintain a culture amongst the TDR Board of proactive disclosure.

4. Recruitment and Onboarding

Recruitment of new Board directors, including any due diligence processes, should include consideration of any prospective conflicts of interest. The recruitment process will have regard to this policy and the impact the appointment will have from a conflict of interest perspective. The director selection and induction guidelines will outline and advise of the requirements.

5. Notification Procedure

5.1 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.

Should a director have any doubt with regard a potential conflict of interest, they should seek advice from the Chair and/or Corporate Secretary.

5.2 Chair identifies potential conflict

Where the Chair or Corporate Secretary 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.

5.3 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), 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

6.1 Assessing the materiality of a conflict of interest

Factors that may need to be weighed in assessing the materiality of the conflict of interest include:

- the type or size of the personal interest, perceived or actual
- the nature or significance of the particular decision or activity being carried out
- the extent to which the personal interest could affect, or be affected by, TDR's decision or activity

An important consideration when identifying conflicts of interest is whether there is a real or sensible possibility of conflict and not simply a remote or theoretical possibility of conflict. If no reasonable person could draw a connection between the personal interest and their duties, then the personal interest is not 'material'.

6.2 Deciding what approach to take

The Board will consider:

- whether the conflict needs to be avoided or simply documented
- whether the conflict will realistically impair the disclosing person's capacity to impartially participate in decision-making
- alternative options to avoid the conflict
- TDR's objectives and resources, and
- the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of TDR.

The approval of any action requires the agreement of at least a **majority** of the board (excluding any conflicted board member/s) who are present and voting at the meeting. The action and result of the voting will be recorded in the minutes of the meeting and in a register of interests

7. Board Meeting Process

At the commencement of each meeting, each director must declare any conflict(s). If none are declared, the Minutes will reflect nil.

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.

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.

The Minutes will record the declared conflict of interest and subsequent proceedings.

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.

In exceptional circumstances, such as where a conflict is very significant or likely to prevent a Board member from regularly participating in discussions, it may be worth the Board considering if it is appropriate for the person conflicted to resign from the board.

The Chair and the Corporate Secretary will consider whether the minutes of the meeting are redacted for the conflicted member, on a case-by-case basis.

8. Management – Ongoing Identification, Monitoring and Controls

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.

8.1 Monitoring

Directors must provide regular updates of material [ensure definition/threshold is agreed, the concept of control/influence should be considered] 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.

Once an actual, potential or perceived conflict of interest is identified, it must be entered into TDR's register of interests, as well as being raised with the Board. The register of interests must be maintained by the Corporate Secretary. The register must record information related to a conflict of interest including the nature and extent of the conflict of interest and any steps taken to address it.

8.2 Prospective Interests

In addition to the declaration of conflicts of interest as they arise, Directors are expected to be forthright in discussing any prospective interests that could reasonably give rise to a conflict of interest in the future, whether actual or perceived. This will allow possible outcomes and interpretations of situations to be explored and managed by the Board proactively.

8.3 Confidentiality of Disclosures

All directors note that the Act places obligations regarding the confidentiality and non-disclosure of information received while acting as a director. All Directors are required to sign a confidentiality agreement on appointment.

8.4 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. This policy will be reviewed and resubmitted to the Board 12 months after endorsement. The Board is responsible for reviewing this policy on an annual basis to ensure that the policy is operating effectively.

8.5 Compliance with this policy

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.

If the Board has a reason to believe that a person subject to the policy has failed to comply with it, it will investigate the circumstances. If it is found that this person has failed to disclose a conflict of interest, action may be taken against them.