

Conflict of interest

Policy

Purpose

This policy states Energy Safe Victoria's (ESV) position on conflicts of interest, including the requirement for ESV's people to avoid potential, perceived and actual conflicts of interest wherever possible.

ESV acknowledges its people may encounter conflicts of interest and that conflicts will not always be avoidable. Any conflict; potential, perceived or actual; must be identified, declared and actively managed to ensure that ESV earns and maintains the highest levels of integrity and public trust.

Implementation of this policy assists ESV and its people to effectively manage the potential risks arising from perceived or actual conflicts of interest.

ESV has issued this policy to support behaviour consistent with the Code of Conduct for Victorian Public Sector Employees, and the Code of Conduct for Directors of Victorian Public Entities (the Code). All employees are required under the Code to comply with this policy.

Scope

This policy applies to all workplace participants. For the purpose of this policy, this includes: all employees, contractors, consultants, Audit and Risk Committee members, other committee and advisory panel members (eg. ELCCC, Section 8 committee) and any individuals or groups undertaking activity for or on behalf of ESV.

Policy principles

Obligations and good practice: ESV's people act in accordance with their obligations and 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 of interest 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: ESV fosters a culture of integrity by supporting its people to raise their own conflicts of interest and to speak up if they believe another ESV person may have an undeclared conflict.

Definitions

Conflict of interest: is where a person employed by or working for ESV has private interests that could improperly influence, or be seen to influence, their decisions or actions in the performance of their public duties.

Conflicts may be actual, potential or perceived:

Actual conflict of interest: there is a real conflict between the public duties of a person employed by ESV and their private interests.

Potential conflict of interest: a person employed by ESV has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.

Perceived conflict of interest: the public or a third party could form the view that the private interest or previous employment of a person employed by ESV could improperly influence their decisions or actions, now or in the future.

Private interest: means anything that can influence a person employed by ESV.

Private interests include:

Direct interests: such personal, family, professional or business interests of a person employed by ESV.

Indirect interests: such as the personal, family, professional or business interests of individuals or groups that a person employed by ESV is closely associated.

Private interests may be:

Pecuniary (i.e. financial): which includes any actual, potential or perceived financial gain or loss.

Non-pecuniary: which includes any favour or prejudice resulting from personal or family relationships, such as friendships, enemies or sporting, cultural or social activities, and previous employment at a regulated entity.

Conflict of duty

Specific to external members of ESV's committees and panels, a conflict of duty (also known as a conflict of role) is a type of conflict of interest that can occur *even if a member does not have any private interest at stake*. It is a conflict between:

- a member's **public duty** to act in the best interests of the organisation; and
- a member's duty to **another public sector or private organisation**. It exists due to the member's role with the other organisation (e.g. as a committee member, employee, volunteer, or organisation member).

Accountabilities of all ESV's people

ESV's people must:

- avoid conflicts of interest wherever possible, and identify, declare and manage those conflicts that cannot be avoided in accordance with this policy and related declaration forms
- assess regularly whether there may be an actual, potential or perceived conflict between their private interests and their official duties (for example, prior to major projects, procurement, recruitment or policy decisions)
- take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise their impartiality when carrying out their official duties
- abstain from involvement in official decisions and actions that could reasonably be seen to be compromised by their private interest and affiliations
- avoid private action in which they could be seen to have an improper advantage from inside information they have access to because of their official duties
- not use their official position, government resources or official information inappropriately (including for private gain or when seeking employment outside the public sector)
- comply with the requirements of this policy, related policies and procedures and the Code.

Identifying a conflict of interest

All ESV's people should regularly consider the relationship between their private interests and public duties in order to identify any potential conflict of interest (for example, before major projects, decisions or policy development).

If a person employed by ESV is unsure if a conflict of interest exists, they should first discuss the issue with their manager. The questions below can help in identifying potential conflict of interest.

Questions to ask yourself

1. What assessment would a fair-minded member of the public make of the circumstances?
2. Could my involvement in this matter cast doubt on my or ESV's integrity?
3. If I saw someone else doing this, would I suspect that they might have a conflict of interest?
4. If I did participate in this action or decision, would I be happy if my colleagues and the public became aware of my involvement and any association or connection?
5. How would I feel if my actions were covered by the media? Would they embarrass me, ESV or the government?
6. Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater scrutiny by others?

An example of area of responsibility where a conflict of interest may apply is when regulating individual and business activities that may involve accountable decisions.

Accountabilities of managers with direct reports

Managers with direct reports must consider the risk profile of their team and its functions and ensure their people are aware of any increased risks of conflict of interest in their work. Managers must:

- be aware of the conflicts inherent in the work of their people
- ensure their people are aware of relevant policies and procedures
- provide advice about appropriate ways to manage conflicts
- record the receipt of disclosures of conflicts reported to them
- assist in the preparation of management strategies for their people who disclose conflicts of interest
- monitor their team and the risk to which they are exposed.

