4. AASB 124 *Related Party Disclosures*

# Frequently Asked Questions (FAQs)

### Why do we need to comply with the requirements of AASB 124 when we already have other transparency and accountability reporting processes in place e.g. Register/Declaration of Private Interests? Can’t we just use that information to meet the disclosure requirements of AASB 124?

The objective of AASB 124 is to ensure that the department’s or entity’s financial statements contain disclosures to enable users to understand the potential effect of the relationships on the financial statements. A review of the current transparency and accountability reporting processes indicate that the information currently collected is very high level and does not meet the requirements of AASB 124. The standard requires more specific and detailed information about each related party transaction.

It should also be noted that notwithstanding that the objective of the standard is not meant to be applied as a means to detect fraud, corruption, or as a means to acquit accountability, public perception and scrutiny is likely to make these disclosures synonymous to other transparency and accountability reporting and potentially be used as a proxy for other purposes.

### Who would be considered key management personnel of the State, departments and agencies?

AASB 124 *Related Party Disclosures* defines key management personnel (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.

#### 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 minister will be considered KMP of the portfolio department and agencies. It should be noted for agencies, the Portfolio Minister has the power to influence decisions even if he/she does not exercise this power.

In addition, departments and agencies would also need to assess which executives meet the definition of a KMP for their respective department and agencies. **Based on the specific facts and circumstances, departments and entities should exercise judgement to determine who will be considered a KMP, and attention should also be given to ‘de facto’ decision makers.**

**As a guide for departments**, KMP would include members of the Senior Executive Group (i.e. the Secretary and divisional Deputy Secretaries) as they are generally expected to be responsible for the delivery of the department’s services, and have the authority and responsibility for planning, directing and controlling the activities of the entity.

**As a guide for agencies**, it would depend on the governing structure of the entity. KMP would include members of the governing board (i.e. Board of Directors) and generally the senior executive management team as they are considered to be responsible for planning, directing and controlling of the overall activities of the entity, directly or indirectly.

For executives or senior managers that have been delegated the operational authority for specific functions of the entity (i.e a Director of Human Resources or an Executive Director of Corporate Services), they will generally not be considered as KMP for the purpose of AASB 124.

### Is it an issue if a reporting entity chooses to make all their executive officers KMP of the entity?

Whilst there is nothing to stop an entity from collecting more information from all their executive officers, this will be onerous for their data collection and beyond. This also indicates that the entity is not applying the definition of KMP appropriately and will have to justify to audit why their entity has so many KMPs. In addition, it puts into question whether the entity’s financial statements are prepared on a true and fair basis in compliance with the accounting standard.

### Why is the Premier not considered the only KMP of the State since the Premier is the Victorian government’s head and is ultimately responsible for government policy and decisions?

While the Premier has the power to make decisions, ministers work together as the government (i.e. akin to a corporate board). Decisions are considered and made at Cabinet, so Cabinet is still considered the principal decision making body of the government.

### As the Minister for Finance and the Treasurer have certain powers under the *Financial Management Act 1994* (FMA), does this mean they have decision making power that will make them KMP of all departments and agencies of the State?

The powers given to the Minister for Finance (MoF) under the FMA is limited to governance and reporting matters but not for operational matters. While the Treasurer is responsible for appropriation, it is ultimately Cabinet that ratifies decisions.

As a result, the MoF and the Treasurer will be KMP of their relevant portfolios but not all other departments and agencies. However, as the MoF and the Treasurer are KMP of the State, they are **related parties** to all departments and the controlled entities of the State.

### Should the Parliamentary Secretary be included as part of the KMP of the State?

A Parliamentary Secretary is a member who assists a minister within their portfolio and may be delegated authority to implement the decisions of the minister, therefore they are not considered a KMP for the purpose of AASB 124.

### Should the Secretary, including his Deputy Secretaries of the Department of Treasury and Finance be KMP of the State? Why or why not?

No, as the Secretary, including his Deputy Secretaries, do not have the strategic decision-making authority to plan, direct and control the activities of the State. Cabinet is the principal decision-making body of the Government, so all Cabinet ministers will be considered KMP of the State. The Secretary, including his Deputy Secretaries, are delegated with the operational authority to implement the strategic decisions of the Government. However, the Secretary and his Deputy Secretaries would be considered KMP of the the Department of Treasury and Finance (DTF).

