

Managing
Conflicts of Interest
in the Public Sector



Toolkit

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Introduction to the Toolkit

This Toolkit has been prepared by the Crime and Misconduct Commission (CMC) and the Independent Commission Against Corruption (ICAC) to provide practical assistance for managing conflicts of interest in public sector organisations.

The tools are intended to help public sector organisations implement the *Conflicts of Interest: Principles and Guidelines for the Public Sector*. A copy of the *Guidelines* is included in this publication.

BACKGROUND TO THE TOOLKIT

Several types of conflicts of interest can arise for public employees during the course of their official duties. Knowing how to identify and manage conflicts of interest is an effective way to prevent corruption and misconduct in the public sector.

It is important for public employees to know that having conflicts of interest is not necessarily the same thing as corrupt or improper conduct. Conflicts of interest can usually be managed and resolved in favour of the public interest if organisations have systems for managing conflicts of interest.

The Organisation for Economic Cooperation and Development (OECD) *Guidelines on Managing Conflicts of Interest in the Public Sector* recommend that the overarching objectives of an organisational system for managing conflicts of interest are to:

- serve the public interest by encouraging employees to make decisions on their merits without regard for private interest, personal attitudes or opinions
- support transparency and scrutiny by providing ways to declare interests and conflicts as they arise
- promote individual responsibility and personal example
- build a supportive organisational culture that facilitates disclosure and discussion of conflicts of interest.

STRUCTURE OF THE TOOLKIT

The purpose of managing conflicts of interest is to maintain the integrity of official policy and administrative decisions and to support public confidence in government. Managing conflicts of interest effectively in an organisation will require that managers:

- i) *identify the types of conflicts that typically arise in the organisation*
- ii) *develop policies, management strategies and responses*
- iii) *educate the organisation about the policy*
- iv) *lead the organisation through example*
- v) *communicate the policy to internal and external stakeholders*
- vi) *enforce the policy*
- vii) *review the policy regularly.*

This Toolkit consists of four sections, the first three of which contain tools that organisations and individuals can adapt for use in their conflicts of interest management systems. Sections 1 and 2 incorporate the above seven functions of a conflicts of interest management system. Section 3 provides tools to help individuals manage conflicts of interest. The fourth section contains resources for you to use in your organisation and for individuals to manage their own conflicts of interest.

SECTION 1:

Developing a Conflicts of Interest Policy

includes tools for identifying the organisation's conflicts of interest main risks and developing a policy to address them. It includes a model process for collecting the information about conflicts of interest and a template for drafting the policy.

SECTION 2:

Implementing a Conflicts of Interest Policy

provides tips for leading and communicating the policy once it is drafted. It includes policy implementation and monitoring checklists, a model communication strategy and advice on training.

SECTION 3:

Managing Conflicts of Interest contains samples and templates of the tools needed to apply the policy on a day-to-day basis. This section is divided into tools for:

- *identifying* individual conflicts of interest
- *managing* conflicts of interest
- *monitoring* conflicts of interest.

It includes a model statement of interests for the Register of Interests, a sample conflicts of interest disclosure form and procedures for public officials to follow.

SECTION 4:

Training Resources contains a list of frequently asked questions that can be provided to staff and managers and a generic training module that can be adapted to train people in your organisation about your conflicts of interest policy.

SECTION 5:

Other Resources includes a range of existing resources from other sources that may be useful to organisations in the management of conflicts of interest.

TERM	DESCRIPTION
Accountability	The process where individuals can be held to account or be answerable for their actions.
Actual conflict of interest	See 'conflict of interest'. The terms are interchangeable.
Apparent conflict of interest	An apparent conflict of interest exists where it appears that a public official's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
Bias	Prejudicial treatment, favouritism or partiality. (See 'Favouritism'.)
Code of conduct	A series of statements informing employees how they are expected and/or required to act. Effective codes anticipate likely situations or questions employees might face and provide clear direction about what the organisation specifically allows and prohibits.
Competing interests	When two or more interests are in conflict with one another. This situation may occur between an individual's official duties and their private interests or duties. It may also occur when the individual has two or more official roles (hats) that come into conflict through the different duties expected from each role.
Conflict of duty	Where a public sector employee has multiple roles and could be said to wear two hats, that is, they have two official roles with a competitive relationship. No private interest is involved or apparent.
Conflict of interest	A conflict of interest involves a conflict between a public official's duties and responsibilities in serving the public interest, and the public official's private interests. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.
Conflict of interest management strategy (individual)	A strategy adopted by a public official for managing a conflict of interest that they have identified. The choice of strategy will depend on an assessment of the nature of the conflict, the complexity of the situation and the subtleties and severity of the case.
Conflict of interest management strategy (organisation)	A series of basic steps for developing a comprehensive strategy for managing conflicts of interest within an organisation before problems arise. Suggested seven steps (Identify, Develop, Educate, Lead, Communicate, Enforce, Review) are dealt with in detail within the Guidelines.
Corruption	A generic description of corruption is the abuse of public office (i.e. 'public trust') for private advantage. There are many different definitions, including some based in legislation.
Declaration of interests	See 'Statement of Interests'.

TERM

DESCRIPTION

Disclosing a conflict of interest

The transparent act of formally making known to others that an interest exists that may affect the carrying out of official duties. Disclosure involves the public official concerned registering details of the conflict of interest, reporting the conflict of interest to their manager and declaring their conflict of interest in a situation where they are expected to participate in a discussion or decision about the matter.

Enmity

Feelings of ill will against another.

Favouritism
(cronyism, nepotism)

Preferential treatment given by a public official to another individual or group over the interests of others with equal claim to the same treatment. Often referred to as cronyism when political patronage occurs, and as nepotism when patronage based on family relationship occurs.

Identify

The first stage in managing a conflict of interest. The public official is required to assess the situation and the surrounding circumstances that could affect any decisions or actions in the matter; identify whether or not any conflicts of interest exist, and determine if it is an actual, apparent or potential conflict of interest, or if it is a pecuniary or non-pecuniary conflict.

Independent third party

A person or group completely removed from the private interest that is causing a conflict of interest and have no personal affiliation with the public employee concerned. This independent third party may belong to the agency in which the conflict arises, or may be drawn from an external agency or body.

Integrity

Adhering to the highest ethical standards in decision making and the exercise of entrusted powers.

Managing a conflict of interest

A process where a conflict of interest is managed to ensure probity, transparency and the public interest. In some cases, agencies will be required by legislation to manage conflicts in a particular way.

Material benefit

A personal advantage received by a public official, which may be a financial gain or have a quantifiable value or expectation of value. Material benefits include lucrative job offers, hospitality, gifts, an increase in land value, money and direct profit.

Material personal interest

This term may be defined by legislation but generally it refers to the realistic expectation that the public official or an associate directly or indirectly stand to gain a benefit or suffer a loss, depending on the outcome of an issue. In Queensland legislation, a material personal interest may encompass a financial or non-financial interest. (See also 'Pecuniary interest'.)

Material loss

A personal disadvantage received by a public official. It may be a financial loss or have a quantifiable cost or expectation of expense or deficit. A material loss can include a decrease in land value, money or direct financial loss.

TERM**DESCRIPTION**

Misconduct	This term may be defined by legislation but generally it is improper conduct in carrying out official duties, such as where a conflict of interest has been improperly acted upon or mismanaged. This situation is also regarded as an 'abuse of office' or may even be an instance of corruption. (See also 'Official misconduct'.)
Misuse of public resources	The unauthorised private use of official resources owned by, or paid for by, a public sector organisation. Such use may be against the organisation's policy.
Monitor	An essential component of any strategy adopted to manage a conflict of interest. Ongoing monitoring and regular reviews allow changes to be made to the management strategy and the way in which it is implemented before problems have an opportunity to arise. It is equally important to monitor any perceptions that may be held, or continue to be held, by others.
Non-pecuniary interest	Non-pecuniary interests do not have a financial component but may arise from personal or family relationships or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias your judgement or decisions.
Official duties	This term may be defined by legislation but generally it is the work done by a public official that may be defined by their position description or directions given by their supervisor.
Official misconduct	Generically described as conduct that could amount to a criminal offence or a disciplinary breach providing reasonable grounds for dismissal of a public employee. There are different definitions, some of which are based in legislation. Also known in some jurisdictions as 'corrupt conduct' or 'corruption'.
Pecuniary interest	Pecuniary interests involve an actual or potential financial gain or loss. They may result from the public official or a related party owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Money does not need to actually change hands for an interest to be pecuniary. (See also 'Material personal interest'.)
Perceived conflict of interest	See 'Apparent conflict of interest'. The two terms are interchangeable.
Personal/private associations	See 'Private affiliations'.
Personal interest	See 'Private interest'. The two terms are interchangeable.
Personal responsibility	All public officials are individually responsible for arranging their private affairs as far as reasonably possible, to prevent conflicts of interest arising and manage their private interests in a way that preserves public confidence in their own integrity and that of their organisations.

TERM

DESCRIPTION

Potential conflict of interest

A potential conflict arises where a public official has private interests that could conflict with their official duties in the future.

