

Disclosure of Interests Guidelines (Commissioners)

Section 21 of the *Victorian Commission for Gambling
and Liquor Act 2011*

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Victorian Commission for
Gambling and Liquor Regulation

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1 Introduction

1.1 Context of these guidelines

These guidelines are designed to ensure that they meet the requirements of section 21 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (VCGLR 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 in the Victorian Commission for Gambling and Liquor Regulation (VCGLR).

1.2 Purpose

The VCGLR operates with the highest levels of integrity and works to avoid actual, potential and perceived conflicts of interest.

When performing the regulatory functions of the VCGLR, Commissioners must:

- 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 interests and affiliations.

Conflicts of interest may arise where a Commissioner's personal, family, or private interests, loyalties, or commitments conflict with those of the VCGLR. Such conflicts are problematic as they may:

- inhibit free discussion in Commission meetings
 - lead to bias or a lack of impartiality in decision-making
 - result in decisions or actions that are not in the interests of the VCGLR
- or
- harm public perception of the VCGLR and the broader public sector by giving the impression that the VCGLR has or may have acted improperly.

Conflicts of interest can arise without anyone being at fault and must be properly managed. The purpose of this policy is to protect both the VCGLR and all Commissioners from any appearance of impropriety.

1.3 Legislative context

1.3.1 Section 21 VCGLR Act

Section 21 of the VCGLR Act provides for the disclosure of interests by Commissioners:

- if a Commissioner has an interest in a matter being considered, or about to be considered, by the Commission, he or she must, as soon as practicable after the relevant facts come to his or her knowledge, disclose the nature of the interest to the Chair¹
- if the Chair has an interest in a matter being considered, or about to be considered, by the Commission, he or she must, as soon as practicable after the relevant facts come to his or her knowledge, disclose the nature of the interest to the Minister
- the Commission must make guidelines specifying the types of interests that a Commissioner must disclose for the purposes of this section
- the Commission must cause guidelines made under this section to be published on the Internet site of the Commission.

The purpose of section 21 is to ensure that interests are identified and addressed thoroughly and transparently. These requirements are in addition to the values that Commissioners as public officials are required to behave consistently with under the PA Act.

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

1.3.2 Relationship with the *Public Administration Act 2004* and the *Code of Conduct for Directors of Victorian Public Entities 2016*

The VCGLR is taken to be a public entity within the meaning of the PA Act. Accordingly, the Commission is taken to be a 'board' under the PA Act and each Commissioner of the VCGLR is considered to be a 'director' for the purposes of the PA Act. In performing their role, Commissioners are bound by the legislated requirements of the:

- Victorian public sector values under section 7 of the PA Act: responsiveness, integrity, impartiality, accountability, respect, leadership and human rights
- Duties of Directors under section 79 of the PA Act
- Code of Conduct for Directors of Victorian Public Entities 2016 (2016 Directors' Code of Conduct) 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.

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 VCGLR.

1.4 Application

This policy applies to all members of the Commission appointed under Part 2 of the VCGLR Act.

1.5 Date effective

This policy was originally approved by the Commission on 6 February 2012.

1.6 Date for review

This policy will be reviewed by the Commission by 30 June each year.

1.7 Responsible officer

The Chair is the responsible officer for conflict of interest oversight on behalf of the Commission.

2 Conflicts of interests

2.1 Definitions

- **Conflicts of interests** – a conflict of interest is a conflict between a Commissioner's public duty to act in the best interests of the VCGLR and his or her 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.
 - **Actual conflict of interest** – a real conflict between a Commissioner's public duties and responsibilities, and their private interests.
 - **Potential conflict of interest** – arises where a Commissioner has private interests that could conflict with their public duties in the future.
 - **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.
- **Private interests** – anything that can have an impact on an individual or group. This includes not only a Commissioner's own personal, professional, or business interests, but also the personal, professional, or business interests of individuals or groups with whom they are closely associated. This can include relatives, friends or competitors.
- **Consensual personal relationships** - a consensual personal relationship between a Commissioner and a close associate constitutes a potential conflict of interest and must be declared.

- **Pecuniary or non-pecuniary** -private interests can be divided into two types: pecuniary and non-pecuniary.
 - **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.
 - **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.
- **Public duty** – the duty of all Commissioners to put the public interest and the interest of the VCGLR above their private interests when carrying out their official duties.
- **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.

2.2 What types of interests should be disclosed?

The following provides a framework for identifying which interests should be disclosed under the VCGLR Act.

The VCGLR Act only requires a Commissioner to disclose an interest in a matter which:

- is being considered at a Commission meeting at which they are or will be attending
- or
- has been allocated to them for consideration outside a Commission meeting or for an inquiry (for instance, determining whether to grant a liquor licence application in their capacity as a single Commissioner).

