



Conflict of Interest (COI) Procedure – SRLA Board

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1. Purpose

This procedure sets out the process for declaring and managing conflicts of interest by Board members (Chairperson and Directors) of the *Suburban Rail Loop Authority* (SRLA).

The purpose of this procedure is to protect both SRLA and SRLA Board members from any appearance of impropriety.

Conflicts of interest may arise where a Director's personal, family, or private interests, loyalties, or commitments conflict with those of SRLA.

Such conflicts create problems, in that they may:

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

2. Scope

This procedure always applies to all Directors in the performance of their duties.

In this procedure, the term 'conflict of interest' is used to cover both '*conflicts of interest*' and '*conflicts of duty*'. These terms are explained in Section 3 – Definitions.

Obligation of good practice

The SRLA Board will act in accordance with its obligations and with good public sector governance practice, including:

- the *Suburban Rail Loop Act 2021* (SRLA Act) and terms of reference;
- the *Code of Conduct for Directors of Victorian Public Entities* issued by the Victorian Public Sector Commission (VPSC);
- the duties of Directors in section 79 of the *Public Administration Act 2004* (PAA);
- the public sector values in section 7 of the PAA, particularly section 7(1)(b)(iv) that any real or apparent conflicts of interest are avoided;
- the requirement in section 81(1)(f) of the PAA that processes be in place for dealing with conflicts of interest;
- any direction, guideline or statement of obligations or expectations issued by the Minister;
- government policy; and
- all other laws and obligations that bind the SRLA.

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3. Definitions

Term	Definition
Conflict of interest	<p>A conflict of interest is a conflict between a Director’s public duty to act in the best interests of the SRLA and their private interests.</p> <p>Conflicts of interest can be:</p> <ul style="list-style-type: none"> • Actual: There is a real and current conflict between your private interests and performing your role for or on behalf of SRLA. • Potential: Your private interests could conflict with your current or future duties for or on behalf of SRLA. This refers to circumstances where it is foreseeable that a conflict may arise in the future and steps should be taken now to mitigate that future risk. • Perceived: The public or a third party could reasonably form the view that your private interests could improperly influence your decisions or actions for or on behalf of SRLA, now or in the future.
Conflict of duty	<p>A conflict of duty (also known as a conflict of role) is a conflict of interest that can occur even if a Director does not have any private interest at stake. It is a conflict between a Director’s:</p> <ul style="list-style-type: none"> • public duty to act in the best interests of the SRLA; and • their duty to another public or private sector organisation. It exists due to the Director’s role with the other organisation (e.g. as a committee member, employee, volunteer or organisation member). <p>These conflicts may arise because of their membership of multiple Boards and are particularly acute for Directors appointed as ‘representatives’ of particular interest groups, membership of a profession or employment in the public service.</p> <p>Conflicts of duty, being a type of conflict of interest, may also be actual, potential or perceived.</p>

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Types of private interests that could constitute a conflict of interest	
Consensual personal relationships	A consensual personal relationship between a Director and a close associate is a private interest that could constitute a potential conflict of interest and must be declared.
Direct or indirect private interest	<p>A private interest can be direct or indirect. A direct interest is held by the director. An indirect interest is held by a relative or close associate of the director, for example:</p> <ul style="list-style-type: none"> • an immediate family member (e.g. spouse, partner, child, parent, sibling); • a regular household member (i.e. someone who normally resides with the director); or • another close associate (e.g. friend, relative, business associate, rival, enemy).
Non-pecuniary interests	Non-pecuniary (non-financial) interests – may arise from personal or family relationships, or from involvement in sporting, social, or cultural activities, etc. They may result in prejudice because of friendship, animosity, or other personal involvement with another person or group. If personal values are likely to affect the proper performance of a Director’s public duty, then this can lead to a conflict of interest. Enmity as well as friendship can give rise to a conflict of interest.
Pecuniary interests	<p>Pecuniary (financial) interests – include actual, potential, or perceived financial gain or loss.</p> <p>Money does not need to change hands. The interest exists if the Director (or a relative or close associate):</p> <ul style="list-style-type: none"> • owns property; • holds shares, investments or other business interests; • has a position in a company bidding for government work; • receives benefits such as concessions, discounts, gifts or hospitality from a source; • holds office in a corporation (public, private or trustee), incorporated association or other entity; or • has any other relevant financial interest, for example: <ul style="list-style-type: none"> ○ is entitled to receive income derived from a contract; ○ is a beneficiary or trustee of a trust; or ○ is entitled to receive income from an office held for payment or reward, or a trade, vocation or profession.