Private affiliations

These include the personal, professional or business interests of others such as family members and friends, or even rivals and enemies.

Private interest

Private interests are those interests that can bring benefits or disadvantages to public officials as individuals, or to others whom public officials may wish to benefit or disadvantage. Private interests are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss. They also include many social and professional activities and interests.

Probity

Probity refers to honesty, ethical conduct and propriety in dealings. It is also often used in a general sense to mean integrity of process.

Public duty

The duty expected of all public officials, that is, to put the public interest above their own personal or private interests when they carry out official duties.

Public interest

An ideal that is central to the concept of democratic government and administration. Acting in the public interest means carrying out official duties for the benefit of the public served by government, in a fair and unbiased way, and making decisions that are not affected by self-interest, private affiliations or the likelihood of personal gain or loss.

Public official

Anyone engaged in any capacity to help deliver government programs and services, whether for remuneration or not. Such persons include employees of commonwealth, state and local governments, including members of boards and committees, councillors, academic and non-academic staff of public universities, casual and contract staff, and consultants and volunteers.

Public sector organisation

May be defined in legislation as a unit of public administration or public authority, or public sector agency. Such organisations are funded or partially funded by public monies, including state government departments, state educational institutions, local government councils, government-owned corporations, statutory authorities, boards or government trading enterprises.

Record keeping

The process of making and maintaining a formal record of all assessments, decisions and actions undertaken in identifying, managing and monitoring a conflict of interest.

Recruit

A conflict of interest management strategy where an independent third party is used to oversee part or all of the process that deals with the matter.

Recusal

A term used in some jurisdictions meaning 'removal', 'withdrawal' or 'self-exclusion'.

TERM**DESCRIPTION**

Register

A conflict of interest management strategy where details of the existence of a possible or potential conflict of interest are formally registered.

Register of Interests

A register held by a public sector organisation where declarations of interest are formally held. (See 'Declaration of interest'.)

Related person

Definitions may vary in different legislations, but generally includes anyone who is part of a public official's immediate family, such as a spouse or de facto spouse, or a wholly or substantially dependent child, or someone who is wholly or substantially dependent on the public official and whose affairs are closely linked (e.g. an aged parent).

Related persons are not always restricted to family relationships, but are often more broadly defined as anyone whose affairs are closely linked to those of the public official, where there may be some type of direct or indirect beneficial relationship. Expressions used to define the additional relationship beyond oneself vary – and include for example, 'persons associated with me' – but the intent is usually clear.

Relinquish

A conflict of interest management strategy where a public official relinquishes the private interest that is creating the conflict.

Remove

A conflict of interest management strategy where public officials remove themselves completely from the matter.

Reporting

The act of reporting or disclosing to an appropriate individual that a conflict of interest exists which may interfere with the proper discharge of official duties. This term covers self-reporting where a public official discloses a conflict of interest that they have. In a different context it may also cover the reporting of another public official who is perceived to have a conflict of interest.

Resign

A conflict of interest management strategy where the public official resigns from their position with the agency.

Restrict

A conflict of interest management strategy where restrictions are placed on the public official's involvement in the matter.

Risk

The chance of something happening that will have an impact on desired objectives.

Sanctions

The consequences of not complying with the public sector organisation's conflicts of interest policy. Sanctions may include, at minimum, a disciplinary matter to sanctions for abuse of office or prosecution for corruption.

Secondary employment

When a public official works for one organisation but also does paid part-time or casual work for another. It includes operating a business and providing paid consultancy services to another individual or organisation.

TERM**DESCRIPTION**

Self interest

Looking out for one's own personal or private interests, rather than the public interest.

Statement of interests

A statement of interests is a listing of a public official's relevant personal interests, and possibly those interests of individuals closely related to the public official, where the interests may cause a conflict of interest. (See also 'Register of interests'.)

Transparency

Transparency involves disclosure of private interests or affiliations that could compromise, or be seen to compromise, the unbiased performance of an official's work, and maintaining proper records of all actions and decisions taken in managing a conflict of interest.

Withdraw

See 'Remove'.

Section 1: Developing a Conflicts of Interest Policy

It is important to have a clear understanding of what a conflicts of interest policy is designed to achieve and who will be affected by it. To achieve its purpose, a conflicts of interest policy needs to be tailored to the identified needs of each organisation.

Conflicts of interest risks can be identified and evaluated by examining the functions of the organisation, the activities performed by staff and external affiliations that may pose a conflict with public duties. The Checklists in Tools 2.1 – 2.4 are designed to assist in identifying and assessing these risks.

Once the necessary information has been gathered, the organisation can begin the policy writing process. There are many approaches to writing a policy and many organisations will already have established protocols for this process. A suggested method for developing a policy is provided in Tool 1: Model process for developing a policy.

Tool 3 describes the structure and key elements for writing the conflicts of interest policy.

Tool 1: Model process for developing a policy

This tool lists the steps to take in developing a conflicts of interest policy. The steps should be followed in the specified order. The checklist below can be used to ensure all steps have been undertaken. It is the ‘how to’ of writing a policy. Specific advice on what should be included in the policy is provided in Tool 3 – ‘Drafting a Conflicts of Interest Policy: Outline and Core Elements’.

CHECKLIST

- Step One: Create a policy development team
- Step Two: Gather necessary information
- Step Three: Define policy aims and audience
- Step Four: Develop recommendations/general principles
- Step Five: Discuss and debate the recommendations at an executive level
- Step Six: Draft the policy
- Step Seven: Hold first reading
- Step Eight: Make revisions
- Step Nine: Hold second reading
- Step Ten: Final editing
- Step Eleven: Adopt the policy.

STEP ONE: CREATE A POLICY DEVELOPMENT TEAM

The first step is to decide who will actually research, write and develop the necessary policy. Any of the following groups, alone or in combination, can be given the responsibility of policy development:

- executive staff (i.e. chief executive officers (CEOs), directors-general and their advisors)
- policy writing specialists, consultants or facilitators external to the organisation
- experienced policy staff within the organisation.

Stakeholders and staff who are affected by the policy and staff from similar organisations in the community may also be included in the team.

STEP TWO: GATHER NECESSARY INFORMATION

For a policy to be effective in meeting its purpose, it should be based on sound research and information and be consistent with other policies and regulations internal and external to the organisation.

Useful information about topics to be included in the policy can be obtained by:

➤ **checking the organisation’s regulatory frameworks and obligations**

An effective conflicts of interest policy must capture any formal obligations imposed on the organisation and its staff by legislation or other regulations. Statutory provisions governing conflicts of interest usually regulate decision-making processes as well as the declaration and registration of pecuniary interests.

➤ **scanning the internal and external environment**

The purpose of this is to identify possible areas where conflicts of interest could arise. The focus should be on the roles and relationships that are specific to the organisation by:

1. *evaluating the circumstances of the organisation*

This involves analysing organisational functions, the community in which the organisation operates, personal circumstances of staff and client–contractor relationships to identify conflicts of interest risks in the organisation. (See Checklists Tools 2.1-2.4.)

2. *consultation*

Staff, managers and external contacts should be consulted about their experiences of conflicts of interest in the organisation.

The following people may be particularly useful in providing information:

- executive staff
- board members
- staff
- legal counsel
- volunteers
- external firms and agencies such as suppliers, clients and other public sector organisations.

Convenient consultation tools include:

- surveys
- focus groups
- open forums
- one-on-one interviews.

➤ **checking the organisation’s existing related policies for provisions concerning conflicts of interest.**

The introduction of a conflicts of interest policy may impact on other policies. Conflicts of interest can overlap with a number of other management issues and employees looking for guidance may need information from more than one policy. Identifying related policies will also help ensure that related policies reflect consistent principles and do not create conflicting or unworkable procedures.

The policies most likely to be related to a conflicts of interest policy are:

- code of conduct
- gifts and benefits
- secondary employment
- post-separation employment
- confidential information
- intellectual property
- use of official resources
- procurement (policy and procedures)
- recruitment (policy and procedures)
- sponsorship
- policies or procedures affecting staff who perform regulatory functions
- policy statements governing external contacts and business relationships.

The organisation's risk management plan, internal reports and grievances should also be reviewed for information indicating areas where conflicts may occur.

Examples of documented internal processes to examine:

- Risk assessment processes and risk management plans may have addressed situations that involve conflicts of interest, in the context of risks of fraud, corruption and staff misconduct in the organisation.
- A review of the records kept under the organisation's internal reporting system or whistleblower records may also point to areas of activity where conflicts of interest are more likely to occur.
- An effective grievance management system provides organisations with valuable information about situations that may also involve conflicts of interest.

➤ **Examining the conflicts of interest policies of other organisations operating under similar regulatory frameworks**

Such examinations can assist in identifying issues that also need to be addressed in your own organisation's conflicts of interest policy.

It may also be possible to liaise with organisations which have established conflicts of interest policies to benefit from their experiences and gain insight into some areas that may need special attention in drafting the policy. Policy evaluations may be useful, if available, in fine tuning the proposed policy.

