

# TASMANIA DEVELOPMENT AND RESOURCES

## Conflict of Interest Policy

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Tasmanian  
Government

## Document Acceptance and Release Notice

This document is Version 3.3 of the Tasmanian Development Board Conflict of Interest Policy. The Policy is supported by a Conflict of Interest Procedure. The Policy is a managed, living document and any amendments will be recorded in consultation with the Corporate Secretary and the Board prior to release.

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## Amendments in this Release

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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 and Authorised Officers in the conduct of its business. This policy also applies to Department of State Growth employees<sup>1</sup> who deal directly with the Board. This policy reflects the Board's commitment to ensuring that conflicts of interest are identified and managed appropriately. The Board promotes an open and transparent approach in the management of conflicts.

The Act also contemplates circumstances under which an administrator may be appointed to administer the affairs and activities of the TDR, and requires that administrators declare interests to the Minister. Requirements for administrators are covered under section 32 of the Act and 2.2.2 of this policy.

## I.2 Purpose

The purpose of this policy, which is supported by the TDR Conflict of Interest Procedure, is to provide a framework for the TDR Board to effectively identify, disclose and manage any actual, perceived or potential conflicts of interest in order to protect the integrity, legitimacy, impartiality, and fairness of the TDR Board.

This policy is designed, such that all interests are disclosed and appropriately managed. Several types of conflict of interest can arise for the TDR Board, and employees working with the Board, during the course of their official duties. Knowing how to identify and manage conflicts of interest is an effective way to prevent corruption and misconduct.

## 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, and manage 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 Principles

It is the responsibility of Directors, Authorised Officers, and employees to identify and disclose conflicts of interest (as defined in section 1.7) as and when they arise. If in doubt, declare it. The key principles underlying this policy are:

- The process for declaring and managing conflict of interest is transparent, accountable, and consistent with the relevant obligations and governance practices.
- Directors, Authorised Officers and employees must refrain from involvement in official decisions and actions which could be compromised by private interests and affiliations.
- Directors, Authorised Officers and employees must ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties.
- Directors, Authorised Officers and employees must not improperly use information obtained in

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<sup>1</sup> For the purpose of this policy and the related procedure, 'employees' includes Department of State Growth employees and contractors.

the course of their duties to:

- Gain, or seek to gain, a benefit or an advantage for themselves or any other person; or
- Cause, or seek to cause, detriment to TDR or any other person.
- Directors should create and maintain a culture amongst the TDR Board of proactive disclosure.

## 1.5 Application

This policy applies to all Directors, Authorised Officers and employees or as identified in the Act.

## 1.6 Applicable Law

The following legislation is relevant to this policy:

- The *Tasmanian Development Act 1983* (in particular section 42 and 44) (the Act)
- The *Tasmanian Development Regulations 2022* (in particular Regulations 5 and 8) (the Regulations)

Both the Act and Regulations create obligations on Directors and Authorised Officers to disclose conflicts of interest in every situation they arise as soon as practicable. Obligations under the legislation reflect similar obligations under the Corporations Act and at common law. Directors and Authorised Officers must remind themselves regularly of the requirements of the Act and Regulations and that they act in the best interests of the TDR.

## 1.7 Definitions

### **Authorised Officer**

Means an officer of TDR to whom any of its functions or powers is delegated under section 19 (1).

### **Conflict of Interest**

A conflict of interest is defined as 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:** where someone has competing professional or private interests that 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:** where it could be reasonably perceived that an individual's professional or private interests could improperly influence the performance of their duties and responsibilities.
- **Potential:** where a conflict between an individual's personal interests and their official duties could reasonably arise in the future given the circumstances.

### **Direct or Indirect**

A conflict of interest can be direct or indirect. A direct interest is held by the individual, while an indirect interest is held by a relative or a close associate of the individual, for example:

- An immediate family member (e.g. spouse, spousal equivalent, child, parent, siblings);
- A regular household member (i.e. individuals who normally reside with the Director);
- Close associate (e.g. friend, relative, business associate, associated of controlled entity, competitor).

