

# Code of Conduct for Directors of Victorian Public Entities 2024

This code is issued by the Victorian Public Sector Commission in accordance with sections 7 and 61 of the *Public Administration Act 2004*.

## Instrument

I, Brigid Monagle, Victorian Public Sector Commissioner, hereby issue the Code of Conduct for Directors of Victorian Public Entities 2024 (Directors' Code 2024).

The code is issued in accordance with sections 7 and 61 of the *Public Administration Act 2004* (the Act) in substitution of the previous Directors' Code issued on 29 March 2016.

I determine that the Directors' Code 2024 applies to and is binding on:

- all directors (board members) of public entities
- all other statutory office holders, as defined in section 4 of the Act, except:
  - statutory office holders of a special body
  - statutory office holders excluded by a specific declaration issued by the Victorian Public Sector Commissioner.

**This code takes effect on 1 March 2024.**



**Brigid Monagle**

Victorian Public Sector Commissioner

08/02/2024

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# Foreword

As the Victorian Public Sector Commissioner, I have a duty to issue codes of conduct under section 61 of the Public Administration Act 2004 that are based on, and promote adherence to, the public sector values.

The Directors' Code was last issued in 2016.

Part of my role includes amending and reissuing the Directors' Code to ensure that the binding obligations it places on directors (board members) of public entities are clear, relevant and protect the public interest.

It is vital that directors act – and be seen to act – in good faith in the best interests of the public entity that they govern on behalf of all Victorians.

This includes acting with integrity, honesty, fairness, due skill, care and diligence, and in an impartial and apolitical manner.

I recommend that directors, and other public officials to whom the Directors' Code 2024 applies, familiarise themselves with the code's requirements and discuss them with the other members of their board. Directors must comply with these requirements individually and collectively.

By following the Directors' Code 2024, directors will help to ensure that Victoria's public entities fulfill their functions in the best interests of the Victorian community they serve.

**Brigid Monagle**

Victorian Public Sector Commissioner

08/02/2024

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# Public sector values

Section 7 of the *Public Administration Act 2004* (the Act) sets out the public sector values, which the requirements in this code promote adherence to.

## Responsiveness

Public officials should demonstrate responsiveness by:

- providing frank, impartial and timely advice to the Government; and
- providing high quality services to the Victorian community; and
- identifying and promoting best practice.

## Integrity

Public officials should demonstrate integrity by:

- being honest, open and transparent in their dealings; and
- using powers responsibly; and
- reporting improper conduct; and
- avoiding any real or apparent conflicts of interest; and
- striving to earn and sustain public trust of a high level.

## Impartiality

Public officials should demonstrate impartiality by:

- making decisions and providing advice on merit and without bias, caprice, favouritism or self-interest; and
- acting fairly by objectively considering all relevant facts and fair criteria; and
- implementing Government policies and programs equitably.

## Accountability

Public officials should demonstrate accountability by:

- working to clear objectives in a transparent manner; and
- accepting responsibility for their decisions and actions; and
- seeking to achieve best use of resources; and
- submitting themselves to appropriate scrutiny.

## **Respect**

Public officials should demonstrate respect for colleagues, other public officials and members of the Victorian community by:

- treating them fairly and objectively; and
- ensuring freedom from discrimination, harassment and bullying; and
- using their views to improve outcomes on an ongoing basis.

## **Leadership**

Public officials should demonstrate leadership by actively implementing, promoting and supporting these values.

## **Human rights**

Public officials should respect and promote the human rights set out in the Charter of Human Rights and Responsibilities by:

- making decisions and providing advice consistent with human rights; and
  - actively implementing, promoting and supporting human rights.
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# 1. Introduction

## 1.1 Purpose of the code

The requirements in this code promote adherence to the public sector values in section 7 of the *Public Administration Act 2004* (the Act).

The code sets standards of behaviour for:

- all directors (board members) of public entities
- all other statutory office holders, as defined in section 4 of the Act, except:
  - statutory office holders of a special body
  - statutory office holders excluded by a specific declaration issued by the Victorian Public Sector Commissioner.

These standards of behaviour apply to the director or other statutory office holder from the date of their appointment.

### Terms used

In this Code, the term 'director' refers to directors and, to the extent applicable, other statutory office holders as described above.

