Declaration Certificate for executives – the certificate for declaration of related party transactions in compliance with AASB 124 disclosure requirements

# Background information

## Related party transactions between key management personnel (KMP) and departments and agencies

The Australian Accounting Standards Board (AASB) extended the scope of AASB 124 *Related Party Disclosures* to include not-for-profit (NFP) public sector entities from 1 July 2016 (i.e. from the 2016-17 financial year). As a result, all NFP public sector entities are required to disclose related party transactions in the same way as private sector entities.

It should be noted that the objective of AASB 124 is to ensure that the department’s or entity’s financial statements contain disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties, and by transactions and outstanding balances, including commitments, with such parties.

The standard defines KMP as those people with the authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly i.e. those charged with decision making responsibilities. AASB 124(9) *Related Party Disclosures* defines a person who has significant influence or a close member of that person’s family to be related to a reporting entity if that person is a member of the KMP of the entity or a parent of the entity.

### What needs to be collected from the KMP?

Information regarding all related party transactions will need to be collected by the KMP, except for those transactions where the KMP and their related parties are acting as public citizens (e.g. payment of tax or accessing a community service available to all citizens like services from a public hospital).

We acknowledge that while KMP such as executive officers are currently required to declare their private interests, AASB 124 requires more extensive disclosures of related party transactions that are not collected in the declaration of private interests form.

### How the information collected will be disclosed in the relevant financial reports

Not all information collected will be disclosed in the respective entity’s annual financial report. This is because the accounting standards only require the disclosure of material related party transactions and outstanding balances. Materiality is subject to professional judgement and goes beyond the dollar value of the transaction or balance.

However, it is important to note that all KMP should disclose all relevant related party transactions, noting that typical citizen transactions are not required to be declared. A threshold of $100 000 may be applied for standard commercial contracts in an effort to ease the reporting burden on KMP. This is because a transaction that may appear immaterial on its own, may in combination with other like transactions have a material effect on the entity’s financial statements and warrants disclosure. Items of a similar nature may be **disclosed in aggregate** except where separate disclosure is necessary for an understanding of the effects of related party transactions on the financial statements of the department or entity. If you are unsure whether there are any related party transactions your close family members have with the entity that you are a KMP of, or with any entity controlled by the entity that you are a KMP of, you are encouraged to include their details in the certificate for completeness.

Due to the sensitive nature of the information, all information collected will be stored in a secured manner.

### Certification completion process

#### Process for Ministers

As not all not-for-profit public sector entities within the State has 30 June year ends i.e. TAFES and schools have 31 December year ends, the State has to collect information from Cabinet ministers more frequently.

The first submission will cover the period 1 July 20X1 to 31 December 20X1. All Cabinet ministers will be expected to complete and submit their certificates by **the end of the third week of the following January**.

Cabinet ministers will return their certificates to the Department of Premier and Cabinet (DPC) via a secure Cabinet portal.

The final submission will cover the remaining period 1 January 20X2 to 30 June 20X2 to report on any additional transactions that may have occurred during the quarter. All Cabinet ministers will be expected to complete and submit their certificates by **the end of the first week of the following July.**

The information collected will enable DPC, the Department of Treasury and Finance (DTF) and the respective departments and agencies to review the information received from Cabinet ministers to support the drafting of the related party disclosures for inclusion in the relevant departments’ and agencies’ related party note. The DTF team will provide an overview and supporting role in facilitating the completion of the related party disclosures and ensuring consistency across the board.

#### Process for executive KMP

Entities are encouraged to adopt a collection frequency that is appropriate for their needs, and may consider the process designed for Ministers as a guide.

All executive KMP will return their certificates to their respective department or agency who will co-ordinate the collection of the certificates.

## Declaration Checklist for executives – Related party transaction identification

|  |  |  |
| --- | --- | --- |
| Name of executive |  | |
| Portfolio and entity name |  | |
| Period covered | First submission  1 July 20X1 – 31 Dec 20X1  **Due: the end of the third week of the following January** | Second submission  1 Jan 20X2 – 30 June 20X2  **Due: the end of the first week of the following July** |
| *Or alternative reporting period:* | *(please state the alternative reporting period covered)* | |

Did you, your close family members[[1]](#footnote-1) or entities controlled[[2]](#footnote-2) or jointly controlled by you or a close family member have any related party transactions with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of, during the year ended 30 June 20X2? **Please declare all related party transactions, noting that typical citizen transactions[[3]](#footnote-3) are not required to be declared**. (Please refer to the definitions and guidance included in the appendix for further details).