STEP THREE: DEFINE POLICY AIMS AND AUDIENCE

A good conflicts of interest policy should address the specific conflicts of interest risks for the organisation. Once the environmental scan is complete and the organisation's conflicts of interest risks have been identified, the aims of the policy should be clearly defined. That is, it should be made clear what outcomes are expected from developing this policy. In developing a policy that meets its purpose, it is important to identify who will be affected by the policy and how it will impact on them and the organisation.

STEP FOUR: DEVELOP RECOMMENDATIONS/GENERAL PRINCIPLES

Once the necessary information is available, the policy team should propose a set of recommendations to be included in the policy. These should be general principles that form the basis of the specifics of the policy.

STEP FIVE: DISCUSS AND DEBATE THE RECOMMENDATIONS AT AN EXECUTIVE LEVEL

Factors to be considered in agreeing on the general principles are:

- Is the content within the scope of the organisation's authority?
- Is it consistent with local, state and federal law and the Australian Constitution?
- Does it respond to the organisation's identified conflicts of interest risks?
- Is it good practice?
- Is it reasonable (are any requirements or prohibitions arbitrary, discriminatory or irregular)?
- Does it adequately cover the subject?
- Is it limited to conflicts of interest-related issues?
- Is it consistent with the organisation's current policies and legislative framework?
- Can it be administered?
- Is it practical?

STEP SIX: DRAFT THE POLICY

Once the organisation's executive has reached consensus on policy content, the policy team should begin writing the policy. It should be clearly, directly and succinctly written and broadly stated with room for adjustment to fit special circumstances. Specific advice on what needs to be included in the policy is provided in Tool 3 – Drafting a conflicts of interest policy: outline and key elements.

Check that the policy addresses all identified conflicts of interest risks for the organisation.

Policy writing tips...

- be as brief and concise as possible
- use plain language
- use present tense
- use a directive tone
- use active words
- use positive terminology
- consistently reflect the mission and beliefs of the organisation.

STEP SEVEN: HOLD FIRST READING

The first draft should be distributed to a group of readers not involved in the writing process. These could be managers and senior managers within the organisation as well as other staff who can offer a fresh perspective on the policy. Involving staff from all sections of the organisation is particularly important because staff will have to adhere to the policy on a daily basis and could offer input into the practicality of the policy's requirements.

Involving staff in the reading process is a way of assuring organisation-wide involvement in the policy development, which could in turn encourage support of and increased implementation of the policy by creating a sense of ownership among staff.

STEP EIGHT: MAKE REVISIONS

Revise the policy based on the information gained from the questions, comments and suggestions obtained after the first reading.

STEP NINE: HOLD SECOND READING

The period between the first and second reading allows time for all concerned individuals to ask questions and make comments or offer suggestions for changes and improvements.

Once revised, the second draft of the policy should be placed on the executive's agenda for a final reading, giving notice to everyone interested that the organisation has a specific policy under consideration. At this time the executive has the opportunity to hold a preliminary discussion of the proposed policy and, if it chooses, may hold an organisation-wide meeting.

STEP TEN: FINAL EDITING

Once the executive has commented on the policy, any suggestions or comments should be incorporated into the final draft.

STEP ELEVEN: ADOPT THE POLICY

Approval by senior management and commencement of the policy

Providing the date on which the policy came into effect will help avoid confusion about whether or not it applies in a particular situation. The policy should be scheduled for regular review according to the organisation's management cycle and the date for review stated in the policy.

Nominate a responsible officer (preferably from the project team) to oversee that:

- the policy is kept current
- a point of contact is available for anyone wanting information or guidance about the policy's meaning or application.

This responsible officer may also be required to oversee that:

- records of reported conflicts are maintained
- the register of interests declared under statutory or other regulation is maintained where required.

The person nominated should be sufficiently senior to initiate changes to the policy when required but still accessible to employees who seek advice. Ideally the responsible officer will have been involved in drafting the policy and therefore have a good understanding of the principles involved in managing conflicts of interest.

Promotion and implementation

The effective implementation and promotion of the conflicts of interest policy is just as important as developing the policy.

Section 2 contains advice and tools for promoting and implementing the policy in the organisation.

Tool 2.1: Checklist for identifying risk of conflicts of interest in organisational functions

The purpose of this tool is to assist you in identifying conflicts of interest risks in your organisation. The checklist sets out organisational functions identified by the CMC and the ICAC as presenting conflicts of interest risks. Use the checklist as part of your environmental scan when preparing to develop your conflicts of interest policy. Where your organisation performs one of the functions listed below, you should identify the specific risks for your organisation and check that your policy provides appropriate management strategies.

DOES YOUR ORGANISATION:

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Appoint and manage staff? |
| <input type="checkbox"/> | <input type="checkbox"/> | Operate in an isolated or small community? <i>See also Tool 2.4</i> |
| <input type="checkbox"/> | <input type="checkbox"/> | Accept or provide sponsorship of any kind? |
| <input type="checkbox"/> | <input type="checkbox"/> | Use, maintain or store public resources or assets (e.g. vehicles, tools, office equipment, buildings) that could be used for private gain? |
| <input type="checkbox"/> | <input type="checkbox"/> | Collect, retain, access, use or distribute confidential information? |
| <input type="checkbox"/> | <input type="checkbox"/> | Regularly interact with the private sector, for example: <i>See also Tool 2.3</i> <ul style="list-style-type: none">• Contract, tender and procure goods or services from the private sector (competitive tendering processes are particularly high-risk)?• Dispose of or sell public assets? |
| <input type="checkbox"/> | <input type="checkbox"/> | Provide goods or services to clients, for example: <ul style="list-style-type: none">• Provide services where demand frequently exceeds supply?• Allocate public services or grants of public funds?• Provide services or advice in a highly specialist area?• Case manage clients on an individual basis?• Provide subsidies, financial assistance, concessions or other relief to those in need? |
| <input type="checkbox"/> | <input type="checkbox"/> | Perform a regulatory role of any kind, for example: <ul style="list-style-type: none">• Inspect, test, regulate or monitor standards, businesses, equipment or premises?• Issue, or review the issue of, fines or other sanctions?• Issue qualifications or licences? |
| <input type="checkbox"/> | <input type="checkbox"/> | Exercise discretionary power in any form of decision-making, for example: <ul style="list-style-type: none">• Make determinations or hand down judgement about individuals or disputes?• Have discretion concerning planning and development applications or zoning decisions? |
| <input type="checkbox"/> | <input type="checkbox"/> | Regularly interact with other public sector organisations, for example: <ul style="list-style-type: none">• Engage in consultation?• Provide advice?• Share information?• Engage in joint projects? |

Notes:

Tool 2.2: Checklist for identifying risk of conflicts of interest in personal circumstances

The purpose of this tool is to assist you in identifying conflicts of interest risks arising from the personal circumstances of public officials in your organisation. While the level of private information your organisation can gather will vary, the following risk areas should be assessed and communicated in your conflicts of interest policy. Specific policies should exist for some of the issues below, such as secondary or post-separation employment. These policies may need to be amended to ensure they are consistent with your conflicts of interest policy.

Consider whether the public officials in your organisation are aware of the following private interests as potential conflicts of interest risks:

- financial and economic interests (e.g. debts or assets)
- family or private businesses
- secondary employment
- affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations
- affiliations with political, trade union or professional organisations and other personal-capacity interests
- obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity or relationships to people living in the same household
- enmity or competition with another person or group
- significant family or other relationships with clients, contractors or other staff working in the same (or a related) organisation
- highly specialist skills in an area where demand for the skills frequently exceeds supply
- future employment prospects or plans (i.e. post-separation employment).

Notes:

Tool 2.3: Checklist for identifying risk of conflicts of interest in client and contractor relationships

The purpose of this tool is to assist you in identifying conflicts of interest risks arising from client and contractor relationships. Specific policies should exist for some of the issues raised below (e.g. management of confidential information) and these policies may need to be amended to ensure they are consistent with your conflicts of interest policy. If any of the areas listed raise specific risks for your organisation, check that your policy provides appropriate management strategies. Robust case and file management systems combined with regular auditing are useful additional strategies for the management of these risks.

CLIENTS

Conflicts of interest are a risk in relationships your organisation's employees have with clients. This risk is heightened where your organisation's employees are involved in:

- collecting, assessing, using, distributing or holding confidential information
- working alone with clients
- updating and changing personal information
- exercising discretionary authority
- providing professional advice
- licensing, assessing or regulating client activities
- providing qualifications or certification
- testing
- allocating funding, public resources or access to public equipment (particularly where demand exceeds supply).

CONTRACTORS

Conflicts of interest are a risk in relationships your organisation's employees have with contractors. Where your organisation's employees are involved in contracting and procurement, the following areas present conflicts of interest risks:

- receipt of gifts and other forms of benefit
- access to confidential information
- allocation of contracts under the tender threshold
- any pre-tender, market-sounding activities
- tender evaluation and the bidding process
- secondary and post-separation employment
- contract administration.