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4. Procedure Requirements

1.1 Key Principles

The key principles underlying this procedure are as follows:

- **Obligations and good practice:** The SRLA Board acts in accordance with its 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 with the *Code of Conduct for Directors of Victorian Public Entities*.
- **Culture of integrity:** The SRLA Board fosters a culture of integrity. Directors are supported to raise their own conflicts of interest and to speak up if they believe that another Director may have an undeclared conflict.

1.2 Annual declaration of private interests

Upon appointment or reappointment to the SRLA Board, each Board member will lodge a declaration of private interests (Directors to lodge for approval with the Chairperson; Chairperson to lodge for approval with the EGM, Corporate Services (COO)). The Board Chairperson will ensure that the information is recorded in the *Register of Interests* and handled in accordance with the *Privacy and Data Protection Act 2014* and the *Public Records Act 1973*.

In line with whole of Victorian Government requirements, Board members will update their declaration **annually**. If a Board member's circumstances change in the meantime, they will lodge an updated declaration (unless the change is already adequately recorded in the register because of a declaration made at a Board meeting).

1.3 Register of interests

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

The SRLA Board Chairperson will have access to the Register of Interests for reference at each Board meeting¹. At the start of the meeting, the SRLA Board Chairperson will ask all Board members to declare any conflicts of interest, and:

- Any conflict of interest declarations are to be noted in the Board meeting minutes for entry into the Register of Interests.
- If there are no conflict of interest declarations, the minutes will note that all Directors present affirmed that their entry in the register of interests remains complete and correct.

¹ Like other documents produced by the Board (e.g. minutes of Board meetings), the register is a public document. However, this does not mean that it is automatically 'open to the public'. Unless the SRLA Board agrees, a member of the public who wants to see the register would need to lodge an application under the *Freedom of Information Act*. If this occurs, SRLA's General Counsel can provide advice and assist to assess whether the register is exempt from disclosure under the Act.

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When declaring an interest, Board members should include 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 (i.e. a Board member informs the Chairperson out of session or the COO in the case of the Chairperson).

Updating the Register

The SRLA Board Chairperson will review the Register of Interests to ensure that it is current and includes:

- all interests declared in all declarations of private interests lodged by Board members; and
- any additional interests which have been declared and recorded in the minutes of a SRLA Board meeting.

1.4 Declaring conflicts of interests during meetings

A Director who becomes aware during the meeting that they have an undeclared interest must declare it immediately.

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

1.5 Options for managing a conflict of interest

The SRLA Board will manage all conflicts of interest in the public interest.

Options for managing a conflict of interest include:

Remove – the Director temporarily leaves the meeting and does not participate at all in the ‘conflicted’ matter.

Record – details of the conflict of interest are recorded in the minutes. Monitoring occurs to check whether this remains the appropriate option.

Restrict – the Director’s involvement in discussion 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, or governance expert in consultation with SRLA’s General Counsel or Director of Integrity & Assurance.

Relinquish or resign – the Director relinquishes their private interest or steps down from their role with the other organisation on a temporary or permanent basis. Alternatively, the Director resigns from the SRLA Board itself.

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1.6 Is the conflict material?

When deciding how to manage a conflict of interest, the SRLA Board will determine whether the conflict is material.² In doing so, the SRLA Board will consider all the relevant factors and circumstances, including (but not limited to):

- the objectives and functions of the SRLA;
- the matter that is to be discussed and determined by the SRLA Board;
- the **nature** of the conflict (i.e. is it real, potential, or perceived?);
- the **severity** of the conflict, including:
 - the amount, scope, and likelihood of any expected benefit (e.g. is it a large benefit primarily to the Director or a small benefit that thousands of people including the Director will receive?);
 - any other relevant circumstances (e.g. if the conflict relates to a SRLA Board decision about an organisation where the Director's partner works. Is the partner the current CEO or is his or her work unconnected to the decision being made?);
- the **potential effect** of the conflict, including:
 - the extent to which the Director's ability to make an impartial decision in the public interest could be compromised (or could reasonably be seen to be compromised); and
 - the overall likelihood that the conflict of interest may affect public confidence in the integrity of the Board and its decisions.

1.7 Managing material conflicts of interests

The SRLA Board's **standard procedure** for managing a material conflict of interest is to **remove** the Board member from all participation in the matter. The Board member will:

- leave the meeting at the start of the relevant agenda item and not return until the start of the next agenda item;
- not discuss the matter at all with any other Board member (either in the meeting or elsewhere); and
- not participate in any Board decision on the matter.