In using this checklist, if you answer ‘yes’ to any of the following questions, then those transactions must be declared. The objective of the checklist is to assist you with identifying related party transactions that need to be declared in the following declaration form. Questions 1 to 9 are designed to broaden your consideration of transactions that are non-standard transactions or agreements, and Question 10 requires declaration of standard commercial transactions to which a **threshold of $100 000 (excl. GST)** may be applied in an effort to ease the reporting burden on KMPs.

If in doubt, you are encouraged to declare the transaction, as your reporting entity will assist in determining whether disclosure of the transaction is required, to minimise the risk of potential omissions of transactions that should be declared.

It should be noted that during the normal course of VAGO audits and entity management due diligence, related party transactions below $100 000 may be identified which may warrant disclosure in an entity’s financial report, as materiality must be assessed on an entity-by-entity basis. Should such transactions be identified, any information relating to executives and their related parties that are proposed to be disclosed by entities in their financial reports will be submitted to the relevant executive for review and approval prior to finalisation of the relevant entity’s related party disclosure.

| Question | Please tick your response below | | Instructions |
| --- | --- | --- | --- |
| Yes | No |
| Are you, or any of your **close family members employed** in a **senior position** by any Victorian Government entity in the current declaration period?  A senior position is a position that has decision making responsibility of a KMP of an entity. |  |  | If you have answered yes, please provide:   * details of your position and the department or agency you are employed by; * details of your close family member, their position and the department or agency they are employed by and any involvement that you may have had in their appointment (if applicable); and * details of any transactions **influenced by the existence of the relationships** between the entities that you are KMP of and/or the entity that your close family member is employed by. Please provide details of the transaction in the form provided (e.g. nature of transaction, amount, terms and conditions of transaction, etc.). |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members had a transaction that was **a non-standard contract or agreement** with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached.  A non-standard contract or agreement has terms that have been varied or negotiated on more favourable terms than generally contracted at arms-length with other suppliers. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members received or provided any **transfers under finance arrangement** i.e. loans, equity contributions to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members had any **debts forgiven or partially forgiven[[4]](#footnote-4)** by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members received any **collateral, indemnity or** **guarantee[[5]](#footnote-5)** or given any collateral, indemnity or guarantee to the entity that you are a KMP of, or any entity controlled by the entity that you are KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members **settled a liability** on behalf of the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of?  Has the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of, settled a liability on behalf of you, your close family members or entities controlled or jointly controlled by you and your close family members? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members received or given any **ex-gratia payments or** received **grants** **or subsidies greater than $5,000** (individually) to/from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members received/obtained the right to receive **interest/dividend income** from, or paid/recognised the obligation to pay **interest expense/dividends** to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members **committed to a transaction** contingent upon whether an event occurs or does not occur in the future, with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached. |
| Have you, your close family members, or entities controlled or jointly controlled by you or your close family members **leased assets with annual rent**, provided or purchased **goods or services[[6]](#footnote-6)**, or **assets[[7]](#footnote-7)** (including intangible assets) , to/from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of? |  |  | If you have answered yes, please provide details of the transaction in the form attached.  For transactions on standard terms and conditions, a $100 000 threshold may be applied for the declaration of these transactions; otherwise they should be declared regardless of the financial quantum of the transaction. |

Please also include any **outstanding balances as of 30 June 20X2** that havebeen carried forward from related party transactions incurred from previous years.

## Form to be completed – Example of details of related party transactions

|  |  |
| --- | --- |
| Name of KMP | John Doe, Secretary |
| Portfolio and name of department/agency | Department of Technology |
| Period covered by this Declaration | 1 July 2019 to 31 December 2019 |

