

Section 5 – Code of conduct and ethics for RDA governing body members and Personnel

5.1 Introduction

RDA governing body members and personnel are required to be people of good character who reflect accepted standards of behaviour. They need to be open, honest and accountable, and to act in good faith. RDA governing body members and personnel need to be aware of the responsibilities attached to their roles.

The obligations outlined in this section of the Guide (**Code**) are in addition to, and do not replace, limit or modify obligations which are applicable to RDAs or their staff under applicable state or territory incorporated associations legislation.

It is the responsibility of each RDA to be familiar with their Code of conduct obligations under this Guide and the legal requirements in their jurisdiction.

5.2 Application

Compliance with this Code is mandatory for RDAs under Clause 18.1 (Clause 16.1 IOT RDO and Victorian Funding Agreements) of the Funding Agreement. In addition, RDAs must, under Clause 2.3(g) ensure that their governance documents and internal management practices give effect to its obligations under the Funding Agreement. Accordingly, RDAs must put in place procedures to ensure that governing body members and personnel adhere to the obligations in this Code. This may include referring to or including the Code in employment contracts, volunteer deeds/agreements, or internal policies of the organisation.

5.3 Principles

RDA governing body members and personnel are to always act in the best interests of the community in their dealings with government agencies, the business sector, other organisations and individuals by:

- being honest and exercising all due care and diligence in the performance of their duties and functions
- maintaining the confidentiality of information made available in the course of their duties and of RDA decisions
- never making improper use of their position, or the information gained through that position, to the unfair advantage of themselves or any other person
- never taking any course of action that would bring into disrepute or otherwise disadvantage the RDA, the Department or the Australian Government, the relevant state or territory government Department, the relevant state or territory minister responsible for regional development or local government in the RDA region
- disclosing any material or personal interest in RDA or regional economic development matters, and subsequently abstaining from any discussion or vote on those issues
- being bound by, and committed to, decisions legitimately taken by the RDA, whether or not they agree with the decision
- demonstrating loyalty to the public interest and to the standards set out in the Funding Agreement and this Guide

- providing authorised persons, fellow governing body members and auditors when asked with complete, accurate and correct information, which is not misleading in any respect
- complying with relevant laws.

Victorian RDA employees

Employees of the 6 Victorian RDAs are required to comply with the [Code of Conduct for Victorian public sector employees](#).

5.4 Personal and professional behaviour

Governing body members and personnel of a must perform their duties diligently, impartially and conscientiously to the best of their ability. Governing body members and personnel of an RDA must comply with all relevant state or territory and Commonwealth legislation. In particular, RDAs must provide a workplace that safeguards the health and safety of personnel, and is free from discrimination, bullying and harassment.

5.5 Fairness and equity

It is important that principles of fairness and equity are both complied with and are seen to be complied with by the Governing body members and personnel of an RDA.

These principles are:

- taking all relevant information into consideration and not taking any irrelevant information or opinion into consideration
- dealing with like situations in a consistent and fair manner, but treating each matter on its merits
- acting in a reasonable, just and non-discriminatory manner
- taking all reasonable steps to ensure that the information upon which decisions or actions are based is factually correct
- only acting for proper and relevant purposes, and on proper and relevant grounds
- operating in a transparent manner and allowing equal access for the community to contribute and access services.

5.6 Use of information

Information provided to an RDA may come with the understanding that it will be treated as confidential, commercial-in-confidence and/or sensitive. It is important to ensure the integrity and security of official documents for which Governing body members and personnel of an RDA are responsible and to respect the rights of the providers of information. In accordance with the Confidentiality Clause of the Funding Agreement {Clause 14 (Clause 12 of the IOT RDO Funding Agreement, Clause 13 of the Victorian Funding Agreement)}, RDAs should not disclose Confidential Information.

Confidential Information must only be released in accordance with Clause 14 (Clause 12 of the IOT RDO Funding Agreement, Clause 13 of the Victorian Funding Agreement), of the Funding Agreement.

5.7 Conditions of RDA governing body membership and employment

RDA governing body members are expected to represent their RDA's interests in the region, rather than those of any particular organisation(s), business or local council, and must be available to participate in RDA meetings and activities.

RDA governing body members and employees must:

- not tender for consultancy or contract work for or on behalf of the RDA (unless an exceptional case has been made to do so as provided in Section 5.7.5)
- comply with the relevant state or territory associations' incorporation legislation, and the conditions stipulated by the Department and the relevant state or territory government Department in the Funding Agreement(s) with the RDA regarding the allocation of administration and/or project funds
- be people of good character who reflect accepted standards of community behaviour. This includes, but is not limited to, not having a civil or criminal conviction punishable by a period of imprisonment and not being an undischarged bankrupt.