STRATEGIES

If your organisation is involved in any of these activities consider also whether these risks are being managed by any of the following strategies:

- providing information about public sector values and business ethics to your community, clients and contractors?
- distributing a statement of business ethics to external business parties?
- conducting regular audits of client relationships and/or contract administration?
- maintaining robust case and file management systems?

Notes:

Tool 2.4: Checklist for identifying risk of conflicts of interest in restricted communities

The purpose of this tool is to assist you in identifying the conflict of interest risks that may arise if your organisation works in an area where the limited availability of specialist skills or knowledge mean that only a limited number of people are able to provide advice or perform functions. This restricted communities problem is common in specialist areas of knowledge and geographically isolated communities. Because conflicts of interest are more likely to occur in a restricted community and common management options (e.g. withdrawal) are likely to be of limited value, your conflicts of interest policy should ensure the issues listed below are systematically addressed in the development of your policy.

When developing a conflicts of interest policy for restricted communities carefully consider the following issues:

- recruitment and selection processes
- discretionary decision making
- record keeping of decision-making processes
- use of public resources
- assignment of multiple functions to one individual (conflicts of duties are a particular risk in restricted communities)
- regulation, licensing, testing and inspection
- links between decision-makers and family members or other associates
- collection, use and maintenance of confidential information
- secondary and post-separation employment
- tender evaluation.

If these risks are relevant to your organisation or community consider also whether they are being managed by any of the following strategies:

- a single coordinated policy approach for managing conflicts of interest in your community?
- consulting with the community as part of the policy development process?
- making policies publicly available and accessible to all?
- considering how to manage the perception of conflicts of interest (e.g. promoting transparency by making public decisions about the management of conflicts of interest)

Notes:

Tool 3: Drafting a conflicts of interest policy

– outline and core elements

This document is a format for a conflicts of interest policy and shows the range of topics that should be addressed in the policy. It also points to the procedures necessary to manage conflicts when they arise.

It should be used in conjunction with the tools for managing conflicts of interest that appear in Section 3 of this Toolkit and Tool 1 – Model process for developing a policy.

INTRODUCTION

Purpose

Explain under this heading why the policy has been drafted and what it is intended to achieve. This section can be used to restate the organisation's commitment to undertaking its work in a fair and unbiased way without being influenced by improper considerations.

Reference can be made here to organisational values that may be stated in the code of conduct or the organisation's strategic plan.

Application

This section explains who the policy applies to. Depending on the work and functions of your organisation, the conflicts of interest policy will need to address a range of conflicts of interest. In addition to standard provisions that apply to all staff, consider also whether your policy should include special provisions for:

- part time and contract staff
- elected representatives
- board and committee members
- staff in remote areas
- executive management
- volunteers
- external tenderers, suppliers or contractors.

Relevant legislation

This section lists any statutory provisions that impose obligations on the staff of your organisation

in relation to the disclosure and management of conflicts of interest. The details of those obligations should be included in the policy's sections on responsibilities and procedures or reproduced in a separate appendix to the policy.

Related policies

In this section, list other organisational policies that have a bearing on the operation of this policy.

Date effective/date for review

Include here the date the policy came into effect and when it will be reviewed.

Responsible officer

Nominate an individual as the responsible officer for conflicts of interest oversight and explain the functions they will perform, such as:

- maintaining records of disclosed conflicts
- maintaining the register of interests declared under statutory or other regulation (where one is required)
- ensuring the conflicts of interest policy is kept current
- providing a point of contact for anyone wanting information or advice about its meaning or application
- providing a point of contact for anyone wanting assistance in identifying a conflict of interest and/or the type of conflict
- receiving complaints and grievances of possible breaches of the conflicts of interest policy, investigating these and enforcing policy compliance
- ensuring that the conflicts of interest communication strategy is implemented and reviewed to assess effectiveness.

The individual nominated should be senior enough to make decisions needed to maintain the policy and give effect to decisions made.

DEFINITIONS

In this section the policy should:

- define conflicts of interest
- define the types of **conflicts** that can occur
 - actual, perceived/apparent, potential
- explain the types of **interests** that can give rise to conflicts including:
 - pecuniary
 - non-pecuniary
 - personal
 - private
 - family
 - business
 - any other key terms used in the policy or applicable legislation
- give examples of the situations in which conflicts are likely to arise in the course of the work of the organisation
- if possible, identify situations and relationships which would **not** be considered conflicts of interest.

The information obtained by scanning the organisation's environment with Checklists (Tools 2.1–2.4) should be used to draft this section.

PRINCIPLES

General

The policy should make it clear that:

- all conflicts of interest are to be managed transparently
- effective management of conflicts of interest depends on the joint participation of staff, managers and the organisation itself.

RESPONSIBILITIES

Responsibilities of staff

Under the policy, all individuals, whether staff or managers, are responsible for:

- being aware of their obligation to avoid, where possible, conflicts of interest and manage those conflicts of interest that cannot be avoided
- assessing their private and personal interests and whether they conflict, or have the potential to conflict, with their official duties
- formally disclosing all conflicts of interest they may have according to the procedures established by the policy
- complying with any other requirements of the policy.

Some public employees will be required by legislation to complete a statement of interests. These are usually financial and business interests and other associations. This policy may also impose statement of interest obligations on some public employees, such as senior executives or staff in high risk roles, where legislation does not apply. Specific procedures for declaring and registering interests should appear in the procedure section of the policy. (See Tools 10.1–10.3 for more information).

However, all public employees will need to formally disclose interests that conflict or have the potential to conflict with their official duties.

Responsibilities of the organisation

The policy should state that the organisation is responsible for:

- establishing a system for managing conflicts of interest in the form of a clear policy and procedures for all public employees to follow

- building an organisational culture that supports managers and staff in the implementation of the policy and procedures with, for example, guidance, training and fair enforcement of the policy
- reviewing the policy and management mechanisms regularly to ensure that they are effective
- receiving and investigating complaints and grievances
- reporting breaches to external agencies, where applicable
- annually reporting the existence of the conflicts of interest policy and/or resolution of alleged breaches.

Responsibilities of managers

The effectiveness of the policy will depend to a large extent on the actions of managers. The policy can make it clear that managers are responsible for:

- complying with the policy with respect to their own conflicts and potential conflicts of interest
- facilitating the compliance of those they supervise by:
 - being aware of the risks of conflicts inherent in the work of the staff they manage
 - making staff aware of the policy and procedures for complying with it
 - recording the receipt of disclosures of conflicts of interest reported to them by staff
 - advising staff about appropriate ways to manage conflicts
 - assisting staff who disclose conflicts in preparing management strategies
 - monitoring the work of staff and the risks they are exposed to.

Advice and guidelines

The policy should acknowledge that conflicts of interest are not always clear to those who have them

and that if individuals are unsure about a possible conflict of interest they should seek advice.

Both managers and those they supervise will need advice about:

- how to identify a conflict of interest
- what action they should take when a conflict of interest arises.

Guidelines about managing conflicts of interest may also be useful for specific roles such as senior executives, board and committee members or staff in high risk activities. They can be included in the policy or in an appendix to the policy and made available as separate documents for general distribution.

Consider appointing a responsible officer to provide individual confidential advice to public employees about possible conflicts. This could be the same person who is responsible for maintaining the policy and system for disclosing conflicts of interest.

PROCEDURES

This section is the place to inform public employees about the practical steps to take when they think they may have a conflict of interest and how to comply with any relevant legislation.

Declaration of interests

The policy should specify how and when public employees are obliged to complete a statement of interests. Position descriptions should identify whether a statement of interest is applicable to the position to ensure that new appointees complete a statement of interests on commencement. Statements of interests are updated as required by legislation or policy. One approach is to remind public employees at their annual performance review.

The policy should provide:

- the name of a person responsible for managing the register of interests.

- a standard statement of interests form and guidelines explaining which interests should be registered
- details of the method that will be used to collect this information, such as a statement on appointment that is updated in accordance with legislative or policy requirements
- an assurance that the organisation will treat the information confidentially according to legislation and its privacy policy.

Disclosure of conflicts of interest

It is also necessary to provide procedures for conflicts of interest to be disclosed as they arise. If there are no legislative requirements for disclosure of interests in meetings and the organisation routinely makes decisions in meetings (such as board, committee or council meetings) the policy should include a meeting procedure for disclosing interests that relate to matters to be discussed or decided in the meeting. Meeting procedures should incorporate any relevant statutory provisions and address the need to minute interests that are declared, the nature of the conflict of interest and how it was handled.

Disclosures are also often used in activities such as:

- investigations
- recruitment panels
- tender evaluation panels
- inspections or audits.

A conflicts of interest management system can require staff to disclose conflicts of interest they have and also to declare that they have no conflicting interest in relation to a particular official decision, process or activity.

Managing conflicts of interest

The minimum requirement for all conflicts of interest is that they must be formally disclosed. The policy should describe a disclosure procedure for everyone of the organisation that:

- nominates the individual to whom conflicts should be disclosed (e.g. the manager)
- describes the way they should be disclosed (e.g. in writing, using a prescribed form).