The Commissioner does not need to disclose an interest if they are not involved in considering a matter.

Note: the test to be applied in determining whether an interest is one which needs be disclosed under section 21 is *whether a fair-minded lay observer might apprehend that the Commissioner might not bring an impartial mind to the consideration of the matter.*

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.

The list below provides some illustrations of the types of conflicts, which might arise, for Commissioners.

Please note: This list 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.

For the purposes of the illustrations provided, the term ‘a party to a/the matter’ may include a/an:

- applicant under gambling or liquor legislation
- licensee or permittee
- key operative
- bookmaker
- commercial raffle organiser

- objector to an application
- manager or employee of a regulated entity
- employee who must be licensed by the VCGLR
- representative of a local council
- member of Victoria Police
- nominee.

2.2.1 Types of Interests

Commissioners/Chair should disclose the following types of interests:

- holds a substantial number of shares in a company which is a party to the matter being considered
- holds 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
- controls and/or is directly associated professionally with a party to the matter being considered
- is a member of a committee of management for a club or unincorporated association linked with the matter being considered
- is contracted to or employed by a party to a matter or provided the information to the Commission in relation to the matter being considered
- has accepted an appointment at an organisation which is a party to or provided the information in relation to the matter being considered
- was contracted or employed within the previous two years at an organisation which is a party to a matter being considered
- has a personal relationship with a party to a matter or the provider of information in relation to the matter being considered
- stands to benefit in any material way from the decision
- a close family member stands to benefit in any material way from the decision
- spouse or partner holds a substantial number of shares in a company which is a party to the matter
- was contracted or employed more than two years ago at the same organisation as a party to a matter under consideration
- holds 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
- lives or owns property in close proximity to the location of the venue the subject of the application or the matter being considered
- is 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)
- holds shares in a publicly listed company which is a party to a matter being considered but has limited ability to influence the company, e.g. has received a general share allocation in a public company or the value of those shares will be unaffected by the decision
- has an informal or personal relationship with a party to a matter through an industry association or similar body
- lives or owns property in the same local government area as the venue the subject of an electronic gaming machine (EGM) application.

3 Principles

The Commission acts in accordance with its obligations and with good governance practice. Effective management of conflicts of interests is the shared responsibility of every Commissioner, and the legal duty of the Commission under the PA Act.

Commissioners will avoid conflicts of interest where possible. Where a conflict exists, it is declared and managed in the public interest.

A conflict of interest exists whether it is actual, potential, or perceived. The process for declaring and managing conflicts of interest is transparent, accountable, and consistent with the 2016 Directors' Code of Conduct.

The Commission fosters a culture of integrity. Commissioners are supported to raise their own conflicts of interest and to speak up if they believe that another Commissioner may have an undeclared conflict.

4 Disclosure of interests

4.1 Annual declaration of private interests

Commissioners must lodge an up-to-date Declaration of Private Interests form² with the Chair before, or as soon as practicable after, their commencement as a Commissioner.

All interests will be recorded on the VCGLR's Register of Interests (Appendix A), which will be maintained by the Chair.

The Declaration of Interests forms and the Register of Interests will be accessible by the Executive Coordinator (within the Legal Services Division), Registry Manager and the Chair.

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 VCGLR, and not for any other purpose.

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).

4.2 The Register of Interests

An up-to-date Register of Interests will be maintained which includes details of the private interests of each Commissioner that may give rise to a conflict of interest.

4.2.1 Confirmation at start of Commission meetings that the register is complete and correct

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.

4.2.2 Updating the register

The Chair will ensure that the Register of Interests is current and includes:

- all interests declared in all Declaration of Private Interests forms lodged by Commissioners
- any additional interests which have been declared and recorded in the minutes of a Commission meeting.

² Department of Premier and Cabinet - Appointment and Remuneration Guidelines for Victorian Government Boards Statutory Bodies and Advisory Committees.

4.3 How should an interest be disclosed?

4.3.1 Declaring conflicts at a meeting

In addition to checking whether the Register of Interests is current and correct, 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. 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. This is required even where the interest has already been declared by the Commissioner and is recorded in the Register of Interests.

4.3.2 Chair

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.

4.3.3 Declaring conflicts of interests on an ongoing basis

It is the VCGLR's policy that preventing conflicts of interests is the responsibility of every Commissioner. Therefore, Commissioners should:

- take responsibility for being aware whether or not they are conflicted in a particular matter (erring always on the side of caution)
- declare their interest at the earliest opportunity.

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.

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.