### How do we assess whether a de facto decision maker is a KMP or not?

For departments and entities, ‘de-facto’ decision makers are persons that are not part of the governing board, but have strategic decision making authorities. 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.

### Will an acting KMP be caught under the AASB 124 disclosures?

#### Acting arrangements

DTF’s preliminary view is that for an acting person that covers a vacant KMP position, it is reasonable to include that person for AASB 124 disclosures in the same way as a formally appointed KMP.

If the acting person only covers an existing KMP that is temporarily on leave, judgement will be required to determine whether the acting KMP will be disclosed for the reporting purposes of AASB 124. Given the established governance policies and practices, it is unlikely that acting KMP or their related parties will enter into related party transactions with the reporting entity while acting as a KMP. As a result, DTF supports the exclusion of these acting KMP from the related party disclosures. Nevertheless, if there is evidence suggesting that significant transactions have been entered into by the acting KMP that can significantly affect users’ understanding of the entity’s financial statements, inclusion of such acting KMP will be warranted.

#### Contractors

Personnel who are engaged by an entity as contractors and charged with significant management responsibilities are considered to meet the definition of a KMP under AASB 124 as they are responsible for planning, directing or controlling, directly or indirectly, the entity’ s activities. Therefore, contractors with significant management responsibilities should undertake the relevant KMP process with their respective entities to provide related party information as required.

The example disclosure included as part of the 2016-17 *Model Report for Victorian Government Departments* provides some guidance on how to disclose remuneration of contractors who are engaged through an external service provider.

### How will information be collected and declared if a person is a KMP of more than one entity?

Each entity needs to assess and determine who are their KMP. Therefore, where a person is a KMP of more than one entity, each entity would need to consider the person as their KMP and undertake the relevant process to collect related party information as required. As a result, the KMP may need to complete a separate declaration certificate for each entity that they are a KMP of.

Note that this excludes inter-entity transactions between reporting entities within a Group, noting the reporting requirements of paragraphs 26 in AASB 124 where transactions between the entities are considered individually or collectively significant.

### What information collected for AASB 124 will be subject to *Freedom of Information Act 1982* requests?

The data that is being collected from all key management personnel (KMP) will be used to assess and determine if they are required to be disclosed in the related party notes of respective public sector entity’s financial reports.

As a result, the data which includes related party transactions disclosed in the self-declaration certificate completed by ministers and other KMP will be subject to the Freedom of Information requests.

However, we do not plan to make the self-declaration certificate available as its disclosure under the Act would involve unreasonable disclosure of personal information of related parties of the ministers and other KMP.

### Are members of an entity’s advisory board considered KMP of an entity, particularly if the entity has both a governance board and an advisory board?

DTF is of the view that the guidance should be principle-based on whether a member of an advisory board is KMP of the entity. The entity will need to assess whether the roles and functions of the advisory board meet the definition of KMP in AASB 124 i.e. the entity needs to determine whether members of the advisory board have the authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly (i.e. they are charged with decision‑making responsibilities).

### What should a KMP do if the KMP is not aware of any related party transactions to report?

A KMP is expected to make enquiries of their related parties and disclose information they are aware of. In the event that a KMP becomes aware there may be some related party transactions, but the KMP is not in receipt of the specific details of the transactions, the KMP is encouraged to declare any known details of their related parties, so that the relevant reporting entity can assist the KMP in determining whether disclosure of the transaction is required. This will assist in minimising the risk of potential omissions of transactions that should be declared.

### Could a threshold be applied for data collection of related party transactions?

AASB 124 only requires the **disclosure** of material related party transactions and their outstanding balances in the financial statements. Materiality is subject to professional judgement and goes beyond the dollar value of the transaction or balance. 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.

However, it is important for all KMP to **declare** all related party transactions, noting that typical citizen transactions are not required to be declared. This is because a transaction that may appear to be immaterial on its own, may in combination with other like transactions have a material impact on the State’s, department’s or agency’s financial statements and warrants disclosure.

A declaration threshold of $100 000 (excluding GST) may be applied only to standard commercial transactions to ease the data collection and reporting burden of related party transactions with KMPs, their close members and entities under their control**.** For all other transactions or contracts, KMP are required to declare all transactions, regardless of the financial amount**.**

For example, where the entity has a standard contract (i.e. standard terms and conditions of procurement for the controlled entity of the State) with a KMP’s related party to provide IT equipment for a total value of $60 000 over three years, the contract is below the $100 000 threshold. The KMP may elect not to declare the transaction. However, if the contract is to provide services for a total value of $150 000 over three years, the contract amount is over the $100 000 threshold. The transaction must be declared even though the service amount each year of $50 000 is below the $100 000 threshold.