The policy should set out the precise steps to follow to manage conflicts of interest once they have been disclosed. The 'Model Decision Making Flowchart' in Section 3 of the Toolkit outlines a process to be followed and suggests a set of options for managing a conflict of interest including:

- registering
- restricting
- recruiting
- removing
- relinquishing
- resigning.

The Toolkit can explain which options described in the Model is appropriate to particular circumstances.

The person with the conflict should prepare a management strategy in consultation with their manager after the conflict of interest is disclosed. The strategy should record which of the available options will be followed and should be signed by both the manager and the individual.

Record keeping

This section of the policy should also describe the type of record keeping that the organisation requires for each type of conflict of interest. It should clarify the records that should be kept for:

- formally disclosing conflicts to a manager or supervisor, for example by using the conflicts of interest reporting form
- conflicts of interest management strategies, for example using an approved form.

Sample documents are available in Tools 11.1–11.3.

BREACHES OF THE POLICY

The policy must explain the consequences for breaches of it. It is important that any sanctions act as a deterrent but are proportionate to the seriousness of the breach. In devising sanctions it may help to consider how breaches of other policies are handled by the organisation.

Sanctions for breaches of conflicts of interest policies typically include disciplinary action for appointed public employees ranging from counselling to dismissal and, for elected representatives, suspension, disqualification and/or fines. Some breaches of policy or non-disclosure may be required to be reported outside the organisation such as the ICAC/CMC or, if they involve criminal activity, the police.

If the organisation intends to impose obligations on businesses or individuals who enter into contracts or tender for services with the organisation, legal advice should be obtained to ensure obligations or sanctions are consistent with contract law.

Obligations may include disclosure of actual or potential conflicts of interest. Sanctions may result in disqualification from a tender process, withdrawal of a contract or removal of a contractor from the organisation's preferred supplier list. All documents including the tender offer, specifications, selection criteria and contract should reflect these obligations.

PRIVACY

The policy should note that reporting potential or actual conflicts may involve disclosing personal information. This information will be handled according to the organisation's Privacy Policy. If disclosing a conflict of interest to a supervisor or manager raises privacy concerns for staff members, consider providing an alternative disclosure mechanism such as the person responsible for maintaining or advising on the policy.

APPENDICES

Appendices are a useful addition to the policy and are meant to provide more detailed or complementary information such as:

- procedures for declaring interests
- standard forms for declaring or registering interests
- procedures for identifying conflicts of interest
- procedures for managing conflicts of interest
- standard forms for disclosing conflicts of interest
- standard paragraphs for declaring 'no conflict of interest' in a particular situation such as a recruitment process, investigation, audit
- meeting procedures for managing conflicts of interest
- information for external parties about the organisation's conflicts of interest policy.

Section 2: Implementing a Conflicts of Interest Policy

One of the most difficult management challenges is ensuring that policies, once drafted, do not just sit on the shelf but become part of the organisation's culture.

This section of the Toolkit includes management tools that are designed to support the implementation of your conflicts of interest policy by focusing on the following functions from *Principles and Guidelines*:

- **Educating** staff, managers and the senior executive and publishing the conflicts of interest policy across the organisation.
- **Leading** the organisation through example.
- **Communicating** the organisation's position on conflicts of interest to stakeholders, including contractors, clients, sponsors and the community.
- **Enforcing** the policy.

Tool 4 – Checklist for implementing the policy is an overview of the suggested steps to take when applying the policy in your organisation.

Tool 5 – Sample communication strategy provides steps for developing a communication strategy and includes ideas for promoting the policy across the organisation and to external stakeholders.

Tool 6 – Sample training needs analysis is a guide for conducting a training needs analysis. A sample training module based on the policy can be found in Section 4.

Tool 7 – Checklist for monitoring the conflicts of interest policy also includes steps for reviewing the policy's implementation.

Tool 4: Checklist for implementing the policy

This checklist sets out tasks that need to be done in ensuring implementation of the conflicts of interest policy. You should read through the list and tick the boxes of steps you have taken to implement the policy. Issues raised in any boxes not ticked should be addressed as soon as possible.

CONFLICTS OF INTEREST POLICY IMPLEMENTATION CHECKLIST

Internal audiences – staff and management

Communication Strategy

- Develop and implement a communication strategy to ensure that your organisation's internal and external audiences are aware of the conflicts of interest policy and have a capacity to comply with the provisions of the policy (see Tool 5 in this section).
- Regularly test and review the strategy to ensure that communication initiatives are appropriate for selected audiences and revise accordingly.

Statements of Interest

- Ensure that position descriptions identify whether the appointee is required to complete a Statement of Interests.
- Those public officials who are required by the policy to submit a Statement of Interests should do so when the policy is introduced. If they have already done so in response to legislative obligations check that their Statement complies with the policy's requirements.
- Ask new public officials who are required to complete a Statement of Interests to do so during the induction process.
- Make sure that all public officials are aware of the legislative and policy requirements to update their Statement of Interests.

Performance management

- Include *compliance* with the conflicts of interest policy and *implementation* of the policy within performance agreements for staff and management. This action will help to promote the policy, its practical application and assist in reviewing its effectiveness.
- Incorporate update of Statement of Interests into annual performance review.

Recruitment

- Ensure that members of selection panels are aware of their obligation to formally disclose all conflicts of interest – not only to the panel but to the relevant responsible officer or manager in the organisation.
- Require panel members to certify that they have no conflict in relation to any applicant

- Ensure that applicants are aware of their obligation to formally declare their interests and disclose all conflicts of interest according to the requirements of the policy and legislation, if they are appointed to the position.
- Include questions in selection interview to assess commitment to ethical work practices by asking conflict of interest questions that are pertinent to the position.
- Enclose a statement of business ethics with all recruitment packages.
- Include a copy of the Conflict of Interest policy in recruitment packages for high-risk positions.

Related policies

- Corporate documents and policies most likely requiring to reflect the content of and make reference to the Conflicts of Interest policy are:
 - Code of Conduct
 - Gifts and benefits policy
 - Secondary employment policy
 - Post-separation employment policy
 - Confidential information policy
 - Procurement policy and procedures
 - Recruitment policy and procedures
 - Sponsorship policy
 - Policies or procedures affecting staff who perform regulatory functions
 - Policy statements governing external contacts and business relationships

Staff induction

- Include a copy of the conflicts of interest policy in staff induction packages and ensure that the purpose, provisions and procedures are explained at induction.

Training

- Implement a training program for all employees to coincide with the release of the conflict of interest policy if possible (see Tool 5 and the Training Module in Section 4).
- Conduct training at regular intervals to capture new staff members.
- Incorporate conflict of interest case studies in code of conduct and other relevant training.

External audiences

Contracting

- Monitor, regularly and systematically, the performance of your suppliers and contractors to ensure that requirements are being met and the risk of conflicts is being managed.
- Arrange for independent audit of tendering processes and contract administration on a regular basis.
- Obtain legal advice to ensure that all tender documents and resultant contract include conditions that allow your organisation to penalise or withdraw from the contract for failure to comply with the organisation's conflict of interest policy.

Tendering

- Incorporate the conflicts of interest policy and declaration forms into tendering documents. Potential service suppliers must be required to divulge all potential conflicts of interest at the time they offer to provide services. Failure to make adequate disclosure may be grounds for ending the contract.
- Ensure that members of evaluation or assessment panels for service suppliers are selected on the basis of their expertise. Consideration should be given to including an independent panel member who can help to ensure impartial decisions are made.
- Inform members of the need to disclose any potential conflicts of interest prior to their appointment to the assessment panel. Members must also disclose any conflicts of interest arising during the purchasing process and can be asked to certify that they have no conflict in relation to any applicant.

Clients, customers & others

- Educate the wider public about the organisation's conflict of interests policy. This can be achieved by developing a statement of business ethics that clearly explains the responsibility of public officials and any person performing work for the government to conduct their work in a fair and impartial manner and distributing this statement to all clients, customers, business partners and suppliers.

Tool 5: Sample communication strategy

This document is a format for developing and using a communication strategy to support the introduction of the conflicts of interest policy. A planned, executed and evaluated communication strategy is an essential step for the effective implementation of policy.

INTRODUCTION

The introduction and ongoing effectiveness of a conflicts of interest policy needs to be supported by a communication strategy. A communication strategy is necessary to ensure that staff, management, committee and board members, the public, contractors, sponsors and other external contacts are aware of the provisions of the conflicts of interest policy and how it should affect their behaviours and interactions. Indeed, communication about the policy should be incorporated into all aspects of the implementation process, not just be considered as an option.

While many organisations employ communication strategies and have experienced staff disciplined in corporate communications, smaller agencies and councils may not have individuals experienced in developing and managing such strategies. The following process can be followed as a step-by-step guide (or in part) to develop a communication strategy to implement the conflicts of interest policy.

Step One: Aim and corporate objectives of the strategy

The communication strategy should have a clear aim statement. For example:

Communicate the provisions of the conflicts of interest policy through appropriate mechanisms to identified audiences to achieve acceptance and compliance.