(Please include all transactions. Note that a threshold may be applied for standard commercial related party contracts. Please refer to the Declaration Checklist for further guidance.)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Nature of transaction  (select from Selection List I on page 11) | Name of entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of | Nature of relationship between the counterparty and KMP  (select from Selection List II on page 11) | Name of counterparty | Details of transaction | Total value of transactions incurred during the period covered by this declaration (GST included) | Outstanding balances as at the end of the declaration period | Committed amount as at the end of the declaration period to be incurred in the following years | Terms and conditions  (select from Selection Lists III and IV on page 12) |
| AASB124(24) | (refer to Appendix 3) | AASB124(19) | (Please include ABN details) | (please specify the nature of the transaction) | AASB124(18)(a) | AASB124(18)(b) | AASB124 (18)(b) | AASB124 (18)(b) |
| Example 7A | Department of Technology (DTF)  (the entity that you are KMP of) | A company wholly owned by my son provided consultancy services to DTF | Spencer & Jeffrey Consultancy Company Pty Ltd  (ABN:12 345 345 345) | Provision of IT consultancy service to the department | $300 000 | $50 000 prepayment by DTF to the entity | IT consultancy service of $50,000 will be provided to the department in the following year. | * Open tender * Unsecured * Standard terms * Settlement by bank transfer |
| Example 7A | Department of Technology (DTF)  (the entity that you are KMP of) | A company owned by my wife and myself provided technology support for DTF | Golden Age Technology Company Pty Ltd  (ABN:13 567 567 567) | Sale of software licences to the department | $570 000 | $10,000 payable by DTF to the entity | The contract was renewed for a further year for $570,000 | * Unsolicited proposal * Unsecured * Standard terms except that the unit price is 10% off the standard price as an incentive to win a new customer * Settlement by bank transfer |

## Form to be completed – Please provide details of related party transactions

|  |  |
| --- | --- |
| Name of KMP |  |
| Portfolio and name of department/agency |  |
| Period covered by this Declaration |  |

(Please include all transactions. Note that a threshold may be applied for standard commercial related party contracts. Please refer to the Declaration Checklist for further guidance.)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Nature of transaction  (select from Selection List I on page 11) | Name of entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of | Nature of relationship between the counterparty and KMP  (select from Selection List II on page 11) | Name of counterparty | Details of transaction | Total value of transactions during the period covered by the declaration (GST included) | Outstanding balances as at the end of the declaration period | Committed amount as at the end of the declaration period to be incurred in the following years | Terms and conditions  (select from Selection Lists III and IV on page 12) |
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Please note that departments and entities are also required under AASB 124 to disclose any allowance for impairment losses and bad debt expenses associated with the declared related party transactions. Such information will need to be retrieved from the entity’s own financial system, rather than from the declaration form of the KMP.

### Privacy notice

This form asks for information about related party transactions between yourself, your family members or entities under your control with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. The main purpose for collecting this information is to help users of financial statements understand the impacts of any related party transactions on an entity’s financial position and performance.

The information is being collected pursuant to the *Australian Accounting Standard AASB 124 – Related Party Disclosures* and section 4.2 of the *Standing Directions of the Minister for Finance*. Departments/portfolio agencies are required to comply with these requirements when preparing their annual financial statements. The information collected will form the basis of an entity’s disclosures in relation to related party transactions.

The State of Victoria collects information in accordance with the *Privacy and Data Protection Act 2014*. All staff within the relevant department/portfolio agency will be required by law to protect the information you provide on this form. **Any information collected that discloses a related party transaction will be collated to form part of the relevant department’s/portfolio agency’s financial statements, which will be tabled in Parliament.** This means that personal information will be disclosed by the relevant department/portfolio agency when required.

In most circumstances you can access and correct the information you provide on this form by contacting the Privacy Officer within the relevant department/portfolio agency. If the relevant department/portfolio agency receives personal information about a third party, such as a close family member, then **that relevant department/agency** will take reasonable steps to ensure that the close family member is aware of their rights as described in the *Privacy and Data Protection Act 2014*, through the provision of the Privacy Fact Sheet, as provided by the KMP to their related party.

*(Please tick to confirm acknowledgement and consent of family members and other related parties)*

I also acknowledge that I have obtained consent from any family member or other related party to the disclosure of any personal information with regard to the transactions that have been declared by me in the certificate and have provided them with information outlined in the Privacy Fact Sheet (attached).

### KMP signoff and declaration

I have made inquiries of my close family members and to the best of my knowledge the information provided in this certificate is complete and accurate. I understand the information is collected for the purpose of preparing disclosures in the notes to the financial statements of the controlled entities of the State of Victoria and consolidated State Annual Financial Report. I give permission to the relevant department/agency to disseminate the information provided in the certificate.