### **Personal Interest**

The direct or indirect stake an individual holds in a particular matter that may influence their decision-making or action in a way that could potentially compromise their professional or ethical obligation. This includes personal, professional or business interests, and can be pecuniary or

non-pecuniary. A 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, spousal, spousal equivalent, or business partners. It should be noted that enmity as well as friendship can give rise to a real or perceived conflict of interest.

### **Pecuniary or Non-Pecuniary**

- **Pecuniary:** a pecuniary interest refers to direct or indirect financial gain or loss (actual or potential) for the individual 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.

## **2. Disclosing Interests**

### **2.1 Responsibilities**

In addition to the duties captured under section 1.4, Directors, and Authorised Officers should:

- 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 on relevant personal interests and potential 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.

### **2.2 Disclosure of Material Personal Interests**

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

[Section 42](#) of the Act provides guidance on when a Director, Authorised Officer or Administrator should disclose interests (as defined in Section 2).

Subsections 42 (4) and 42 (6) of the Act provide guidance on materiality by stating that *"The requirements of [section 42] do not apply in any case where the interest of a director, administrator, or authorised officer has been regarded as not being a material interest."* *"A director who discloses an interest under this section shall not be present during any deliberation of the Board with respect to that matter."*

[Regulation 5](#) of the Regulation provides guidance on what is a **material personal interest** but is not an exclusive set of circumstances. The guidance has been documented for reference under section 10 of the policy.

#### **2.2.1 Director, Authorised Officer and Employee Disclosures**

A Director, Authorised Officer or employee who is in any way directly or indirectly interested in a



contract, grant, or recommendation made, or proposed to be made, by TDR, must declare the nature of the interest to the Chair or Corporate Secretary prior to or at a meeting of the Board, or as soon as practicable after the relevant facts have come to their knowledge. Upon disclosure, it is the responsibility of the Chair and the Corporate Secretary to perform a materiality assessment of the declaration and to ensure the most appropriate management strategy has been applied.

A standard agenda item for all meetings will be a reminder to disclose any interests.

## 2.2.2 Administrator Disclosures

In accordance with Section 42(3) of the Act, an Administrator who is in any way, whether directly or indirectly, interested in a contract, grant, or recommendation made, or proposed to be made, by TDR, shall declare the nature of the interest to the Minister in writing as required by the Act as soon as practicable after their appointment or the relevant facts have come to their knowledge.

## 2.2.3 Corporate Secretary Disclosures

If the Corporate Secretary is in any way directly or indirectly interested in a contract, grant, or recommendation made, or proposed to be made, by TDR, they must promptly declare the nature of the conflict to the Chair and Chief Executive.

## 2.2.4 Chair Disclosures

If the Chair possesses a direct or indirect interest, they must disclose the nature of the interest to the Corporate Secretary and Chief Executive. Upon disclosure, it is the responsibility of the Corporate Secretary and Chief Executive to perform a materiality assessment of the declaration and to ensure the most appropriate management strategy has been applied. In the event that the Chair declares a conflict, the Board will be notified immediately.

# 3. Register of Interests

[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.*”

In adherence to the Act, a Register of Interests will be managed and maintained through an annual review by the Corporate Secretary.

The Register of Interests is to be maintained by the Corporate Secretary and must record information related to an interest including, if relevant, whether it amounts to a conflict, including the nature and extent of the conflict and any steps taken to manage it.

The details of the disclosure will be managed confidentially by the Corporate Secretary until it is entered into the Register of Interest, at which point it shall be open to inspection by any member of the public without charge.

A high-level report on the Register of Interests can be provided to the Board on an annual basis.

## 3.1 Transition Period for Conflict Resolution

The period from when a conflict has ceased and when it is no longer generally considered a conflict of interest, is three (3) years. This means that while the record may remain in the Register of Interests for three (3) years, it does not necessarily mean the record will be considered as an active conflict that requires management for the full three (3) year period.