Regulatory staff – declaration of previous employment

Upon appointment to a regulatory position at ESV, an individual must declare any previous employment (whether direct employment or as a contractor or consultant) within organisations or network businesses, that ESV regulates.

Cooling-off period

Where an individual appointed to ESV in a regulatory position has been employed by an entity that is directly related to their position at ESV, within the 3 years prior to appointment at ESV, a 6 month cooling-off period will apply. Within this 6 months, the individual will not be allocated work related to that entity.

Where this is not possible, an exemption must be sought from the Director of Energy Safety. The exemption request must include a conflict of interest declaration and a sufficient management plan to control any conflict of interest.

Declaring conflict of interest

Any potential, perceived or actual conflict of interest must be declared. ESV's people must discuss any conflict of interest with their manager. A *Declaration and Management of Conflict of Interest Form* should be completed as soon as a conflict of interest is identified. The declaration form sets out specific instructions for the individual and their manager for completing and submitting the form.

Managing conflict of interest

Where a conflict of interest is identified an ESV person, in conjunction with their manager, is required to develop a conflict of interest management plan. People Services can assist with the process. The plan will ensure conflicts are managed and resolved in favour of the public interest rather than that of the individual and will be based on the following mitigation strategies:

Restrict: restrictions are placed on the impacted individual's involvement in the matter.

Recruit: a disinterested third party is used to oversee part or all of the process that deals with the matter. In most circumstances a subordinate would not be considered a disinterested third party.

Remove: the individual removes themselves, or is removed, from the matter.

Relinquish or Resign: the individual relinquishes the private interest that is creating the conflict.

Where relinquishing the interest is not possible (e.g. relationship with family) and the conflict cannot be managed in the public interest using one of the other options above, the affected individual's employment with ESV may not be able to continue, if other arrangements are not practicable.

Managers should review their direct reports management plans regularly to ensure they remain effective (for example, annually and before major projects, decisions or policy development).

Contractors and consultants

Prior to engaging any contractors, consultants or service providers, it is the responsibility of the ESV person engaging with the contractor, consultant or service provider to ensure that any conflicts of interest are declared and mitigated or managed prior to work commencing.

External members of ESV committees and panels

It is the responsibility of the Chair of any ESV panel or committee, to ensure its members, including external parties, comply with this policy, including the declaration and management of any conflict of interest.

Conflict of interest is a standing agenda item for all formal meetings held within ESV. At the start of each meeting the chair will ask if any member present has an interest (i.e. a private interest or a duty to another organisation) in respect to any item on the agenda. If a member has an interest he or she will declare it, including the nature of the interest and the conflict that results, or may result, from it. An interest must be declared even if it is already recorded in the register.

A member who becomes aware during the meeting that he or she has an undeclared interest will declare it immediately.

A member who believes that another member may have an undeclared interest will raise this as a query, so as to enable the other board member to declare the interest, if it exists.

Recording in minutes

If a member 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
- if the member leaves the room during discussion and/or decision-making on the 'conflicted' matter, the time that he/she leaves and returns and the item, or part of thereof, for which he or she was absent.

Conflict of interest register

All declaration forms and management plans will be submitted to People Services.

People Services record all declared conflict of interest in the Conflict of Interest Register, which is monitored monthly.

People Services provide ESV's Audit and Risk Committee with an annual report on the administration and quality control of the conflict of interest declaration process. This occurs at the end of the financial year.

Annual declaration of private interests

The following people employed by ESV must complete the ESV's *Declaration and Management of Private Interests Form* upon appointment, annually after appointment and within five working days after the relevant individual's circumstances change (i.e. their circumstances as they relate to the topics covered in the declaration form):

- Executive Management Board members
- Audit and Risk Committee members
- ESV people holding a financial delegation of \$25,000 or more
- Any ESV person assessed by the Director of Energy Safety as requiring declaration of private interests on the basis of potential, perceived or actual conflict of interest risk.

Private interests register

The office of the Director of Energy Safety coordinates the annual private interests process, and maintains a register which includes details of any declared direct and indirect interests that may give rise to a conflict of interest.

Breach of policy

Breaches of this policy could lead to disciplinary action in accordance with the *ESV Managing Underperformance and Disciplinary Policy*.

Members of panels or committees may be terminated from their role at ESV.

Related policies and documents

- ESV's Gifts, Benefits and Hospitality Policy
- Public Administration Act 2004
- Code of Conduct for Victorian Public Sector Employees
- Code of Conduct for Directors of Victorian Public Entities

Document control

Version	Date	Revision information	Author/Edited by	Authorised by	Review date
1.0	2009	Conflict of Interest Policy		Executive Committee	
2.0	May 2017	Revision of Conflict of Interest Policy	Head of People Services	Executive Management Board	May 2019
3.0	March 2019	Edited to include: Declarations of previous employment for regulatory staff; 6 month cooling-off period; extended information about committee and panel members and transferred to new template	Head of People Services	Executive Management Board	March 2022