Print and sign name: Date:

# Privacy fact sheet

## Related Party Disclosures for Victorian Public Sector Financial Reports

### Purpose of this fact sheet

This Fact Sheet has been provided to ensure that close family members are aware of their rights as described in the *Privacy and Data Protection Act 2014*.

### Related Party Disclosures

Under Australian Accounting Standard AASB 124 *Related Party Disclosures* (AASB124), all public sector entities are required to disclose their related party transactions. This means any transactions that involves a Key Management Personnel (KMP), their close family members and entities under their control. This requirement came into effect 1 July 2016.

The objective of AASB 124 is to ensure that the department or entity’s financial statements contain disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties, and by transactions and outstanding balances, including commitments, with such parties.

To give effect to this, the adoption of AASB 124 requires you to submit information about related party transactions between yourself, your family members or entities under your control with an entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of.

The State of Victoria collects information in accordance with the *Privacy and Data Protection Act 2014*. This fact sheet meets the requirements of relevant Information Privacy Principles under that Act.

### Who is a KMP?

Under AASB 124, a KMP is a person with the authority and responsibility for planning, directing and controlling the activities of an entity, directly or indirectly.

All Cabinet Ministers are regarded as KMP of the State. The accounting standard also defines a person who has significant influence or a close member of that person’s family to be related to a reporting entity if that person is a member of the KMP of the entity or a parent of the entity. Portfolio ministers are responsible for the oversight of their relevant portfolio departments and entities. So, the portfolio ministers will be considered KMP of their relevant portfolio departments and agencies.

In addition, departments and agencies will need to assess who are the relevant executives that meet the definition of a KMP and their respective related parties.

In general, members forming an entity’s governing board will typically be considered KMP of the entity as they are considered as having the strategic decision making authority for the planning, directing and controlling of the overall activities of the entity. Executives or senior managers that have been delegated the operational authority for specific functions of the entity would not be considered KMP for the purposes of AASB 124.

### What is a related party transaction?

Under AASB 124, examples of related party transactions include the following:

|  |  |
| --- | --- |
| Related party transactions under the AASB 124: | |
| Close family members employed in a senior position by the Victorian Government. A senior position is a position that has decision making responsibility of a KMP. | Any transactions by the KMP, close family members or related entity that comprise of a non-standard contract or agreement with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. |
| Loans to/from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. | Equity contribution from an entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of, to a related party entity. |
| Debts forgiven or partially forgiven by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. | Collateral, indemnity or guarantee received from/given to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. |
| Settlement of liabilities on behalf of you, your close family members or entities controlled or jointly controlled by you and your close family members, by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. | Receipt/payment of ex-gratia payments or receipt of grants or subsidies greater than $5,000 (individually) from/to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. |
| Receipt of dividend income from, or payment of dividends to, an entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. | Receipt/recognition of entitlement of interest income from or incurrence of interest expense to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. |
| Lease of an asset to/from an entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. | Provision/purchase of goods/services to/from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. |
| Purchase or sale of non-financial assets from/to an entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of e.g. land, buildings, intangibles. | Commitment to execute a transaction contingent upon whether an event occurs or does not occur in the future with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. |

### What kinds of transactions are not required to be disclosed?

Typical citizen transactions are not required to be disclosed. These transactions are where you or a close family member interacts with a government entity in the capacity as a citizen. Some examples include paying personal tax or receiving tax refunds, receiving a social welfare benefit, receiving public health services, receiving education or student allowances, purchasing government bonds directly from the market, and obtaining a Medicare rebate when visiting the GP.

### What information is being collected?

You have received this privacy fact sheet because your personal information may be collected as part of the entity’s obligations in relation to the disclosure of related party transactions as required under AASB 124. Personal information collected includes:

* your name or your business name;
* details of any relevant transactions with the entity or it’s controlled entity;
* total value of transactions with the entity or it’s controlled entity, for the relevant financial year;
* outstanding balances as at the end of the financial year;
* terms and conditions related to the transaction.

### Who will be collecting this information?

The relevant department or agency will be collecting the personal information from Key Management Personnel of the department or agency.

### Will my information be disclosed?

Yes, the department or entity will need to disclose personal information to a relevant department or portfolio agency in order for the entity to comply with the reporting requirements of AASB 124.

