

Disclosure of Interests Guidelines (Commissioners)

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Introduction

Document purpose

1. The Commission must have processes in place to deal with conflicts of interest and disclosures of interests. This policy sets out the requirements and processes to manage the interests of Commissioners.
2. These guidelines are designed to ensure the Commission meets the requirements in section 21 of the *Victorian Gambling and Casino Control Commission Act 2011* (VGCCC Act) and section 81 of the *Public Administration Act 2004* (PA Act). These guidelines form a subset of the broader legislative requirements and policy statements about how Commissioners, managers and staff are to perform their roles at the VGCCC.
3. The purpose of these guidelines is to maintain the highest levels of integrity in the VGCCC and to protect the VGCCC and all Commissioners from any appearance of impropriety. Conflicts of interest can arise without anyone being at fault and must be properly managed by working to avoid actual, potential and perceived conflicts of interest. When performing the regulatory functions of the VGCCC, Commissioners must:
 - a. 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
 - b. abstain from involvement in official decisions and actions that could reasonably be seen to be compromised by their private interests and affiliations.
4. Conflicts of interest may arise where a Commissioner's personal, family, or private interests, loyalties, or commitments conflict with those of the VGCCC. Such conflicts are problematic as they may:
 - a. inhibit free discussion in Commission meetings
 - b. lead to bias or a lack of impartiality in decision-making
 - c. result in decisions or actions that are not in the interests of the VGCCC
 - d. harm public perception of the VGCCC and the broader public sector by giving the impression that the VGCCC has or may have acted improperly.

Scope

5. This policy applies to the Commissioners of the Victorian Gambling and Casino Control Commission (VGCCC). It also applies to the independent and external Chair of the Audit and Risk Management Committee.

Statutory requirements

Section 21 VGCCC Act

6. Section 21 of the VGCCC Act provides for the disclosure of interests by Commissioners. The purpose of Section 21 is to ensure that interests are identified and addressed thoroughly and transparently. The following conditions apply:

- a. If a Commissioner has an interest in a matter being considered, or about to be considered, by the Commission, they must, as soon as practicable after the relevant facts come to their knowledge, disclose the nature of the interest to the Chair¹.
 - b. If the Chair has an interest in a matter being considered, or about to be considered, by the Commission, they must, as soon as practicable after the relevant facts come to their knowledge, disclose the nature of the interest to the responsible Minister.
 - c. The Commission must make guidelines specifying the types of interests that a Commissioner must disclose for the purposes of this section.
 - d. The Commission must cause guidelines made under this section to be published on the Internet site of the VGCCC.
7. The above requirements are in addition to the values that Commissioners as public officials are required to behave consistently with under the PA Act.

Relationship with the Section 21 VGCCC Act, the PA Act and the Code of Conduct for Directors of Victorian Public Entities 2024

8. Within the meaning of the PA Act, the Commission is taken to be a 'board' and each Commissioner of the VGCCC is a 'director'. In performing their role, Commissioners are bound by the legislated requirements of the:
 - a. Victorian public sector values under section 7 of the PA Act: responsiveness, integrity, impartiality, accountability, respect, leadership and human rights
 - b. Duties of Directors under section 79 of the PA Act
 - c. Code of Conduct for Directors of Victorian Public Entities 2024 issued by the Victorian Public Sector Commissioner, which is based on the above public sector values and duties and sets standards of behaviour expected of Directors in the performance of their duties. The code is issued in accordance with sections 7 and 61 of the PA Act.
9. Public entity boards have an obligation under section 81(1)(f) of the PA Act to ensure that processes are in place to deal with conflicts of interest in Directors. This policy and the procedures it outlines constitute those 'processes' for the purposes of the PA Act for the VGCCC.

Definitions

10. **Conflicts of interest** – a conflict between a Commissioner's public duty to act in the best interests of the VGCCC and their private interests and/or duty to another organisation. A conflict of interest can arise from attempting to avoid personal losses or gain personal advantage – whether financial or otherwise. Conflicts of interests can be actual, potential, or perceived, and may relate to private interests or public duties:
 - a. **Actual conflict of interest** – a real conflict between a Commissioner's public duties and responsibilities, and their private interests.
 - b. **Potential conflict of interest** – arises where a Commissioner has private interests that could conflict with their public duties in the future.
 - c. **Perceived conflict of interest** – can exist where a third party could form the view that a Commissioner's private interest could improperly influence the performance of their public duties, now or in the future.
11. **Lobbying activity** – any contact (including telephone contact, electronic mail contact, written mail contact, or face to face meetings) with a Government Representative in an effort to influence Government decision-making, including the making or amendment of legislation, the development or

¹ Chair means the Chairperson under section 3 of the VGCCC Act

amendment of a government policy or program, the awarding of a government contract or grant or the allocation of funding.