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

More stringent options for managing a material conflict

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

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

² Determining whether a conflict of interest is material is consistent with the requirements of s 81(1)(f) of the *Public Administration Act 2004*

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- resign from the SRLA Board.

If the SRLA Board is unsure whether a more stringent option is in the public interest SRLA's General Counsel or Director of Integrity & Assurance may be contacted for advice.

Less stringent options for managing a material conflict

A less stringent option (i.e. record, restrict or review) will not usually be in the public interest for managing material conflicts of interest. If the SRLA Board is unsure whether a less stringent option is in the public interest the Board will err on the side of caution.

If the SRLA Board decides on a less stringent option then, in addition to recording in the minutes 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, considering all the relevant circumstances, include:

- **Discussion:** If the 'conflicted' Director was appointed based on their knowledge of the matter, it may be in the public interest for them to be present for part of the SRLA Board's discussion. (However, if an 'un-conflicted' director 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 'un-conflicted' Directors are present, then a less stringent option would be in the public interest.³ (However, if 'un-conflicted' Directors are absent then it would usually be in the public interest for the decision to be held over to the next Board meeting instead.)

1.8 Managing non-material conflicts of interest

For a **non-material** conflict of interest, there is more likelihood that a less stringent option (i.e. record, restrict or review) will be in the public interest. In making its decision, the SRLA Board will consider 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 SRLA Board 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 SRLA Board may initially determine to only record the conflict but after monitoring may decide instead that the Director can participate in part of the discussion but must be removed from all decision making on the matter).

If the SRLA Board is unsure whether a less stringent option is in the public interest it will err on the side of caution and decide that the Director be **removed** from the room and not participate in any discussion or decision making on the matter).

³ If this is a common occurrence, the relevant portfolio department should be notified.

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1.9 Recording in minutes

If a Director declares a conflict of interest, the following information must 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 SRLA Board will take to manage the conflict in the public interest;
- why the chosen action is in the public interest; and
- if the Director leaves the room during discussion or decision making on the 'conflicted' matter, the time that they leave and returns and the item (or part of the item) for which they were absent.

1.10 Breach of this procedure

A Director who may have breached this procedure must notify the SRLA Board Chairperson immediately. If the SRLA Board Chairperson is of the view that a breach has not occurred, the SRLA Board will determine at the next scheduled SRLA Board meeting, and record in the minutes, whether a breach has occurred.

If the SRLA Board Chairperson is of the view that a breach has occurred, they will arrange for the SRLA Board to determine on an urgent basis, and record in the minutes, whether a breach has occurred. If a breach has occurred, the SRLA Board Chairperson will notify the Minister in writing as soon as practicable, including whether the breach relates to a material conflict of interest.⁴

A Director who believes that another Director may have breached this procedure but not yet notified the SRLA Board Chairperson will bring this to the attention of the SRLA Board Chairperson or will approach the other Director, who will then notify the SRLA Board Chairperson.⁵

1.11 Regular review of this procedure

The Board must review this procedure on an annual basis or more frequently, if required, to keep up-to-date with changes to laws, government policy, etc.

⁴ These requirements are consistent with s 81(1)(b) and (f) of the *Public Administration Act 2004*.

⁵ If the matter concerns a possible breach by the SRLA Board Chair, it should be brought to the attention of the Deputy Board Chair or Director nominated by the SRLA Board to assist the SRLA Board Chairperson with conflict of interest queries.

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5. Related documents

Document Type	Reference
Relevant Legislation	<i>Privacy and Data Protection Act 2014 (Vic)</i> <i>Public Records Act 1973 (Vic)</i> <i>Public Administration Act 2004 (Vic)</i> <i>Suburban Rail Loop Act 2021 (Vic)</i>
External Policy Documents and Standards	Code of Conduct for Directors of Victorian Public Entities
Relevant SRLA Policy	Governance and Integrity Policy
Related and Supporting Documents	Governance and Integrity Policy Documents
Please see the SRLA Policies and Supporting Documents Intranet page for links to SRLA's approved policies and supporting documents	

6. Document control

Procedure	Conflict of Interest (COI) Procedure – SRLA Board
Issuing Division & Branch	Corporate Services, Integrity and Assurance Branch
Enquires/Contact	Rudy Monteleone, Director, Integrity and Assurance Branch
Accountable Officer	Rudy Monteleone, Director, Integrity and Assurance Branch
Sponsor	Jennifer Gale, Executive General Manager, Corporate Services
Approved by	SRLA Board
Date approved	1 December 2021
Review Date	1 December 2023
Last reviewed	N/A
Version	1.0
Summary of changes to latest version	First version, developed for SRLA Board