## 1.2 Other obligations and guidance

Other conduct requirements may also apply to directors – for example other requirements in:

- the *Public Administration Act 2004*
- other relevant legislation
- the public entity's establishing documentation (such as establishing Act or Terms of Reference)
- the board's policies
- a policy or procedure of the public entity.

### Seek advice if unsure

Directors who are unsure of the appropriate action to take in a situation should seek advice from their chairperson.

The chairperson may seek advice from the Secretary of the portfolio department and/or the Minister, as appropriate in the circumstances.

## 1.3 Professional codes of conduct

Certain professions have professional codes of conduct that establish specific behaviours relevant to that profession.

The Directors' Code 2024 should be read by directors in conjunction with any professional conduct code that applies to them.

A breach of a professional code may affect:

- the capacity of the director to continue to act in that profession
- the ability of the director to undertake duties as a board member.

However, a breach of the Directors' Code 2024, and any sanctions arising, can only be determined in accordance with procedures established for this code.

## 1.4 Breach of this code

Directors must familiarise themselves with this code.

A failure to comply with the requirements of this code may amount to misconduct. In the most serious cases, this may lead to suspension or removal from office.

In addition, a director who improperly uses their position to gain advantage for themselves or someone else, or to cause detriment to the public entity, will be liable for their actions under both civil and criminal law.

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## 2. Board

Directors are members of the board of the public entity. The board is the governing body. As such, directors have both individual and collective responsibilities.

This part of the code outlines the behaviours required of the collective board.

### 2.1 Leadership and stewardship

The board safeguards and oversees the management of the public entity.

It must ensure that the entity:

- fulfils its purpose and functions
- operates within the limits of its powers and functions.

The board must ensure appropriate arrangements are in place to meet the entity's legal and policy obligations.

For example, it must ensure information is provided to the department and the Minister in accordance with the Act and this code.

Examples of the board's leadership and stewardship role include:

- setting the entity's strategic direction (the board does not usually manage day to day operations)
- oversight of risk and compliance activities
- oversight of the entity's reputation and intellectual capital
- maintaining a direct and effective relationship with the Minister through the chairperson (and with other key stakeholders as designated by the board).

### 2.2 Board authority and delegation

The board must ensure that the necessary delegations are in place.

It should also ensure that matters reserved for the board are clearly identified.

#### **Act within power**

The board must only make decisions within its power.

This is a fundamental restriction which the board must comply with.

At times, the board may wish to do something that is not authorised under the public entity's establishing documentation (for example, establishing Act or Terms of Reference).

Even if what is proposed would be in the public interest and consistent with the entity's objectives, the board must not act beyond its power.

One possible solution could be to contact the department or the Minister. The Minister may be able to issue directions to facilitate the action or may consider potential legislative change.



## Accountability

The board is accountable for the actions of its delegates and sub-committees.

Directors of a sub-committee who are delegated to consider a matter cannot lawfully delegate that power or function to any other individual or body unless the law expressly authorises such delegation.

## 2.3 Best interests of the public entity

The board must act in the best interests of the public entity.

In doing so, it must act in accordance with the entity's objectives, functions and powers.

It should also act consistently with any business or strategic plan or other document relevant to its work program.

## 2.4 Risk management and financial responsibility

The board plays an important role in overseeing the management of risks faced by a public entity. As part of this role, the board must:

- inform the portfolio department and Minister of known major risks to the effective operation of the entity and of the processes in place to address those risks
- ensure adequate controls are in place to prevent fraudulent behaviour
- ensure the entity's financial management system is adequate and designed to minimise processes that can lead to errors
- ensure financial statements or accounts are audited at regular intervals.

## 2.5 Conflicts of interest (including duty)

If a director has a conflict of interest, for example a conflict of duty, the board must manage the conflict in the public interest, consistent with its conflict of interest policy.

### Recording in minutes

If a director has a conflict in relation to an item on the agenda this must be declared and recorded in the minutes of the meeting, even if it has been previously declared. The board's decision on how to manage the conflict must also be recorded in the minutes.

### Material breach of policy

If there is a breach of the board's conflict of interest policy in relation to a material (serious) conflict, the board must notify the Minister in writing as soon as practicable.

## **No loans or guarantees**

The board must not make loans or give guarantees to provide security for loans or other undertaking to directors or their families or associates.