12. **Private interests** - anything that can influence an employee. Private interests include direct interests, such as personal, family, professional or business interests, as well as indirect interests, such as the personal, family, professional or business interests of individuals or groups with whom the Commissioner is, or was recently, closely associated.
13. Private interests may be pecuniary (i.e. financial), which includes any actual, potential or perceived financial gain or loss, as well as non-pecuniary, which includes any tendency toward favour or prejudice resulting from personal or family relationships, such as friendships, enemies or sporting, cultural or social activities.
14. **Consensual personal relationships** - a consensual personal relationship between a Commissioner and a close associate constitutes a potential conflict of interest and must be declared.
15. **Pecuniary or non-pecuniary** - private interests can be divided into two types:
 - a. **Pecuniary interests** - involve an actual, potential, or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative, or a close associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits such as concessions, discounts, gifts, or hospitality from a particular source.
 - b. **Non-pecuniary interests** - interests which do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social, or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group. If personal values are likely to impact on the proper performance of public duty, then these can also lead to a conflict of interest. Enmity as well as friendship can give rise to a conflict of interest.
16. **Public duty** - the duty of all Commissioners to put the public interest and the interest of the VGCCC above their private interests when carrying out their official duties.
17. **Conflict of duties** - in this context, conflict arising from a Commissioner having multiple public duties. These conflicts may arise as a result of membership of multiple boards and are also particularly acute for Commissioners appointed as 'representatives' of particular interest groups, or by virtue of their membership of a profession, or their position as a public servant. In this policy, a reference to a conflict of interest is deemed to include a conflict of duty.

Disclosure of interests

Interests required for disclosure

18. The following provides a framework for identifying which interests should be disclosed under the VGCCC Act. The VGCCC Act requires a Commissioner to disclose an interest in a matter which:
 - a. is being considered at a Commission meeting at which they are or will be attending, or
 - b. has been allocated to them for consideration outside a Commission meeting or for an inquiry (for instance, determining an application to appeal a decision of a delegate).
19. The Commissioner does not need to disclose an interest if they are not involved in considering a matter.
20. The test to be applied in determining whether an interest is one which needs to be disclosed under Section 21 of the VGCCC Act is whether a fair-minded lay observer might apprehend that the Commissioner might not bring an impartial mind to the consideration of the matter.
21. Further, the existence of an interest or association of the type provided in the illustrative examples listed below will not necessarily prevent a Commissioner from deciding a matter. Whether the interest is in fact a *material conflict of interest* will ultimately depend on the facts.
22. The list below provides some illustrations of the types of conflicts which might arise for Commissioners, is in no particular order of priority, and should be used as a general guide to determine if a conflict of interest exists in a particular situation.
23. For the purposes of the illustrations provided, the term 'a party to a/the matter' may include a/an:
 - a. applicant under gambling legislation
 - b. licensee or permittee
 - c. key operative²
 - d. bookmaker
 - e. commercial raffle organiser
 - f. objector to an application
 - g. manager or employee of a regulated entity
 - h. employee who must be licensed by the VGCCC
 - i. representatives of a local council
 - j. nominee.

Code of Conduct for Directors of Victorian Public Entities

24. The Code of Conduct for Directors of Victorian Public Entities 2024 requires Commissioners to disclose current and previous lobbying activities or interests. Commissioners and the Chair should disclose interests if they:
 - a. hold a substantial number of shares in a company which is a party to the matter being considered
 - b. hold shares in a company which is a party to the matter being considered and the value of those shares may be affected by the decision of the Commission
 - c. control and/or are directly associated professionally with a party to the matter being considered

² Under section 1.3 of the *Gambling Regulation Act 2003* key operative is defined as the wagering and betting licensee, the holder of a venue operator's licence, a keno licensee, a person listed on the Roll, a casino operator, a holder of a public lotteries licence, a bingo centre operator.