### What will this information be used for?

In most instances, the information received by the department or entity will be de-identified, unless required to be disclosed separately and collated with other data for inclusion in relevant public sector entities’ financial statements, and tabled in Parliament. Please be advised that your personal information will be protected in accordance with the *Privacy and Data Protection Act 2014.*

### Can I access or correct my own information?

Yes, by contacting the Privacy Officer within the relevant department or portfolio agency.

### What if information is received about a third party, such as a close family member?

The relevant department or agency will take reasonable steps to ensure that the close family member is aware of their rights as described in the *Privacy and Data Protection Act 2014*, through the provision of this Privacy Fact Sheet.

### Where can I go for further information?

By contacting the Privacy Officer within the relevant department or portfolio agency.

# Reference for completing Declaration Certificate

## Details of related party transactions selection list

**I. Nature of transactions**

1A **Loans** to/from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

1B. **Equity contribution** from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

2. **Debts forgiven** **or partially forgiven** by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

3. **A collateral, indemnity or guarantee received from/given to** an entity controlled by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

4. **Settlement of liabilities** on behalf of you, your close family members or entities controlled or jointly controlled by you and your close family members, by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

5. Receipt/payment of ex-gratia payments, or receipt of grants or subsidies greater than $5,000 (individually) from/to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

6A. **Receipt/recognition of entitlement of interest income from, or incurrence of interest expense** to, the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

6B. **Receipt of dividend income from, or payment of dividends to,** the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

7A. **Provision/purchase of goods/services** to/from an entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

7B**. Purchase or sale of non-financial assets** from/to the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of e.g. land, buildings.

8. **Lease of an asset** to/from the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

9. **Commitment to execute a transaction** contingent upon whether an event occurs or does not occur in the future, with the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of

**II. Nature of the relationship between the counterparty of the transaction and the KMP**

A. Yourself

B. Your spouse or domestic partner (as a close family member)

C. Your children (as close family members)

D. Your spouse or domestic partner’s children (as close family members)

E. Other dependent family members (please specify) (as close family members)

F. Other close family members who are expected to influence, or be influenced by, you (please specify)

G. An entity controlled by you or your close family members (please specify the name of the entity and control power by you or your close family members)

H. An entity that you or your close family members have significant influence over (please specify the name of the entity and influence by you or your close family members)

**III. Common terms and conditions**

A. **Standard terms** **or non-standard terms** (standard terms are standard procurement terms and conditions of the State. Non-standard terms are terms and conditions that are favourable, negotiated/varied or unusual – please provide details about non-standard terms).

B. **Secured or unsecured**

C. The **nature of the consideration** for settlement of the outstanding balances, i.e. bank transfers or payment in kind

**IV. Procurement approach to be included in terms and conditions[[8]](#footnote-8):**

A. **Open tender**: an arrangement where an advertisement is placed in local newspapers / trade journals inviting contractors to apply.

B. **Limited or closed tender/selective tender**: only pre-qualified or known bidders are allowed to participate.

C. **Single tender**: the purchaser sends the tender to one particular party.

D. **Negotiated tender**: normally one contractor is approached and the tender is mainly used for specialist work, e.g. lift system or airport project.

E. **Invited tendering**: an organisation contacts a select number of suppliers directly to perform the contract. It is generally used for specialist work, emergency situations or for low value, low risk and off the shelf options.

F. **Multi-stage tendering**: used when there are a large number of respondents. At each stage in the process, the suppliers are culled to those who are most suited to the specific contract requirements.

G. **Unsolicited proposal**: a proposal that is not in response to a government request. These ideas can often contain qualities that are new, unique and innovative with considerable benefits to the State.

H. **Other approach** (please specify)

# Appendix

## Definitions and guidance for AASB 124

1. **KMP** are those people with the authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly i.e. those charged with decision making responsibilities.

#### For the State

Cabinet is the principal decision making body of the government. All cabinet members will be considered KMP of the State.

#### For departments and agencies

Portfolio ministers are responsible for the oversight of their relevant portfolio departments and entities. So, the portfolio ministers will be considered KMP of their respective portfolio departments and agencies.

In addition, departments and agencies would also need to assess which executives meet the definition of a KMP for their respective department and agencies.