Key corporate objectives of the strategy can also be identified at this stage of development. The objectives should ideally be linked to the key result areas and audiences within your organisation's corporate and strategic plans and goals. The purposes of the corporate objectives is to expand the aim statement and further define outcomes. For example:

- *staff have a capacity to adopt and comply with the provisions of the conflicts of interest policy*
- *external relationships are managed by all staff adhering to the intent of the policy.*

The aim statement and objectives detailed above are **examples only**. It is necessary for your organisation to discuss and develop relevant aims and objectives that meet your corporate goals.

Staff involvement in the development of the communication strategy is useful and can be beneficial to the success of the strategy. Staff generally have a practical understanding of how processes work and their involvement should help give a sense of ownership of the policy and indicate that the whole organisation is working towards the same goals.

Step Two: Identify key audiences

The provisions of the conflicts of interest policy will need to be communicated at varying degrees, through a range of media, to different audiences. It is recommended that all audiences be defined and dissected into two groups – internal and external audiences.

The audience groups can be further defined by the groups that fall within your internal and external audience groupings. For example:

1. Internal audiences

- a. staff
- b. managers at all levels
- c. volunteers
- d. contract staff
- e. councillors or minister
- f. board members.

2. External audiences

- a. the public
- b. contractors
- c. clients
- d. sponsors
- e. service providers
- f. suppliers
- g. government.

Step Three: Link audiences and organisational risks

The risks identified using Tool 2.1: Checklist for identifying risks of conflicts of interest in organisational functions to develop your conflicts of interest policy can now be used for the development of your communication strategy.

This risk assessment will help you decide the key messages to be communicated to each of your identified audiences in the strategy.

It is recommended that assessed risks be linked to each audience identified in your strategy. This will help you decide the best use of your resources. Audiences that have high level risk should be key targets within the strategy (range: 1 high risk ... 5 low risk):

Example:

Level	Risk	Audience
2	licensing	————> staff
		————> management
		————> the public
1	tendering & contracting	————> staff
		————> contractors
		————> service providers
5	sponsorship arrangements	————> not undertaken by organisation

Step Four: Communication initiatives – examining the options

Now that the risks and audiences have been linked you are ready to consider the best ways of communicating to each audience. Your choices should be based on the type of audience (e.g. internal or external, senior management or junior staff), the organisation's resources, the practicalities of implementing the initiative and the opportunities and timeframes for implementation.

Step Five: Assessment and review of the strategy

The effectiveness of the communication strategy should be reviewed to ensure that key messages are received and understood by audiences. This can be done by seeking feedback from internal and external audiences about their understanding of the policy and its practical application. It should be possible to build opportunities for feedback into certain communication tools and other relevant materials.

The communication strategy is not static. It should be reviewed regularly to ensure compliance with the conflicts of interest policy.

Examples of strategies to assess the effectiveness of your communication strategy may include:

- staff surveys
- debrief – following completion of a contract or project
- exit interview – when a public employee leaves or a contractor's contract comes to an end
- reflection – after dealing with a conflicts of interest consider what worked, what did not work, and whether changes need to be made to the communication strategy or conflicts of interest policy.

Some initiatives for communicating with internal and external audiences are suggested below. All have advantages and disadvantages so apply as wide a range of appropriate initiatives that resources permit.

Internal audiences	Initiatives	Assessed risk	Corporate objective	People tasked	Time frame
Staff including line managers and contracted staff	<ul style="list-style-type: none"> • official release of conflicts of interest policy • training (generic modules in s.4) • intranet and email • newsletter and bulletins • team briefing • large scale meetings with the executive • telephone help line (larger organisations) e.g. responsible officer nominated to advise • contract conditions or performance criteria • reminder at annual performance review 	<ul style="list-style-type: none"> • tendering and contracting • licensing 	Staff have a capacity to adopt and comply with the provisions of the conflicts of interest policy		
Senior managers	<ul style="list-style-type: none"> • training • executive briefings • intranet and email • newsletter and bulletins • team briefing • large scale meetings with the executive • telephone help line (larger organisations) e.g. responsible officer nominated to advise • contract conditions or performance criteria • reminder at annual performance review 	<ul style="list-style-type: none"> • regulatory role of organisation • enquiry and review role 			

External audiences	Initiatives	Assessed risk	Objective	People tasked	Time frame
Contractors and suppliers	<ul style="list-style-type: none"> • corporate communications, include information in the <i>statement of business ethics</i> or produce a brochure for all contractors • include information on the policy in all tender documentation • information provided on the internet • include information in tender specifications, selection criteria and conditions of contract • information provided on the internet 				
The public, including other organisations and key stakeholders	<ul style="list-style-type: none"> • brochure regarding the policy and/or poster at 'point of sale' locations for the public, e.g. licensing counters, payment counters • regional agencies and councils can promote the strategy in local media by issuing a media release and having a suitable spokesperson available to explain policy • material incorporated in displays and information booths at trade shows • reference in speeches made by senior management • information provided on the internet 				

Tool 6: Sample training needs analysis

The purpose of this tool is to assist you in identifying the training needs of all public officials in your organisation.

A training needs analysis and any subsequent training should help to ensure greater understanding of and compliance with the conflicts of interest policy and procedures.

STEP 1

Before considering training requirements it is necessary that you undertake the following steps in your organisation:

- Identify risk:** identify conflicts of interest risks against your core organisational functions and categories of people (Tool 2.1)
- Policy:** finalise conflicts of interest policy (Tools 1 & 3)
- Implement and communicate:** develop communication strategy for internal and external stakeholders (Tools 4 & 5). Training will become part of that communication strategy
- Feedback and analysis:** collect feedback about your communication strategy initiatives to see if further action is required for internal and external stakeholders.

STEP 2

Training Needs Analysis

- Review feedback from your communication strategy against risk areas identified within your organisation's conflicts of interest risk assessment. The risk assessment undertaken using Tools 2.1-2.4 will identify the level of staff and management exposure to conflicts of interest risks and the functional areas that are at higher risk, for example:
 - contracting and outsourcing
 - procurement
 - cash handling
 - relationship building.
- Identify primary gaps in understanding, conduct and compliance with the policy, for example, by conducting a staff pre-training survey.
- Review policy to identify roles requiring specific training, for example responsible officers maintaining statements of interest registers.

STEP 3

Training assessment and evaluation

- If training is considered necessary:
 - develop training packages for staff and managers that address identified gaps in their knowledge and understanding
 - prioritise the delivery of training in line with key risk areas within your organisation
 - evaluate training to measure effectiveness and review training package
 - monitor compliance with conflicts of interest policy.

STEP 4

Training

To assist organisations in delivering training, a generic training module has been included in the Training Resources Section of the Toolkit. The generic module has interactive exercises for participants to identify conflicts of interest and explore the different types of conflicts of interest they may encounter in their dealings with external stakeholders. It will also be necessary for you to augment this module with a session about your organisation's own conflicts of interest policy and/or the organisation's code of conduct.

The generic module can be used as Part 1 in a workshop with staff and managers. However, it may still need to be tailored to meet the specific needs of individual groups. It will also be necessary for you to develop Part 2 to communicate your organisation's policy to staff and management.

Tool 7: Checklist for monitoring the Conflicts of Interest Policy

The purpose of this tool is to help organisations review and monitor the conflicts of interest policy and its effective implementation across the organisation.

MONITORING THE CONFLICTS OF INTEREST POLICY AND ITS IMPLEMENTATION

The development of the organisation's conflicts of interest policy and its introduction across the organisation is an essential process in ensuring that conflicts of interest are identified and managed in a transparent and accountable manner. As part of the ongoing implementation process, the policy and its supporting structures and processes need to be regularly reviewed and monitored to ensure the continued relevance of the policy and its application.

This monitoring function is separate from the monitoring of how individual conflicts of interest are being managed (see Tool 12.1: Checklist for monitoring conflicts of interest management (individuals) and Tool 12.2: Checklist for monitoring conflicts of interest management (managers)).

All organisations should regularly check their conflicts of interest policy and its ongoing implementation by using the following checklist.