- d. are a member of a committee of management for a club or unincorporated association linked with the matter being considered
- e. are contracted to or employed by a party to a matter or provided the information to the Commission in relation to the matter being considered
- f. have accepted an appointment at an organisation which is a party to or provided the information in relation to the matter being considered
- g. were contracted or employed within the previous 2 years at an organisation which is a party to a matter being considered
- h. have a personal relationship with a party to a matter or the provider of information in relation to the matter being considered
- i. stand to benefit in any material way from the decision
- j. a close family member stands to benefit in any material way from the decision
- k. spouse or partner holds a substantial number of shares in a company which is a party to the matter
- l. were contracted or employed more than 2 years ago at the same organisation as a party to a matter under consideration
- m. hold shares or other financial interest indirectly in an organisation which is a party to a matter, including through superannuation or managed investment vehicles, where there is a material degree of control or knowledge of those holdings
- n. live or own property in close proximity to the location of the venue the subject of the application or the matter being considered
- o. are a member of a club which is a party to the application or matter being considered (the size of the club membership may be a relevant factor)
- p. hold shares in a publicly listed company which is a party to a matter being considered but have limited ability to influence the company, e.g. they have received a general share allocation in a public company or the value of those shares will be unaffected by the decision
- q. have an informal or personal relationship with a party to a matter through an industry association or similar body
- r. live or own property in the same local government area as the venue the subject of an electronic gaming machine (EGM) application
- s. engage in lobbying activities including:
 - i. current lobbying activity (including activities undertaken in other jurisdictions) that may relate to the functions of the public entity)
 - ii. previous lobbying activity that may relate to the functions of the public entity (including activities undertaken in other jurisdictions)
 - iii. any such previous lobbying activity that relates to a matter on the board's meeting agenda.

Declaring private interests

25. Commissioners must declare their private interests upon appointment as Commissioner and on an annual basis.
26. Commissioners must lodge an up-to-date Declaration of Private Interests form³ with the Chair before, or as soon as practicable after, their commencement as a Commissioner. All interests are recorded on the VGCCC's Register of Interests which will be maintained by the Secretariat on behalf of the Chair.

³ The VGCCC has its own Disclosure of Private Interests form, as does the Department of Justice and Community Safety, with model forms provided by the Victorian Public Sector Commission and the Department of Premier and Cabinet - Appointment and Remuneration Guidelines for Victorian Government Boards Statutory Bodies and Advisory Committees.

The Declaration of Interests forms and the Register of Interests will be accessible by the Secretariat Unit, the General Counsel and the Chair.

27. The information provided by Commissioners will be handled in accordance with principles for information privacy and security as set out in relevant Victorian and Commonwealth legislation. All information will be used only to ensure that Commissioners act in the best interests of the VGCCC, and not for any other purpose.
28. All Commissioners must review their Declaration of Interests form annually. Commissioners must also update their declaration if their circumstances or interests change in the meantime (unless the change is already adequately recorded in the register as a result of a declaration made at a Commission meeting).

Register of interests

Updates to the register

29. The Chair will ensure that the Register of Interests is current and includes:
 - a. all interests declared in all Declaration of Private Interests forms lodged by Commissioners
 - b. any additional interests which have been declared and recorded in the minutes of a Commission meeting
 - c. any additional interests which have been declared on an ongoing basis.

At meetings

30. The Chair will ensure that the Register of Interests is present for reference at each Commission meeting. At the start of the meeting, the Chair will ask for all Commissioners to state whether their interests as recorded in the register are complete and correct. If there are no changes, the minutes will note that 'all Commissioners present affirmed that their entry in the Register of Interests remains complete and correct'. If any changes are declared, these will be recorded in the minutes for entry into the register.

Declaring conflicts

At a Commission meeting

31. In addition to checking whether the Register of Interests is current and correct, to address requirements under the VGCCC Act, the Chair will ask if any Commissioner has an interest (i.e. private interest or duty to another organisation) with respect to any matter on the agenda at the start of each Commission meeting.
32. If a Commissioner has an interest with respect to any matter on the agenda, they will declare both the nature of the interest and the conflict that results (or may result) from that interest. A record of the disclosure must be made in the minutes of the Commission meeting, even if the conflict has previously been disclosed. This is required even where the interest has already been declared by the Commissioner and is recorded in the Register of Interests.