In general, members forming an entity’s governing board are considered having the strategic decision-making authority for the planning, directing and controlling of the overall activities of the entity. As a result, members of the governing board will typically be considered KMP of the entity. For executives or senior managers that have been delegated the operational authority for specific functions of the entity, they will generally not be considered as KMP for the purpose of AASB 124. Departments and entities should exercise judgement to determine who will be considered a KMP based on the specific facts and circumstances. Attention should also be given to ‘de-facto’ decision makers. ‘De-facto’ decision makers are persons that are not part of the governing board, but have the strategic decision making authority. If such persons exist, they will be considered as KMP and should be disclosed in accordance with AASB 124. It should be noted that while it is rare to have ‘de facto’ decision makers in the public sector, departments and entities should undertake an assessment to determine whether the ‘de-facto’ decision makers exist or not.

A **related party,** as defined by the standard, includes:

a person and the close family member of that person, if that person has control or joint control over the entity; has significant influence over the entity; or is a KMP of the entity; and

an entity that is (i) a controlled entity of the State; (ii) an associate or joint venture of the entity; or (iii) controlled, jointly controlled or significantly influenced by a person identified in (a) above.

Significant influence is having the power to participate in or ability to affect the financial and operating policy decisions of the KMP.

As all cabinet ministers are considered KMP of the State, they are also related parties of the State and all its controlled entities (i.e. departments and agencies).

Note that the same assessment would also need to be done at the department and agency level for executives who are KMP of the entity.

**Close family members** are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity and include:

(a) that person’s children and spouse or domestic partner;

(b) children of that person’s spouse or domestic partner; and

(c) dependants of that person or that person’s spouse or domestic partner.

‘Children’ include step, adoptive, dependant, non-dependant, adult children and children not living at home (unless they are estranged).

‘Spouse’ or ‘domestic’ partner includes married, de facto, civil union partnerships, but excludes separated or divorced spouses or partners.

Dependants are any family members who are **financially supported** by you, your spouse or domestic partner and may include siblings, parents, elderly dependants such as grandparents, or disabled family members.

**It should be noted that while the definition of close family members does not specifically include siblings, parents and other extended family, it is expected that transactions with other family members outside the immediate family that the KMP is aware of are also taken into consideration for declaration on a case-by-case basis if the relationship can be reasonably expected to influence, or be influenced by the KMP’s dealing with the entity. This may include cousins, siblings and any other members of the extended family.** **This will be a matter of judgement by respective parties.**

1. The Australian Accounting Standard indicates that **Control** is assessed on the achievement of the following three criteria,
   * + - 1. **Having power over the investee;**
         2. **Having exposure, or rights, to variable returns from its involvement with the investee; and**
         3. **Having the ability to use its power over the investee to affect the amount of the investor’s return.**

**Joint control** is the **contractually agreed sharing of control** over an economic activity. An entity controlled or jointly controlled by you and your close family members means that you and/or any close family members have the ability or power to direct an entity’s relevant activities that can significantly affect its returns, and have rights or exposure to the financial and non-financial returns of the entity.

Types of entities include companies, partnerships, sole traders and trusts.

#### Examples

Entities controlled or jointly controlled by you and/or any close family members may include:

* + - A company where you have 30% voting shares and your spouse has a 30% voting shares
    - A partnership of two people where your spouse is one of the partners
    - A trust where you and your spouse are two of three trustees

Entities not controlled or jointly controlled by you and/or your close family members may include:

* + - A company where you have a 25% voting shares and your spouse has a 20% voting shares
    - A partnership of three people where your spouse is one of the partners
    - A large accountancy practice with multiple partners where your child is a partner
    - A trust where you and your spouse are two of five or more trustees
    - A non-government company where your son/daughter is the chief executive and has minor voting shares (i.e. less than 50% voting power in the company)
    - A non-government company where your spouse is a director of the board and has minor voting shares (i.e. less than 50% voting power in the company)

1. **Typical citizen transactions**

Typical citizen transactions are **not required to be disclosed**. These transactions are where you and/or any close family members interact with a government entity in the capacity of a citizen.