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## 3. Directors

### 3.1 Duties of the chairperson

The chairperson or their properly appointed delegate must preside at meetings of the board.

The chairperson should ensure all directors have ready access to up-to-date copies of relevant legislation, policies and procedures.

#### Major risks

The chairperson must advise the Minister and the department of:

- known major risks to the effective operation of the entity, and
- the management systems in place to address those risks.

### 3.2 Leadership and stewardship

Directors should promote the public sector values to employees through their exemplary behaviour.

In doing so, they should encourage a strong culture of accountability where:

- issues are raised early
- board decisions are implemented in a timely manner
- people operate within their delegated authority and cooperate with one another.

### 3.3 Compliance with establishing documents, government policies and ministerial directions

Directors must comply with the legislation, ministerial charter, constitution, terms of reference and/or other document under which the public entity was established.

They must also comply with any government policies and priorities and with any lawful ministerial directions that affect the entity.

#### Board performance

Directors must comply with the relevant policies and procedures of the entity.

The board must also develop and comply with policies that apply specifically to the board, including those relating to:

- assessing the board's collective performance
- assessing the performance of individual directors

- dealing with poor performance by directors
- resolving disputes between directors
- dealing with conflicts of interest
- dealing with gifts offers
- conducting meetings, making decisions and keeping appropriate records.

## 3.4 Care, diligence and skill

Directors must exercise their powers with a reasonable degree of care, diligence and skill.

They must:

- regularly attend board meetings
- understand the business of the public entity and the role of the board
- act responsibly in the best interests of the public entity when considering matters before the board.

### Board decisions

Directors must:

- be actively involved in matters before the board
- consider the financial, strategic and other implications of proposed decisions
- take reasonable steps to seek and consider all relevant information
- ignore irrelevant information
- base their decisions on the best information available at the time, seeking further information if necessary
- ask questions if they need clarification about a matter before the board
- accept responsibility for their actions and decisions.

Directors should be professional and respectful in their dealings with the other members of their board.

Directors may ask management for detailed briefings on the public entity's business to inform strategic planning and risk minimisation.

## 3.5 Best interests of the public entity

Directors must act in good faith in the best interests of the public entity. This requirement applies at all times, not just at board meetings.

They must be objective in board discussions and decisions.

They must not allow their personal or professional interests or relationships to influence their judgement.

Directors must not join a board if they consider that the impartiality of their decisions may be compromised or would reasonably be perceived to be compromised.

## Conduct as board members

Directors must behave in a way that reflects well on their standing as a board member and on the public's trust in the public entity. This is the responsibility of each director.

The chairperson should:

- model good practice
- provide guidance to board members on standards of conduct.

In doing so, they can seek support from the department or the Minister, as appropriate.

## 3.6 Proper use of position

Directors must only use their position to promote the best interests of the public entity.

They must not:

- use their position to seek an advantage for themselves or another person or to cause detriment to the public entity
- seek gifts or favours for themselves, members of their family or other close personal or business associates
- accept gifts or favours that may cast doubt on their ability to apply independent judgement.

## 3.7 Proper use of information

Directors must only use the information they gain in the course of their board duties for its intended purpose.

They must not use the information, including privileged information or commercially sensitive information, to:

- obtain an advantage for themselves or another person, or
- cause detriment to the public entity.

## Privacy and confidentiality

Directors must only disclose official information or documents:

- in the legitimate course of duty when proper authority exists
- when called to give evidence in court, or
- when required to do so by law.

In addition, when making public comment directors must not express their personal opinion on official policy or practice.

They must respect confidentiality and use their discretion, prudence and good judgement when deciding how to treat information in a manner that is consistent with their authority and the board's position.

Directors should be well informed about privacy and freedom of information laws.

Former directors will generally have ongoing confidentiality obligations even when they are no longer members of the board.

## **Alleged corrupt behaviour**

Nothing in this code prevents a director who believes that corrupt or improper conduct is occurring from making a complaint directly to the Independent Broad-based Anti-corruption Commission (IBAC) or the Victorian Ombudsman. Sometimes this can occur on a whistleblower basis as a public interest disclosure.

## **3.8 Standing for election**

Directors must notify the board if they become a candidate for an election in any state, local or federal election.

They must not use the public entity's resources in connection with their candidature.