On an ongoing basis

33. Should an issue arise in the course of a meeting, an inquiry or considering a matter allocated to them in which a Commissioner feels they may be conflicted, they should declare this to the Chair immediately.
34. Should a Commissioner become aware that another Commissioner failed to declare an interest which is known to them or any other Commissioner, the Commissioner must make that interest known to the Chair immediately or in the case of the Chair, the Commissioner shall contact the Minister.

Disclosure of interest by the Chair

35. When disclosing private interests or conflicts of interests, the Chair must provide sufficient detail to the Minister to enable an adequately informed decision about the identification of any conflict of interest. In most cases, the Chair should inform the Minister in writing about the disclosure of interest.

Checks prior to matter allocation

36. Before Commissioners are allocated tribunal matters for consideration, the VGCCC's registry staff will carry out a preliminary conflict check according to the Register of Interests. If it becomes evident that a conflict of interest may exist, that Commissioner will not be given any materials relating to the matter. Commissioners are reminded that this is not a substitute for their own duty to ensure they are free of conflicts.

Managing conflicts of interest

Options for managing conflicts of interest

37. The Commission will manage all conflicts of interest in the public interest. Options for managing a conflict of interest include:
- a. **Remove** – the Commissioner leaves the room and does not participate in the 'conflicted' matter in any way.
 - b. **Reassign** – in the case of an inquiry or matter allocated to a Commissioner, the Chair will reassign the matter to another Commissioner for consideration.
 - c. **Record** – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.
 - d. **Refer** – in the case of a tribunal matter, details of the conflict of interest are disclosed to the parties and based on the received submissions, continue to consider the matter or remove themselves.
 - e. **Restrict** – the Commissioner's involvement in discussion and/or decision-making on the matter is restricted to the extent that matches the public interest. Monitoring occurs to check whether this remains the appropriate option.
 - f. **Recruit** – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer).
 - g. **Relinquish or resign** – the Commissioner relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the Commissioner resigns from the Commission itself.
 - a. The process for determining which option is in the public interest is set out below.

Determining whether a conflict is material

38. If a conflict of interest is declared by a Commissioner, the Commission will use the following factors to determine whether the conflict is material⁴ and how to manage the conflict:
- a. The objectives and functions of the VGCCC.
 - b. The matter that is to be discussed and determined by the Commission.
 - c. The nature and extent of the conflict, including:
 - i. whether it is actual, potential or perceived
 - ii. the amount, scope and likelihood of the expected benefit

⁴ Section 81(1)(f) of the PA Act requires that the board determine whether a conflict of interest in a matter is material.

- iii. the degree to which the interest could compromise or reasonably be seen to compromise the Commissioner's ability to make an impartial decision.
- d. The overall likelihood that there will be a public perception of a conflict of interest and the extent to which this may affect public confidence in the integrity of the Commission and its decisions.

Less stringent options for managing a material conflict

- 39. A less stringent option (i.e. record, restrict or refer) will not usually be in the public interest for managing material conflicts of interest. If the Commission is unsure whether a less stringent option is in the public interest the Commission will err on the side of caution.
- 40. If the Commission decides on a less stringent option then, in addition to recording in the minutes, or if applicable the transcript, why it is in the public interest, careful monitoring will occur to ensure that the less stringent option remains appropriate.
- 41. Examples of where a less stringent option may be in the public interest, taking into account all the relevant circumstances, include:
 - a. **Discussion:** If the 'conflicted' Commissioner was appointed on the basis of their knowledge of the matter, it may be in the public interest for them to be present for part of the Commission's discussions. However, if an 'unconflicted' Commissioner is absent who also has this expertise, it will usually be in the public interest for discussion to occur at the next meeting instead.
 - b. **Decision:** If the recommended procedure would mean that there is no quorum for the decision even if all 'unconflicted' Commissioners are present, then a less stringent option will be in the public interest.⁵ However, if 'unconflicted' Commissioners are absent then it will usually be in the public interest for the decision to be held over to the next Commission meeting instead.