	YES	NO
Have managers at all levels expressed their commitment to the policy?	<input type="checkbox"/>	<input type="checkbox"/>
Has the policy been made available to everyone within the organisation?	<input type="checkbox"/>	<input type="checkbox"/>
Is the policy easily accessible to everyone within the organisation?	<input type="checkbox"/>	<input type="checkbox"/>
Is the policy and its supporting procedures available on the intranet and in hard copy?	<input type="checkbox"/>	<input type="checkbox"/>
Have all members of the organisation been made aware of the policy and its requirements?	<input type="checkbox"/>	<input type="checkbox"/>
Have all managers and staff received adequate training in how to manage conflicts of interest?	<input type="checkbox"/>	<input type="checkbox"/>
Do all staff and managers know where to seek advice about the policy?	<input type="checkbox"/>	<input type="checkbox"/>
Has a responsible officer been designated to maintain the policy and manage its ongoing implementation?	<input type="checkbox"/>	<input type="checkbox"/>
Have the duties of the responsible officer been determined?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a provision for a regular review and updating of the policy?	<input type="checkbox"/>	<input type="checkbox"/>
Is there regular monitoring of new legislation that may impact on the policy?	<input type="checkbox"/>	<input type="checkbox"/>
Are policy and procedure monitoring and review processes and subsequent updates properly documented?	<input type="checkbox"/>	<input type="checkbox"/>
Are policy and procedure updates communicated to all staff and managers in the organisation?	<input type="checkbox"/>	<input type="checkbox"/>
Is the consideration of conflicts of interest issues incorporated into the organisation's recruitment and selection processes?	<input type="checkbox"/>	<input type="checkbox"/>
Is the consideration of conflicts of interest issues a regular feature in staff meetings?	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
Are examples of effectively managed conflicts of interest profiled within the agency?	<input type="checkbox"/>	<input type="checkbox"/>
Are there mechanisms to ensure external awareness of the organisation's policy and stance on conflicts of interest applied effectively?	<input type="checkbox"/>	<input type="checkbox"/>
Are the conflicts of interest mechanisms in contracting and tendering processes applied effectively?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a process to capture staff and managers' feedback on the efficacy of the policy and its supporting processes?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a process to capture complaints of unmanaged or inappropriately managed conflicts of interest that may be detrimental to the organisation?	<input type="checkbox"/>	<input type="checkbox"/>
Are data available from central corruption-fighting bodies that indicate whether or not conflicts of interest within your organisation are being managed properly?	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: Managing Conflicts of Interest

The tools in this section are in three parts each reflecting a major stage for dealing with conflicts of interest.

Stage 1: IDENTIFY

Stage 2: MANAGE

Stage 3: MONITOR

The relationship between these stages can be seen on the model flowchart that follows. A brief overview of each stage is given below.

THE FLOWCHART

As you will see on the model flowchart the three major stages are clearly delineated to allow you to understand the process of good conflicts of interest management. Each stage flows seamlessly to the next, providing progressive steps, pertinent questions and tool suggestions that you may find helpful.

Each stage in the flowchart has a corresponding section that provides useful tools to help you deal with the particular stage that you are at in dealing with a workplace situation. Managing a conflict of interest effectively will involve the input of managers and individuals. The flowchart and the tools in this section can be used by individual public employees who suspect that they have a conflict of interest as well as by the managers who supervise them.

You may not find it necessary to use all of the flowchart for a particular situation in which you find yourself involved. For example, if you already know that you have a conflict of interest and are simply seeking some good options on how to best manage the conflict, you would start at the second stage, Manage. Or alternatively, you may have worked through the first stage, Identify, and decided that you do not have a conflict of interest and therefore do not need to take the process any further.

Regardless of whatever point you feel you are at in determining the best way to resolve a situation, the

full flowchart is a useful reference – to help you make decisions and take actions that are informed, and ultimately are in the public interest.

THE TOOLS

Stage One: Identify

The first stage provides tools to help you to:

- Assess the situation that you find yourself in and the surrounding circumstances that could affect any decisions or actions that you carry out in your official duty.
- Identify if any conflicts of interest exist in the situation in which you are dealing.
- Determine if conflicts are actual, perceived or potential conflicts of interest, or if they are pecuniary or non-pecuniary conflicts. Understanding the type of conflict you are dealing with will help you to determine the most appropriate method of managing it.

Stage Two: Manage

This second stage provides tools to help you to:

- Report conflicts of interest promptly and mobilise organisational resources in response.
- Record information properly and fully on the prescribed registers so that it is kept confidential but also accessible by those responsible for managing the conflict.
- Review the conflicts of interest report to determine if further management action is required, and who will be responsible for making final decisions.
- Choose a strategy for managing conflicts through one or more of six major options presented. (These options range from formal registration only of conflicts to the resignation of the public employee concerned from their position. The choice of strategy will depend on the assessment

of the individual circumstances and seriousness of each case and should be made in conjunction with the employee's supervisor.)

- Implement the management strategy selected as the most appropriate for the circumstances of the matter.
- Record formally and clearly the arrangements for resolving and managing conflicts to enable you and your organisation to demonstrate, if necessary, that a specific conflict has been appropriately identified and managed.

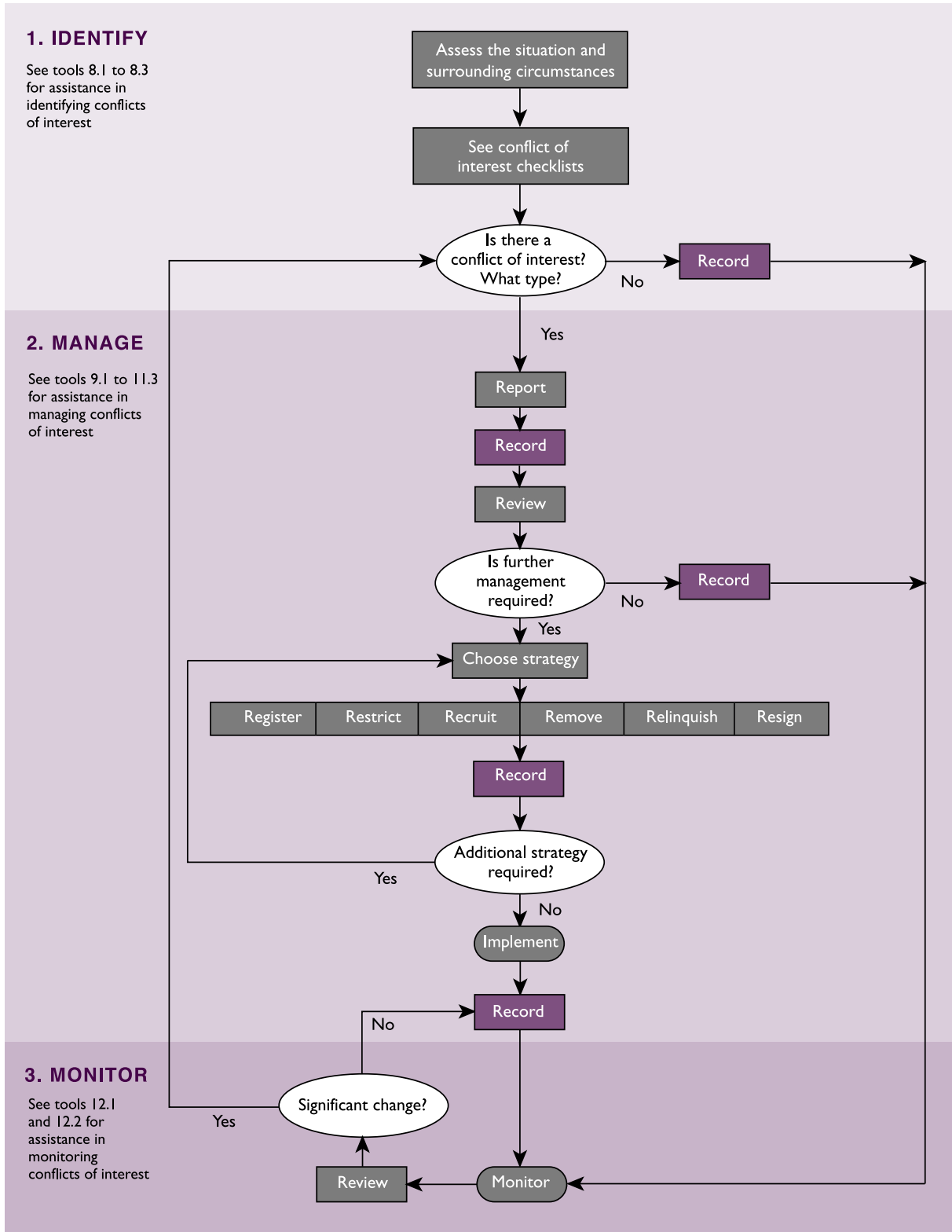
Stage Three: Monitor

This third stage provides tools to help you to:

- Monitor the initial management decisions on an ongoing basis.
- Regularly review the strategy you have chosen to manage conflicts of interest to ensure the strategy remains relevant until conflicts are resolved.
- Make any relevant changes to the strategy in place, before problems arise.
- Keep formal records of all reassessments and any decisions made.

Remember – If you have determined that you have a conflict of interest, and have chosen a management strategy that is most appropriate for the situation, always ensure all necessary steps in the strategy are properly implemented, monitored and recorded.

MODEL DECISION MAKING FLOWCHART



Stage 1: Identifying and reporting conflicts of interest

Identifying conflicts of interest is an important first step in managing them appropriately. When faced with a situation in which you suspect you may have a conflict of interest, as a public employee you will be required to:

- Assess the situation and the surrounding circumstances that could affect any decisions or actions in the matter.
- Identify whether or not any conflicts of interest exist.
- Determine what type of conflict of interest you might be dealing with (i.e. if the conflict is an actual, perceived or potential conflict of interest, or whether it is a pecuniary or non-pecuniary conflict).