4.3.4 Checks prior to matter allocation

Before Commissioners are allocated matters for consideration, the VCGLR'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.

4.4 Options for managing a conflict of interest

The Commission will manage all conflicts of interest in the public interest. Options for managing a conflict of interest include:

- **Remove** – the Commissioner leaves the room and does not participate in the 'conflicted' matter in any way.
- **Reassign** - in the case of an inquiry or matter allocated to a Commissioner, the Chair will reassign the matter to another Commissioner for consideration.
- **Record** – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.
- **Refer** – in the case of an inquiry, 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.
- **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.
- **Recruit** – an impartial third party is engaged to provide advice (e.g. a probity adviser, lawyer).

- **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.

The process for determining which option is in the public interest is set out below.

4.5 Determining whether a conflict is material

If a conflict of interest is declared by a Commissioner, the Commission will use the following factors to determine whether the conflict is material³ and how to manage the conflict:

- The objectives and functions of the VCGLR.
- The matter that is to be discussed and determined by the Commission.
- The nature and extent of the conflict, including:
 - whether it is actual, potential or perceived
 - the amount, scope and likelihood of the expected benefit
 - the degree to which the interest could compromise, or reasonably be seen to compromise the Commissioner's ability to make an impartial decision.
- 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.

5 Managing conflicts of interest

5.1 Managing material conflicts of interest

The Commission's standard procedure for managing a material conflict of interest is to remove the Commissioner from all participation in the matter. Where the matter is being considered at a Commission meeting, the Commissioner will:

- leave the room at the start of the relevant agenda item and not return until the start of the next agenda item
- not discuss the matter in any way with any other Commissioner, either in the meeting or elsewhere
- not participate in any Commission decision on the matter.

Where the matter has been allocated to the Commissioner, they should notify the Chair and have the matter reassigned to another Commissioner for consideration.

The standard procedure will be followed unless the Commission determines and records in the minutes clear reasons why it is not in the public interest.

5.1.1 More stringent options for managing a material conflict

If the public could reasonably form the view that the conflict is of an unacceptable frequency and/or duration, then to maintain public confidence and protect the reputation of the organisation it may be necessary, in the **public interest**, for the Commissioner to:

- relinquish their private interest
 - resign or stand down on a temporary basis from the other organisation to which they have a duty
- or
- resign from the Commission.

³ Section 81(1)(f) of the PA Act requires that the board determine whether a conflict of interest in a matter is material.

5.1.2 Less stringent options for managing a material conflict

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.

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.

Examples of where a less stringent option may be in the public interest, taking into account all the relevant circumstances, include:

- **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.
- **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.⁴ (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.)

5.2 Managing non-material conflicts of interest

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).

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 Commissioner can participate in part of the discussion but must be removed from all decision-making on the matter).

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).

5.3 If a Commissioner discloses an interest, will the relevant parties be advised?

This depends on the facts of each case whether a Commissioner is required to disclose an interest to parties involved. 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.

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

It is recommended that the disclosure of interest should occur at the earliest possible opportunity.

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 VCGLR Act).

⁴ If this is a common occurrence, the Department of Justice and Regulation should be notified.

5.4 What if a party to a matter being considered is dissatisfied that a Commissioner is continuing to participate in the matter?

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.

Where an objection is raised to a Commissioner participating in a matter, the Commission should:

- 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
- 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.

Some decisions made by a single Commissioner are capable of being reviewed internally by the Commission (see for instance Division 2 of Part 9 of the *Liquor Control Reform Act 1998*).

Additionally, parties affected by a decision of the Commission may have a right of appeal of a decision of the VCGLR to the Supreme Court on a point of law under the *Gambling Regulation Act 2003* and the *Liquor Control Reform Act 1998*. Parties may also have a right of review under the *Administrative Law Act 1978*.

5.5 Decisions taken where a Commissioner has an interest

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.

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.

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:

- the nature and extent of the director's conflict
- whether the conflict was material
- the action the Commission will take to manage the conflict in the public interest
- if a less stringent option or more stringent option is to be taken, why it is in the public interest
- 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.

6 Breaches of this policy

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.

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.

If the Commission determines a breach has occurred, the Chair will notify the Minister and Secretary in writing as soon as practicable, including whether the breach relates to a material conflict of interest.⁵

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.⁶

⁵ These requirements are consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*.

⁶ If the matter concerns a possible breach by the Chair, it should be brought to the attention of a Deputy Chair.

7 Review history

The Commission reviewed the guidelines on 25 March 2013, 31 March 2014, 15 June 2015, 23 June 2016, 25 May 2017, 28 June 2018 and 27 June 2019

8 Appendices