#### Examples

* + - Paying personal taxes or receiving tax refunds
    - Paying taxes or receiving tax refunds by an entity controlled or jointly controlled by you and/or any close family members
    - Receiving a social welfare benefit
    - Receiving public health services
    - Receiving public housing
    - Receiving education services or student allowances
    - Paying licence fees
    - Utility supplied by entities controlled by State of Victoria, e.g. water supply
    - Allowances and benefits from a department of the State of Victoria, e.g. unemployment / disability allowance
    - Purchasing government bonds directly from the market
    - Obtaining a Medicare rebate when visiting the GP

1. **Provision/purchase of goods and services** with entities that you are a KMP of means there will be a business agreement between (a) you and/or your close family members or entities controlled or jointly controlled by you or your close family members, and (b) the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of. **For transactions that are on standard terms and conditions, a threshold may be applied; otherwise they should be disclosed regardless of the financial quantum of the transaction.**

#### Examples

* + - Your spouse owns 50% of an advertising agency that is contracted to develop the marketing strategy to roll out a public program and design the web page on behalf of a department or agency that you are KMP of, or an entity controlled by the department or agency that you are a KMP of.
    - Your son owns an IT company and sells PCs to a department or agency that you are a KMP of, or an entity controlled by the department or agency that you are a KMP of.
    - Your partner owns an engineering consulting firm which provides advisory services to a department or agency that you are a KMP of, or an entity controlled by the department or agency that you are a KMP of.
    - Your son jointly controls a construction company and his company wins the tender to re-build a hospital for a department or agency that you are a KMP of, or an entity controlled by the department or agency that you are a KMP of.

1. **Assets** include plant, equipment, land, buildings or businesses. It also includes intangible assets like rights, quotas, and research and development. **For transactions that are on standard terms and conditions, a threshold may be applied; otherwise they should be disclosed regardless of the financial quantum of the transaction.**

#### Examples

* + - A piece of land owned by a department or agency that you are a KMP of, or an entity controlled by the department or agency that you are a KMP of, is sold to a company owned by you.
    - An investment property owned by a trust that you and your spouse jointly control, is sold to a department or agency that you are a KMP of, or an entity controlled by the department or agency that you are a KMP of.

1. When determining whether the value of the transactions/assets purchased or sold, the **actual transaction value should be used**, unless there is evidence or indication that the actual transaction value is **significantly different from the market value**. In these circumstances, the **market value should be used**. **Market value** means an amount that knowledgeable, willing parties in an arm’s length transaction would pay when a good, service or business is sold, purchased or exchanged. **For transactions that are on standard terms and conditions a threshold of $100,000 may be applied; otherwise they should be disclosed regardless of the financial quantum of the transaction.**

#### Example

In certain purchases and sales of assets, the market value may differ from the actual consideration. An extreme example is where a business has a market value of $1 million is purchased from the government for a nominal consideration of $1. This transaction would need to be reported and described in this certificate as its market value exceeds the $100,000 threshold although the actual transaction price doesn’t.

1. **Debts forgiven or partially forgiven** by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of, during the year are required to be disclosed in this certificate. This includes forgiveness of any of your debts and the debts of any close family members or entities controlled or jointly controlled by you and your close family members.
2. **Collaterals, indemnities and guarantees** provided by the entity that you are a KMP of, or any entity controlled by the entity that you are a KMP of, during the year are required to be disclosed in this certificate. A collateral is something pledged as security for repayment of a loan which may be forfeited in the event of a default. An indemnity or guarantee is a legally binding promise of one party to assume responsibility for a debt or performance of an obligation of another party should that party default in some way. Guarantees generally relate to the payment of money, but may alternatively or in addition require the performance of services.

1. Refer to Note 1 of the Definition and Guidance section. [↑](#footnote-ref-1)
2. Refer to Note 2 of the Definition and Guidance section. [↑](#footnote-ref-2)
3. Refer to Note 3 of the Definition and Guidance section. [↑](#footnote-ref-3)
4. Refer to Note 7 of the Definition and Guidance section. [↑](#footnote-ref-4)
5. Refer to Note 8 of the Definition and Guidance section. [↑](#footnote-ref-5)
6. Refer to Note 4 of the Definition and Guidance section. [↑](#footnote-ref-6)
7. Refer to Notes 5 and 6 of the Definition and Guidance section. [↑](#footnote-ref-7)
8. The disclosure of procurement approaches will enhance the transparency of related party transactions and is considered relevant information to users of financial statements. [↑](#footnote-ref-8)