5.8 Conflict of interest

5.8.1 Overview

Conflict of interest is one of the most important governance issues for RDAs. As recipients of Australian Government funds, it is essential that RDAs undertake their activities in a fair, non-biased and apolitical manner, without actual or perceived conflicts of interest in their decision-making.

As some conflicts of interest may be unavoidable, RDAs need to manage all conflicts of interest within an ethical, open and transparent framework that requires the Chair, Deputy Chair, governing body members and personnel to act with integrity, impartiality, good faith and in the best interests of the RDA at all times.

Transparency is fundamental to the principles of good governance and managing conflicts of interest. RDAs should build an ethical culture by consistently requiring conflicts of interest to be identified, recorded and dealt with properly.

The Funding Agreement requires RDAs to take all reasonable steps to identify any conflicts of interest and to maintain a register of these. Declaration of conflicts of interest should be a standing item on all RDA meeting agendas, and should appear on the agenda prior to the discussion on any substantive issues.

5.8.2 Conflict definition

A conflict is defined in Clause 1 of the Funding Agreement as “an actual, potential or perceived conflict of interest arising through [the RDA, a governing body member or personnel] engaging in any activity or obtaining any interest that is likely to or has potential to conflict with or restrict [the RDA] in engaging in the [activity] fairly and independently”. When assessing conflicts of interest, the RDA should always take a conservative approach and carefully consider the perception of a conflict by the general public. The test should always be: *Could a member of the community, on the face of it and with limited information, consider the matter to be a conflict of interest?*

5.8.3 Identifying a conflict of interest

A conflict of interest arises when a Chair, Deputy Chair, governing body member or personnel:

- has a personal, business, or financial interest that could be considered to influence their work with the RDA, their contribution to debates by the RDA, and/or decisions taken by the RDA
- uses information and/or contacts gained through working in a professional capacity for the RDA to benefit their own personal business interests in any way, or inform other organisations that they are involved with outside the RDA where those organisations could benefit directly or indirectly from the information.

Conflicts of interest can be direct or indirect, for example:

- the Chair, Deputy Chair, governing body member/s or personnel owning or having an interest in a business that is under consideration to provide goods or services to an RDA
- a close family member being employed by an organisation applying for support for a project
- the Chair, Deputy Chair, governing body member/s or personnel participating in a decision that results in their gaining an economic or financial benefit or a non-financial benefit, such as a gift being given to the individual involved in making the decision
- the RDA employs a partner, relative or close friend of an RDA governing body member or personnel, who is then responsible for approving benefits such as reimbursement of travel or salary increase for that person
- progressing personal business or personal business relationships through the course of RDA professional business
- the Chair, Deputy Chair or governing body member/s working in the office of an elected representative of the federal or state parliament, where their access to RDA information could be seen by the public to give the elected representative unfair access to RDA resources and influence over RDA decision making.

RDAs should contact their RDA Liaison Officer if they have any questions about conflict of interest arrangements or whether a particular activity may constitute a conflict.

5.8.4 Disclosing a conflict of interest

RDAs must have clearly documented principles and procedures for handling conflicts of interest, consistent with their constitution, the Funding Agreement and this Guide. In addition, declaration of conflicts of interest should be a standing agenda item for all RDA and sub-RDA meetings.

If, while performing RDA business, the Chair believes that they have a conflict or potential conflict of interest, they must disclose the nature of the conflict to the RDA. Similarly, the Deputy Chair, governing body members or personnel must disclose any real, perceived or potential conflict to the Chair of their RDA as soon as that conflict or potential conflict becomes apparent. Such declarations should be made immediately after the RDA has received the agenda and papers for its next meeting.

The interests of immediate family members and close associates need also be disclosed to the extent that they are known and could be considered to lead to a conflict of interest. All disclosures, discussions and decisions on conflicts of interest must be recorded in the minutes of the relevant RDA meeting.

If a situation arises where any governing body member of the RDA (or any personnel) believes that there is an undisclosed conflict or potential conflict of interest relevant to an RDA governing body member, the matter will, in the first instance, be raised with the party who may be conflicted. Such a discussion should be sufficient to suggest that a potential conflict exists and the matter then be listed for discussion by the RDA at its next meeting. If doubt continues to exist, the matter is to be raised with the Chair or with the Department if related to the Chair.

Following disclosure, the remaining RDA governing body members must determine whether or not there is a conflict of interest. Where it is determined that a conflict of interest exists, or may be perceived to exist, the RDA must determine a course of action which ensures that any subsequent decisions and/or actions are, and are seen to be, free of undue influence or bias.

In doing this, the RDA should refer to its constitution, which may prescribe arrangements with respect to voting on decisions where a conflict or the perception of a conflict of interest exists. In the absence of such direction, the RDA must act to preclude the governing body member with the identified conflict from:

- receiving any subsequent or related papers
- being present and/or participating in the consideration, discussion or debate on the matter
- voting on the matter
- being counted in quorum for the vote on the matter
- being privy to the record of discussion of the matter, including the record which is set out in the minutes of the meeting.

The decision of the RDA (and the steps taken to resolve or deal with the perceived or actual conflict of interest) must be recorded in the minutes of the RDA meeting.

Where a conflict of interest arises or is perceived to arise, the Department may investigate the circumstances of the conflict to determine that the action taken to address the conflict is appropriate.

5.8.5 Managing an ongoing conflict of interest

A different situation arises when a conflict of interest is ongoing and may continue to affect an individual's ability to perform RDA business or contribute to RDA discussions, deliberations and/or decision-making.

In the case of ongoing conflicts of interest, RDAs should conduct an initial investigation into the conflicts of interest, including the evaluation of any potential remedies, and a risk assessment which:

- identifies the risks
- evaluates the nature of the risks (for example, if the risk eventuated, would the consequences be serious?)
- evaluates the likelihood of the risks (for example, is it probable the risk will occur?)
- considers whether the risk may be acceptable to the Australian Government, relevant state or territory governments, and the public
- determines whether the proposed remedies (if any) would adequately resolve or otherwise manage the risk
- leads to the RDA notifying the Department immediately if it is determined that a conflict restricts the RDA from undertaking activities in a fair and independent way, including advice of what measures are being taken to prevent any such restriction.

All action taken to address these situations must be documented and readily accessible. Where the risk cannot be mitigated, the conflicted individual should be excluded from all discussion on the matter, including receiving papers and records of discussion and decision. Depending on the nature and seriousness of a conflict of interest, an RDA may need to consider seeking independent legal advice on the most appropriate manner in which to manage a conflict.

For general advice on procedures and templates to manage conflicts of interest and conflicts of role, go to Australian Public Service Commission [Conflict of Interest](#) page or [Australian Charities and Not-For-Profit Commission](#) (ACNC).

Section 5.6 requires that ordinarily RDA governing body members and personnel must be excluded from tendering for consultancy or contract work for or on behalf of the RDA.

In rare cases, however, the RDA may resolve that a governing body member or personnel can tender for consulting or contracting work for or on behalf of the RDA.

This could only occur in circumstances where the RDA, after making inquiries, is satisfied on reasonable grounds that the individual is the only service provider that can deliver the services to the RDA on terms which are reasonable and represent a value for money outcome for the RDA.

In such a case, the RDA must follow the requirements of Section 5.6, including that the RDA approves the work, the terms are reasonable and comparable with those elsewhere, and that the selection process is open and transparent, documented and stored in the RDA's conflict of interest records.

5.9 Gifts, benefits and assets

An RDA governing body member or personnel of the RDA must never demand or request any gift or benefit for a governing body member or anyone else in connection with their RDA work. A governing body member or personnel must not accept any gift or benefit if they think, or a reasonable person would think, the person offering the gift is likely to expect the governing body member or personnel to be influenced in the way they do their RDA work as a result of the gift.

Generally, non-token gifts would only be accepted in exceptional circumstances. Where non-token gifts are accepted, it would be appropriate to inform the Chair of the RDA or the next meeting of the RDA. If the governing body member or personnel is in any doubt about whether or not a gift is token, they should notify the Chair.

As set out in the guidance on asset disposal (section 4.7.6), RDAs must follow proper procedure for the disposal of assets, including not selling these to RDA governing body members, personnel or those people's friends or relatives.

5.10 Public comment

With respect to activities funded by the Australian Government, state or territory or local governments, the RDA must not make any statements or give any undertaking that could be interpreted as committing the Australian Government Minister or relevant state or territory minister or the Australian Government, state or territory or local governments to a particular action or expenditure. This position should be made clear in any negotiations which the RDA, its governing body members, personnel or representatives undertake with any company, firm or other body, or member of the public.

Whilst it is recognised that a governing body members or personnel of an RDA, as members of the community, have the right to make public comment and enter into public debate on political and social issues, comments must not, in any way, be made or be perceived to be attributable to the person in their capacity as a member or employee. This includes all forms of commentary on all social media platforms.

If it is not possible for an RDA governing body member or personnel to make it clear that they are speaking personally, public comment must not be made.

While constructive criticism of the operations of RDAs and the Department is welcome, it is inappropriate for such criticism to be reflected in press releases, public documents or statements, or on social media platforms. The utmost care must be taken to ensure public comments cannot be misinterpreted. The Chair is responsible for channelling matters relating to the operations of RDAs and the Department to the state, territory or Australian Government Ministers and/or senior employees of the Department.

5.11 Corrupt and unethical conduct

If a governing body member or personnel of the RDA is aware of any possible corrupt or unethical conduct by another governing body member(s) or personnel, it must be reported to the Chair. The governing body member or personnel does not need to have proof that corruption or unethical conduct is occurring - they need merely to suspect it on reasonable grounds. The Chair can then seek specialist advice for managing the particular issue. Corrupt and unethical conduct can also be reported to the Department, or the relevant state or territory Departmental manager responsible for regional development, where appropriate. This does not alleviate any right or obligation of the relevant governing body member or personnel to also report the conduct to relevant authorities (for example, the police) as required under relevant legislation.

People who report possible corrupt or unethical conduct will not be penalised for making their report.

5.12 Breaches of the Code

RDAs should be vigilant for any actual or perceived breaches of the Code, and be prepared to take their own disciplinary action as necessary.

Breaches of the Code by RDA, its governing body members, or personnel may result in disciplinary action being taken by the Department pursuant to the Funding Agreement as necessary and reasonable in the circumstances.

Disciplinary action under the Funding Agreement may include:

- directing the RDA to remedy a breach
- investigating a conflict of interest
- removing personnel including RDA governing body members;
- withholding or recovery of payments
- terminating of the Funding Agreement for default
- referral of matters to appropriate authorities as necessary.

5.13 Allegations of misconduct

This section deals with allegations concerning the conduct of Chairs, Deputy Chairs, governing body members and personnel which if true would constitute a breach of the Code (misconduct).

It is important that the conduct of Chairs, Deputy Chairs, Governing body members and personnel is at all times perceived in the community to reflect the principles and ethical requirements set out in the Code.

If allegations concerning the misconduct of a Chair, Deputy Chair or governing body member are made, the person the allegations have been made against must immediately stand aside from the governing body of the RDA. Standing aside means a temporary leave of absence from the RDA. During this time the stood aside individual must not participate in RDA business.

Chairs must facilitate the standing aside of Deputy Chairs and governing body members and, if the matter involves the Chair, the Australian Government will facilitate the Chair standing aside. If the Chair is required to stand aside, the Deputy Chair will be asked to assume the role as Acting Chair. The governing body members may appoint an Acting Deputy Chair where this is required.

All allegations concerning the misconduct of a Chair, Deputy Chair, RDA governing body member, DRD or other RDA personnel are to be notified to the Department's Director RDA Program Management Section and the Liaison Officer allocated to the RDA within 48 hours after the RDA becoming aware of the allegations and in any case, within 24 hours of the allegations being made public.

The Chair is responsible for advising the Department (Director RDA Program Management Section and the RDA's Liaison Officer) of allegations against the Deputy Chair, an RDA governing body member, DRD or other RDA personnel. If the allegations are against the Chair, the Deputy Chair must advise the Department (Director RDA Program Management Section and the RDA's Liaison Officer). The Chair or Deputy Chair must advise the governing body member or personnel that the Department has been advised.

Notification of any such allegations should include the allegations and the context in which they have been made. The Department will, with the Chair (or with the Deputy Chair if the allegations concern the Chair), consider an appropriate way to address the allegations. The Department reserves the right to apply the provisions of Clause 24.5 (Clause 22.6 IOT RDO Funding Agreement, Not applicable to Victorian Funding Agreement) of the Funding Agreement regarding potential removal of personnel from the RDA's activities. This provision is covered in Section 7.2.8 of this Guide.

Allegations include, but are not limited to, being:

- referred to a relevant authority for investigation or review in relation to misconduct
- referred to in sworn evidence (either oral or written) in any court or tribunal proceeding in relation to misconduct
- the subject of or named as a person of interest in any investigation by a state or territory ombudsman or Commonwealth Ombudsman
- the subject of or named as a person of interest in any investigation, review or proceedings in relation to misconduct by any relevant authority, court or tribunal in any jurisdiction
- the subject of an internal investigation involving a workplace health and safety matter.

Relevant authorities include any Department, agency or authority of the Commonwealth, State, Territory or local government (however described) with functions including the review, prevention, detection, investigation, remedying, prosecution or punishment of criminal offences, breaches of a law or improper conduct.

It is important to note that the Chair's or Deputy Chair's responsibility to notify the Department about allegations of misconduct does not require them to have been proven or established.

The governing body member may resume their governing body membership of the RDA when the relevant authority, court, tribunal or internal investigation makes a finding that the allegations are unfounded, or otherwise when the Australian Government and relevant state or territory governments and where appropriate the relevant state, territory or local government association, so determines.