An example of a contract or agreement that is not on standard terms and conditions of the State is where the entity has a contract with a KMP’s related party to provide web design services for a total value of $25 000 over two years. The negotiations with the KMP’s related party has resulted in an upfront prepayment of the contract in one lump sum prior to any services being rendered, which is not consistent with current procurement terms of the State. As a result, the related party contract would need to be declared regardless of its total value.

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 Minister KMPs and their related parties that are proposed to be disclosed by entities in their financial reports should be submitted to the relevant KMP for review and approval prior to finalisation of the relevant entity’s related party disclosure.

### When collecting information of related party transactions, is it collected on the accrual basis or cash basis?

Information collected will be based on the accrual basis.

### Would grants passed on from a department to an entity be required for disclosure as related party transactions?

A department and its portfolio agencies are related as all entities are controlled by the State. As a result, when a department passes on grants to a portfolio entity on behalf of the State, it will be considered to be a related party transaction of the entity. AASB 124 provides a partial exemption for transactions between government-related entities. Government-related entities are entities that are controlled by the same government. As the department and its portfolio agencies are controlled by the State, prima facie, they will be partially exempted from the detailed disclosures under AASB 124.

However, the department and its portfolio agencies are still required to disclose the nature and amount of the individual transaction if the transaction is significant. In cases where transfers that are collectively, but not individually, significant, a qualitative or quantitative indication of the extent of the grants transferred will be required. An illustrative example of the disclosure will be included as part of the 2016-17 *Model Report for Victorian Government Departments.*

### Is a partial disclosure exemption available to all government-related entities?

Yes. Paragraph 25 of AASB 124 allows a reporting entity to reduce the level of disclosures about transactions and outstanding balances, including commitments with:

* a government that has control, joint control or significant influence over the reporting entity; and
* another entity that is a related party because the same government entity has control, joint control or significant influence over both the reporting entity and the other entity (for example, government departments, statutory authorities and state owned corporations).

The partial disclosure exemption does not apply to KMP (as they are individuals), their close family members (as they are individuals) or to related parties that are entities controlled or jointly controlled by the KMP (as they are not under the control, joint control or significant influence of the State and its reporting entities). Similarly the exemption does not apply to KMP of a parent entity. An illustrative example of the disclosure will be included as part of the 2016-17 *Model Report for Victorian Government Departments.*

### Are transactions with ministers, who are related parties, in their collective government capacity, eligible for the government-related exemption?

Yes. Where the ministers are acting in their collective government capacity, they are assessed as being the government and are therefore related parties of the government’s subsidiaries. However, these relationships are not captured as KMP related party transactions. As a result, transactions with ministers in their collective government capacity (e.g. grant funding from a department to a portfolio entity) qualify for the partial disclosure exemption.

### Should the standard indemnity policy provided to members of the Board of Directors of a Victorian public sector agency be declared by KMPs as related party transaction?

The indemnity provided to a KMP in their capacity as an employee should be excluded from declaration. A general disclosure statement in the entity’s financial statements should be included that indicates that the Board of Directors are indemnified in the normal course of their role as Board Directors of an agency.

However, where the entity provides a personal guarantee for a related party of a KMP, the KMP will need to declare information of the guarantee in their declaration certificate, and the entity will need to assess whether specific or separate disclosure will be required in the entity’s financial statements.

### Does an agency need to report related party transactions that a KMP may have with a Foundation or Trust?

Whether transactions would need to be reported will depend on the specific circumstances of the entities structure/circumstances. For example:

* **The Foundation or Trust is controlled by the agency and is consolidated into its financial statements.**

Where a KMP of the agency **as an individual** transacts with the Foundation or Trust, the transactions should be declared in the KMP’s declaration certificate as the KMP is transacting with the agency as a consolidated reporting entity.

Where the **agency** transacts with the Foundation or Trust, this would be an inter-entity transactions subject to the requirements of paragraph 26 in AASB 124.

* **The Foundation or Trust is not controlled by the agency and is not consolidated into its financial statements.**

Where the KMP of the agency as an individual transacts with the Foundation or Trust, the transactions **would not be** required to be declared in the KMP’s declaration certificate.