Managing non-material conflicts of interest

- 42. For non-material conflicts of interests, there is more likelihood that a less stringent option (i.e. record, restrict or refer) will be in the public interest. In making its decision, the Commission will take into account all relevant factors and circumstances (e.g. the lower the severity of the conflict, the more likely that a less stringent option will be in the public interest).
- 43. If the Commission decides on a less stringent option then, in addition to minuting why it is in the public interest, careful monitoring will occur to ensure that it remains appropriate (e.g. the Commission may initially determine to only record the conflict but after monitoring may decide instead that the 45) Commissioner can participate in part of the discussion but must be removed from all decision-making on the matter).
- 44. If the Commission is unsure whether a less stringent option is in the public interest it will err on the side of caution and decide on the standard procedure to remove (i.e. the Commissioner will leave the room and not participate in any discussion or decision-making on the matter).

Advising relevant parties

- 45. Whether relevant parties are advised of Commissioner interests depends on the facts of each case. It is recommended that Commissioners disclose any conflict of interest to the parties if the interest in question causes a serious possibility of perceived bias.
- 46. The Commissioner should present all of the relevant matters and facts relating to the interest. This will enable the parties to make submissions to the Commission or the Commissioner about whether the Commissioner in question should be excused from deciding the matter. A party may bring to the attention of the Commission, or Commissioner a relevant matter or the possible consequences of a

⁵ If this is a common occurrence, the Department of Justice and Regulation should be notified.

matter, in order to assist the Commission or Commissioner to determine the question of conflict and disclosure.

47. It is recommended that the disclosure of interest should occur at the earliest possible opportunity.
48. In the case that a Commissioner excuses themselves from a meeting where a matter that they have an interest in is being considered, the Commissioner usually will not disclose their interest to the parties (although they will still be required to disclose the interest to the Chair under section 21 of the VGCCC Act).

Objections to Commissioner participation in matters with declared interests

49. The rules of natural justice require that the Commissioners allocated to determine a matter be free of any bias or reasonable suspicion or apprehension of bias.
50. Where an objection is raised to a Commissioner participating in a matter, the Commission should:
 - a. require the person making the objection to identify what is said might lead a Commissioner to decide a case other than on its legal or factual merits and to articulate the logical connection between the matter and the feared deviation from the course of deciding the case on its merits
 - b. assess whether, having regard to the identified matter and its logical connection with the matter being decided other than on its merits, a fair-minded observer might reasonably apprehend that the matter might not be decided impartially.
51. Some decisions made by a single Commissioner are capable of being reviewed internally by the Commission.
52. Additionally, parties affected by a decision of the Commission may have a right of appeal of a decision of the VGCCC to the Supreme Court on a point of law under the *Gambling Regulation Act 2003*. Parties may also have a right of review under the *Administrative Law Act 1978*.

Decisions taken where a Commissioner has an interest

53. Where the Commission must decide upon a matter in which a Commissioner has an interest, all decisions will be made by a vote, with a majority required.
54. A quorum must be present for the discussion and decision, and Commissioners excluded from the matter due to a conflict will not be counted in determining whether the meeting has a quorum.
55. All decisions taken where a Commissioner has a conflict of interest will be recorded by the Secretariat and reported in the minutes of the meeting. The minutes must record:
 - a. the nature and extent of the director's conflict
 - b. whether the conflict was material
 - c. the action the Commission will take to manage the conflict in the public interest
 - d. if a less stringent option or more stringent option is to be taken, why it is in the public interest
 - e. if the Commissioner leaves the room during discussion and/or decision-making on the 'conflicted' matter, the time that they leave and return and the item (or part of the item) for which they were absent.

Breaches of this policy

56. A Commissioner who may have breached this policy must notify the Chair immediately. If the Chair is of the view that a breach has not occurred, the Commission will determine at the next scheduled Commission meeting, and record in the minutes, whether a breach has occurred.
57. If the Chair is of the view that a breach has occurred, he will arrange for the Commission to determine on an urgent basis, and record in the minutes, whether a breach has occurred.

58. If the Commission determines a breach has occurred, the Chair will notify the Minister and the relevant Department Head in writing as soon as practicable, including whether the breach relates to a material conflict of interest.⁶
59. A Commissioner who believes that another Commissioner may have breached this policy but not yet notified the Chair will bring this to the attention of the Chair or will approach the other Commissioner, who will then notify the Chair.⁷

⁶ These requirements are consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*.

⁷ If the matter concerns a possible breach by the Chair, it should be brought to the attention of a Deputy Chair.

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