# 4. Recruitment and Onboarding

Recruitment of new Directors including any due diligence processes, must include consideration of any potential 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. Assessment and Management

Any actual, perceived, or potential conflict of interest that are declared by a Director, Authorised Officer or employee is to be assessed by the Chair and Corporate Secretary to determine its materiality and the appropriate management, as defined in the *TDR Conflict of Interest Procedure*.

Similarly, the Corporate Secretary declarations are to be assessed by the Chair and Chief Executive while the Chair's interests are to be assessed by the Corporate Secretary and Chief Executive.

Management of actual, perceived, or potential conflicts is commensurate with the nature and materiality of the conflict that is assessed in accordance with the *TDR Conflict of Interest Procedure*.

## 6. 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 assessor, not the conflicted individual, makes the determination as to the materiality of the declared conflict.

Minutes must document that a conflict has arisen and the assessment/management decision.

### 6.1 Ongoing identification of interests

The Act requires a Director, Administrator, and Authorised Officers to disclose all conflicts of interest to the Board in every situation in which they may arise. The *TDR Conflicts of Interest Procedure* outlines the processes for Directors, Authorised Officers and employees to follow when identifying and managing declared conflicts and those that arise during the Board's regular activities.

### 6.2 Monitoring

It is the responsibility of Directors, Authorised Officers and employees to ensure that their interests are appropriately documented in the Register of Interests at all times.

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

Once an actual, perceived, or potential conflict of interest is identified, it must be assessed and entered into TDR's Register of Interests (Section 2.3), as well as being raised with the Board.

## 7. Potential Interest

In addition to the declaration of conflicts of interest as they arise, Directors, Authorised Officers, and employees 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, perceived, or potential conflict. This will allow possible outcomes and interpretations of situations to be explored and managed by the Board proactively.

## 8. Confidentiality of Disclosures

[Section 45](#) of the Act states "A director, administrator, or officer of TDR who, in the course of the administration of this Act, obtains any information as to a process, technique, practice, plan, invention, specification, prototype, or design shall maintain and aid in maintaining the secrecy of that information except for the purposes of the administration of this Act."

In adherence to the Act, all Directors, Authorised Officers and Administrators have an obligation regarding the confidentiality and non-disclosure of information received while acting within their role. On this basis, Directors, Administrators, and Authorised Officers are required to sign a confidentiality agreement on appointment.



## 9. Policy Responsibility and Review

The Corporate Secretary is the policy owner and is responsible for updating and oversight of this policy and the related procedure statement, and for maintaining the Register of Interests.

. The Board will be responsible for reviewing this policy and related procedure statement on a three-yearly basis to ensure effectiveness and currency.

The process of review should include :

- This Conflict of Interest Policy
- The Procedure Statement to Support the TDR Conflict of Interest Policy

And should have regard to any updates to the *Tasmanian Development Act 1983* and any significant changes to Tasmanian Government policies around declarations of interests.

Additionally, the Corporate Secretary should conduct a full review of the Register of Interests annually.

## 10. Compliance with this policy

Non-disclosure or presence at deliberations can have significant consequences for the Director, Authorised Officers, employees and the Board – offences may apply to Directors and the Board, and the Board may be exposed to broader legal action, reputational damage, or its decisions being challenged.

Failure or refusal to report will be considered a major breach of duty and appropriate action will be taken. These obligations mean that all parties covered under this policy must err on the side of disclosure in raising any conflict, whether direct or indirect.

If the Board has a reason to believe that a person subject to the policy has failed to comply with it, the Corporate Secretary 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.

## 11. Appendix

### 11.1 Material Personal Interest

Under [Regulation 5](#) of the Tasmanian Development Regulations 2022, examples of 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 gives, or may give, rise to a conflict of interest.

In line with the guidance, the Regulation states, a Director does not have a material personal interest by reason only of:

- the Director also being a State Service employee or State Service officer.
- an interest in a contract with the Authority for a good or service ordinarily supplied by the

Authority and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation.