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| Managing conflicts of interest |
| Guidance for Class B cemetery trusts |
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# Introduction

Cemetery trust members have a duty to place the public interest above their own interests. This helps to maintain the public’s confidence in the ability of trust members to act in the best interests of the trust and Victorian communities.

The trust chairperson or chairperson’s delegate is responsible for ensuring conflicts of interest are managed appropriately and the duty to prioritise the public interest is maintained.

# What is a conflict of interest?

A conflict of interest is a conflict between your duty as a trust member and your private interests. This conflict exists if your private interests influence, or are seen to influence, your decisions or actions as a trust member.

Private interests include direct interests, such as your own personal, family, professional or business interests. They also include indirect interests, such as the personal, family or business interests of the individuals or groups connected to you.

There does not need to be any direct benefit or advantage received for a conflict of interest to arise. Conflicts may be actual, potential or perceived:

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| Actual | A real conflict between your public duties and responsibilities and your private interests. |
| Potential | Where you have private interests that could conflict with your public duties, and it is foreseeable that a conflict may arise in the future. |
| Perceived | Where the public or a third party could form the view that your private interests could improperly influence your decisions or actions, now or in the future. |

## Financial conflicts of interest

A financial conflict exists if a trust member or someone they are connected to is financially affected by the trust member’s decisions or actions. Money doesn’t need to change hands for a financial conflict to exist; it could involve a trust member or someone they know receiving concessions, discounts, gifts or hospitality.

## Non-financial conflicts of interest

A non-financial conflict exists if a trust member’s feelings about a person or group could influence, or be seen to influence, the trust member’s decisions or actions. Personal feelings about another person or group, whether positive or negative, can create a conflict of interest by influencing a trust member to use their position to help or hinder a person or group.

## Conflicts of interest due to personal relationships

Personal relationships between trust members and people who could be affected by the trust member’s decisions can create a conflict of interest because the relationship could influence or be seen to influence the trust member’s decisions.

## Conflicts of duty

A conflict of duty is a conflict between a trust member’s duty as a trust member and duty to another public or private organisation or group. This conflict exists if a trust member has two or more roles that have competing priorities.

# Examples of conflicts of interest

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| Type | Conflict | Why is it a conflict? |
| Financial conflict of interest | A trust member works in a profession directly related to the cemetery sector (funeral director, celebrant, gravedigger, stonemason, plaque manufacturer, florist) that delivers services at the cemetery. | A trust member who works in a profession directly related to the cemetery sector could use their position as a trust member to gain a competitive advantage over other businesses resulting in financial gain. |
| Financial conflict of interest | A trust member’s close personal friend works for a herbicide supplier that is seeking the trust’s business and has offered the trust member a discount on personal purchases. | The trust member may use their position to influence the trust’s procurement decisions in exchange for personal financial gain. |
| Financial conflict of interest | A trust member who is also a gravedigger is paid by a funeral director for gravedigging services, and the cost is then on-charged to the trust by the funeral director. | While not receiving payment directly from the trust, the trust member may still use their position as a trust member to gain a competitive advantage over other businesses resulting in financial gain. |
| Non-financial conflict of interest | A trust member’s daughter is a funeral director, and the trust member has placed advertising materials for their daughter’s business in the cemetery trust office. Advertising for other business is not allowed.  | The trust member’s actions result in an unfair competitive advantage for their daughter’s business and disadvantages other businesses. |
| Non-financial conflict of interest | A trust member’s brother owns a groundskeeping business bidding for a cemetery maintenance contract. | The trust member’s personal feelings about their brother may influence the trust member’s decision-making during the procurement process and may result in an unfair outcome.  |
| Conflict of interest due to personal relationship | A trust member’s close personal friend has applied for a position as a paid trust secretary and the trust member wants to join the selection panel and participate in the interview process.  | The trust member’s personal relationship with the applicant may influence the selection process and may result in an unfair outcome.  |
| Conflict of duty | A trust member is a member of a community group that is opposed to the removal of vegetation in public spaces and the trust is planning to develop a new section of the cemetery that will require vegetation removal. | The trust member’s duty to the community group conflicts directly with the trust’s strategy for future development which is required to enable the trust to continue to deliver services and meet community needs. |

# Avoiding financial conflicts of interest

Financial conflicts of interest can pose significant risks to organisations with financial management responsibilities. A key risk is the potential for fraudulent and unlawful activities. It is not acceptable for a Class B cemetery trust member to:

* receive payment from the cemetery trust as an employee
* receive ad hoc payments from the cemetery trust outside of reasonable reimbursements for out-of-pocket cemetery related expenses
* receive payment from the cemetery trust as a contractor (except in exceptional circumstances approved by the department – see below)
* receive payment from a third party for delivering services that are on-charged to the trust by the third party (except in exceptional circumstances approved by the department – see below)
* receive gifts, benefits or hospitality (except in accordance with the trust’s [Gifts, benefits and hospitality policy](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates)).

# Managing conflicts of interest for an applicant seeking appointment

The application form for appointment to a Class B trust asks applicants if they have a potential conflict of interest. If the applicant answers ‘Yes’ or ‘Unsure’ they are required to discuss the matter with the trust.

If the trust agrees the applicant has a potential conflict, the trust must consider possible actions for managing the conflict and inform the applicant that they will be required to enter into a [conflict of interest management plan](#_Conflict_of_interest) if their application is successful. The applicant must include all relevant information in ‘Part C – Conflicts of interest’ of the application form.

When signing ‘Part E – Applicant’s declaration and signature’ of the application form, the applicant is required to declare that they agree to the terms in the application guidelines which specify that applicants with a potential conflict will be required to enter into a conflict of interest management plan if appointed.

When the trust submits an endorsed application to the department for processing, the department will review the information provided. If the department identifies a potential conflict relating to the applicant’s profession that has not been addressed in ‘Part C – Conflicts of interest’ of the application form, the department will return the application to the trust to action.

When the trust and applicant have discussed the potential conflict and the applicant has updated ‘Part C – Conflicts of interest’ of the application form, the trust may then resubmit the application to the department.

When the endorsed application has been submitted to the department, the trust may wish to draft the conflict of interest management plan in advance or wait until the appointment process is completed. The applicant is not expected to sign a conflict of interest management plan before they have received confirmation that their application has been successful, but they must sign the document as soon as practicable following their appointment.

## Exceptional circumstances for applicants intending to receive payment from trust as a contractor

In exceptional circumstances where an applicant is to receive payment from the cemetery trust as a contractor, the department may consider the application if the trust has three or fewer trust members and the following conditions have been met and documented:

* The trust has undertaken an advertising and recruitment process and not identified other suitable candidates.
* The trust has undertaken a procurement process to test the market and an alternative provider has not been identified.
* The trust can demonstrate that there is no other suitable local provider of the required services.
* The applicant has committed to enter into a conflict of interest management plan with the trust if their application for appointment is successful.
* The trust has compared the contractor’s proposed fees with fees paid by a trust in the same region for comparable services and considers the proposed fees to be reasonable (for example, up to 10 per cent variation).
* The trust has committed to undertake a procurement process to test the market and seek an alternative provider every 12 months.

If a suitable alternative supplier is identified in the future, the department recommends changing providers to remove the risks associated with the financial conflict of interest of the trust member appointed under exceptional circumstances.

If a trust member appointed under exceptional circumstances intends to seek reappointment when their term of appointment ends, the circumstances will be tested again against the conditions above.

## Diagram: Process for managing conflicts of interest for an applicant seeking appointment

# Managing conflicts of interest for an existing trust member

Trust members are required to disclose conflicts at a trust meeting as soon as possible after becoming aware of a conflict. The person presiding at the trust meeting must ensure that the disclosure is recorded in the meeting minutes and the trust must take appropriate action.

From time to time the department becomes aware of potential trust member conflicts that have not been declared to the trust. In these circumstances the department will contact the trust to request the trust discusses the potential conflict with the trust member as soon as practicable and takes appropriate action.

Trust members who have disclosed or been identified as having a conflict are expected to enter into a conflict of interest management plan with the trust as soon as practicable following the disclosure/identification of the conflict to ensure it is managed appropriately.

If a trust member with a conflict of interest refuses to enter into a conflict of interest management plan, the trust’s chairperson or chairperson’s delegate is still responsible for monitoring the conflict and ensuring it is managed appropriately. In these circumstances the trust member’s unwillingness to enter into a conflict of interest management plan and relevant details of discussions with the trust member should be noted in the trust’s records.

## Diagram: Process for managing conflicts of interest for an existing trust member

# Conflict of interest management plan

A conflict of interest management plan is a written document that specifies a trust member’s conflict/s and strategies for managing the conflict/s.

Both the trust member and the trust chairperson or chairperson’s delegate are required to sign the document and agree to a schedule for periodic review of the plan. The trust member is responsible for acting in accordance with the plan and implementing agreed management actions. The trust chairperson or chairperson’s delegate is responsible for reviewing the plan as per the agreed schedule.

The department has developed a conflict of interest management plan template for Class B cemetery trusts available at [Class B cemetery trust governance](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance>. Signed conflict of interest management plans should be kept on record and managed appropriately to protect the privacy of the trust member.

# Conflict of interest management strategies

A conflict of interest management plan may require a range of strategies, including the examples below.

## Trust meetings

* The trust member:
	+ will disclose any conflicts of interest relating to agenda items at the beginning of trust meetings
	+ will leave a trust meeting as soon as an agenda item related to the conflict comes up for discussion
	+ will not initiate or engage in any discussions related to the conflict (including before and after meetings)
	+ will not seek to influence other trust members’ opinions or decisions related to the conflict (including before and after meetings)
	+ will not vote on an agenda item related to the conflict
	+ will accept decisions made by the trust and support the implementation of trust decisions.

## Procurement processes

* The trust member will not participate in any stage of procurement processes where:
	+ the trust member owns or works for a business bidding for a contract
	+ the trust member has shares in a business bidding for a contract
	+ the trust member has a private interest in a business bidding for a contract
	+ the trust member is a directly related family member or a close personal friend of a person who owns or works for a business bidding for a contract.
* The trust member will not be privy to commercial-in-confidence information relevant to a profession/business the trust member has a private interest in.

## Promotion and advertising

* The trust member will not promote a business they have a private interest in (financial, non-financial or personal) to customers and other stakeholders.
* The trust member will not advertise a business they have a private interest in (financial, non-financial or personal) on cemetery premises or via trust communications (including online).[[1]](#footnote-2)
* The trust member will not be permitted to provide quotes in a private capacity for grant applications.

## Recruitment and employment

* The trust member will not participate in the recruitment process for new trust members (including interviews and referee checks) where an applicant is a directly related family member or a close personal friend of the trust member.
* The trust member will not participate in the recruitment of trust employees (including interviews and referee checks) where an applicant is a directly related family member or a close personal friend of the trust member.
* The trust member will not participate in performance reviews and performance management of a trust employee who is a directly related family member.

# Long-term conflicts that negatively impact the trust

In some cases, a conflict of interest may have a negative impact on the trust despite efforts to manage the conflict. Negative impacts may include ongoing disruptions to trust operations and the inability of the trust to realise plans and strategies in place to ensure it can meet community needs into the future.

If a trust member with a conflict of interest that has negatively impacted the trust seeks reappointment, the ongoing impact of the conflict will be taken into consideration.

If, after going through a recruitment process, a trust decides **not** to endorse an application for reappointment due to concerns about the impacts of a long-term conflict of interest, the trust must advise the department in writing outlining its concerns and justifications for its decision.

If a trust **does** endorse an application for reappointment where the department has identified concerns about the impacts of a long-term conflict of interest, the application for reappointment may not be supported by the department.

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1. If a cemetery trust sells and supplies memorialisation goods and services, private businesses that are in direct competition are permitted to promote their goods and services in accordance with the [*Cemetery trust code of practice - sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries*](https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice-relating-to-the-sale-and-supply-of-memorialisation-goods) <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice-relating-to-the-sale-and-supply-of-memorialisation-goods>. [↑](#footnote-ref-2)