## **3.9 Fairness and impartiality**

Directors must act fairly and impartially.

When participating in board deliberations and decisions they must:

- behave in a manner that is free of favouritism and self-interest
- take reasonable care to consider all relevant facts objectively.

Directors must also implement policies and programs equitably.

## **Treatment of others in the course of their public duties**

When performing their board duties, directors must:

- not engage in discrimination
- respect human rights
- foster a culture that is free of intimidation and bullying
- foster a culture that supports diversity, equality and inclusion.

They should also be professional and respectful in their treatment of others, including other board members.

## 3.10 Financial responsibility

Directors must act in a financially responsible manner. They must exercise care in relation to public funds and assets and, if applicable, comply with:

- the Standing Directions of the Minister and the related Instructions
- the Financial Management Compliance Framework.

Directors must:

- demonstrate due diligence through active monitoring of the public entity's financial accounts and financial position
- regularly review financial statements and management reports
- ask questions about the financial material put before the board, if that material is unclear or raises matters that may be of concern from a financial perspective
- understand the financial justification for decisions taken by the board
- vote to record their disagreement if they do not believe the financial implications are sufficiently clear or if a board resolution has financial implications that they consider imprudent.

## 3.11 Honesty and integrity

Directors must act with honesty and integrity.

As part of this requirement, they must:

- comply with laws, policies and generally accepted standards of behaviour
- give proper consideration to matters before the board
- express their views genuinely and make a reasonable effort to do so clearly and without ambiguity
- speak up when a decision or advice is being considered that may be detrimental to the public interest and vote to record their view.

Directors should also:

- be open and transparent in their dealings
- disclose to the board the information or considerations they relied upon in coming to their view if this will assist the board's decision-making.

## 3.12 Conflicts of interest (including duty)

Directors must comply with the board's policy on managing conflicts of interest, including conflicts of duty.

Where possible, they should avoid any actual, potential or perceived conflicts.

If a conflict of interest arises it must be declared so that it can be managed by the board in the public interest.

## Declaration of Private Interests (DOPI)

Directors must:

- make an annual declaration in accordance with the DOPI requirements that apply to directors of their public entity
- update this declaration when they are appointed to a new role, their circumstances change, or before they consider matters that may affect their private interests.

## Conflicts with agenda items

At the start of each board meeting, directors must:

- confirm that their entries in the register of interests are complete and correct
- declare any interests that relate to particular agenda items, even if previously declared
- comply with the board's decision on how the conflict is to be managed consistent with the board's conflict of interest policy.

## Nominees must act in best interest of the public entity

Directors who are appointed to boards after having been nominated by industry groups, other government agencies or stakeholders must act in the best interests of the public entity.

## 3.13 Restrictions on past or present lobbying activity by directors

Additional requirements in relation to conflict of interest apply if a director is or has been engaged in lobbying activities in Victoria or elsewhere that **may relate to the public entity**.

Lobbying activity is defined in the [Victorian Government Professional Lobbyist Code of Conduct](#).

### Current lobbying activity

A director:

- must not engage in any lobbying activity (including activities undertaken in other jurisdictions) that **may relate to the functions of the public entity**
- must confirm at the start of each board meeting that they are not engaged in any such activity.

### Previous lobbying activity



If a director was previously engaged in lobbying activities that **may relate to the functions of the public entity** (including activities undertaken in other jurisdictions) these must be declared as soon as practicable.

This applies whether the director engaged in the lobbying activity:

- prior to their appointment to the board, or
- prior to the commencement of item 3.13 on the date this code commenced.

## Items of the meeting agenda

Any such previous lobbying activity that relates to a matter on the board's meeting agenda must be declared by the director at the start of the meeting, even if the interest has previously been declared.

## Conflict of interest

The board will determine if any interest declared by a director is a conflict of interest and, if so, how it is to be managed in accordance with the board's conflict of interest policy.

## Requirements extend to board committees and sub committees

These requirements in item 3.13 extend to the board's committees and sub committees.

## General integrity requirements still apply

The above requirements (item 3.13) are additional to those that apply to all directors. For example, the general integrity requirements in this code, including:

- acting in the best interest of the public entity (item 3.5)
  - proper use of position (item 3.6)
  - proper use of information (item 3.7)
  - conflicts of interest and duty (item 3.12).
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