A clear assessment of the type of conflict of interest you are dealing with will help determine the best strategy for its management. Tools 8.1 – 8.2 are checklists to help individuals identify conflicts of interest they may have and Tool 8.3 is a table that demonstrates the differences between the types of conflicts of interest.

Tool 8.1: Checklist for identifying a conflict of interest

The purpose of this tool is to provide a checklist that you can methodically work through when you are faced with a situation in which you think you might have an actual, perceived or potential conflict of interest.

Checklist for identifying a conflict of interest

FIRST STEPS:

(1) Describe the matter or issue being considered and the situation in which you are involved.

(2) What is your public duty in serving the public interest?

MAKING AN ASSESSMENT:

In assessing whether you have an **actual**, reasonably **perceived** or **potential** conflict of interest, it may be helpful to ask yourself the following questions. The test when assessing these situations is to ask yourself – ‘Could this conflict with my public duty to serve the public interest?’

What is the situation?	YES	NO
• Would I or anyone associated with me benefit from or be detrimentally affected by my proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>
• Could there be benefits for me in the future that could cast doubt on my objectivity?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I have a current or previous personal, professional or financial relationship or association of any significance with an interested party?	<input type="checkbox"/>	<input type="checkbox"/>
• Would my reputation or that of a relative, friend or associate stand to be enhanced or damaged because of the proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I or a relative, friend or associate of theirs stand to gain or lose financially in some covert or unexpected way?	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
• Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I contributed in a private capacity in any way to the matter my agency is dealing with?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I made any promises or commitments in relation to the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>
• Am I a member of an association, club or professional organisation or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose by my proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>
• Could this situation have an influence on any future employment opportunities outside my current official duties?	<input type="checkbox"/>	<input type="checkbox"/>
• Could there be any other benefits or factors that could cast doubts on my objectivity?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I still have any doubts about my proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>

What perceptions could others have?

- What assessment would a fair-minded member of the public make of the circumstances?
- Could my involvement in this matter cast doubt on my integrity or on my agency's integrity?
- If I saw someone else doing this, would I suspect that they might have a conflict of interest?
- If I did participate in this action or decision, would I be happy if my colleagues and the public became aware of my involvement and any association or connection?

- How would I feel if my actions were highlighted in the media?
- Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater scrutiny by others?

Should I seek help?

YES NO

- Am I confident of my ability to act impartially and in the public interest? YES NO
- Do I feel a need to seek advice or discuss the matter with an objective party? YES NO
- Does this person know more about these things than I do? YES NO
- Is all the relevant information available to ensure a proper assessment? YES NO
- Do I know what my agency's code of conduct requires in relation to conflicts of interest? YES NO
- Do I need to discuss any issues regarding this matter with my manager? YES NO
- Do I understand the possible penalties that may apply if I proceed with an action or decision with an unresolved conflict of interest? YES NO

Remember – Seeking and following advice by suitably qualified persons is evidence of good faith but does not transfer the responsibility from the individual to decide whether or not they have a conflict of interest.¹

Have I recognised the type of interest?

An important step is to recognise whether or not the interest is a pecuniary interest (also known as a material personal interest). Because there can be legal consequences, public officials should not rely on their own opinion, but should seek independent legal advice if there is any doubt. Tool 8.2 will help you determine whether you may be dealing with a pecuniary interest.

¹ Department of Local Government Planning Sport and Recreation (Qld) 2003, *Material Personal Interests: A handbook for councillors*, p.10.

Can I now make a decision?

YES

NO

- Have I assessed whether I need to obtain appropriate independent legal and other impartial advice? YES NO
- Am I comfortable with my decision to seek (or not seek) advice, and with advice that I have been given? YES NO
- If I disagree with any advice given, am I able to state a defensible case to those who made the assessment? YES NO
- Can I determine what is the best option to ensure impartiality, fairness and protect the public interest? YES NO
- Does this option ensure openness and transparency in my proposed decision or action? YES NO
- Have I identified and documented the facts and circumstances governing my evaluation of, and decision on, how I should handle the situation? YES NO
- Does my decision allow me to act **and be seen to act** in a fair, impartial and objective manner? YES NO

Tool 8.2: Checklist for identifying a pecuniary interest

The purpose of this tool is to provide a checklist that you can use to identify whether you have a pecuniary or non-pecuniary conflict of interest.

Checklist for identifying a pecuniary interest

What is a pecuniary interest?

You have a pecuniary interest (also known as a material personal interest) in a matter if you have or should reasonably have a realistic expectation that you or an associated individual stand to gain a benefit or suffer a loss, whether directly or indirectly.

- It is not necessary to be able to identify or quantify the benefit or loss that might either directly or indirectly be attributable to you as a consequence of the relationship.²
- Money does not have to change hands – the benefit could be an increase in the value of property or other material interest.

As soon as a pecuniary interest of an associate is recognised you must treat it as if it was your own pecuniary interest. Using the checklist below may be useful.

	YES	NO
• Does the matter fall within the legislated definition of a pecuniary interest?	<input type="checkbox"/>	<input type="checkbox"/>
• Is there a realistic expectation that I will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?	<input type="checkbox"/>	<input type="checkbox"/>
• Will the matter affect my earning capacity or financial situation?	<input type="checkbox"/>	<input type="checkbox"/>
• Will it have an impact on the value of any shares or property that I own?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I have a second job or private business that may be affected by the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I have any debts owing to a person who will be affected by the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Is there a realistic expectation that someone in a personal or business relationship with me will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?	<input type="checkbox"/>	<input type="checkbox"/>
• By nature of my relationship with this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?	<input type="checkbox"/>	<input type="checkbox"/>

² Department of Local Government Planning Sport and Recreation (Qld) 2003, *Material Personal Interests: A handbook for councillors*, p. 11.

Some examples of pecuniary and non-pecuniary interest

<p>Pecuniary interests</p> <p>involve an actual or potential financial gain or loss, or other material benefits or costs</p> <p>(In some jurisdictions they are also known as material personal interests.)</p>	<p>Non-pecuniary interests</p> <p>do not have a financial or other material component.</p> <p>(They may arise from personal or family relationships or involvement in sporting, social or cultural activities.)</p>
<p>You have shares in a family business which tenders for a contract with your agency.</p>	<p>Your child is a star player in a local sporting group which submits a grant application to your agency.</p>
<p>Your spouse owns a company in which you have no direct interest, which tenders for a contract with your agency.</p>	<p>One of your regular fishing buddies has submitted a tender with your agency and asks you to keep an eye on its progress.</p>
<p>You have a second job with a company which tenders for a contract with your agency.</p>	<p>An old enemy from schooldays who used to bully you is an applicant for a job with your agency.</p>
<p>You own property adjacent to a block of land which is the subject of an application to your agency for redevelopment.</p>	<p>You are the president of a local amateur operatic society which seeks sponsorship from your agency.</p>
<p>You have a private business which may lose custom to a rival concern which has lodged an application with your agency for permission to set up new premises near your private business.</p>	<p>Your children's nearby school will be affected by a new development. The development proposal has been lodged for approval with your agency.</p>
<p>Your spouse is an applicant for a job with your agency.</p>	<p>You are active in a voluntary organisation and in your spare time you draw up plans for an extension to its premises. These plans are lodged for approval with your agency.</p>

Whether the interest is pecuniary or non-pecuniary, in all above circumstances, you will have a conflict of interest if your public duties require you to become involved in any decision or action regarding the matter.

Tool 8.3: Table of types of conflicts of interest

The purpose of this tool is to describe the differences between actual, perceived and potential conflicts of interest. It also provides a progressive scenario that demonstrates when a conflict of interest might arise, and the types of circumstances that can change the type of conflict of interest you are dealing with.

IDENTIFYING TYPES OF CONFLICTS OF INTEREST

Actual, perceived or potential?

The following descriptions help tease out the differences between the types.

Actual conflict of interest	Perceived conflict of interest	Potential conflict of interest
<p>A public official <i>is in a position to be influenced</i> by their private interests when doing their job.</p>	<p>A public official <i>is in a position to appear to be influenced</i> by their private interests when doing their job.</p>	<p>A public official <i>is in a position where they may be influenced in the future</i> by their private interests when doing their job.</p>

How they can arise

The following progressive scenario demonstrates how each of the above three different types of conflict of interest may come into play when you are doing your job. You may note the difficulties that can arise with perceived conflicts of interest and therefore how important it is to manage these situations effectively.

Scenario	Type of conflict	Why this is so
<p>You are a town planner in a small regional agency and you and your supervisor regularly assess development applications.</p>	<p>No conflict</p>	<p>This is part of your assigned official duties, but you have no relevant private interests that may impact on carrying out these duties.</p>
<p style="text-align: center;">↓</p> <p>You meet and marry a partner of a local architectural firm.</p>	<p>Potential conflict</p>	<p>Your private interests are currently not relevant to your official duties but they could be in the future if your spouse's firm submits plans as part of a development application.</p>
<p style="text-align: center;">↓</p> <p>Your spouse's firm submits plans to your agency as part of a development application, but your supervisor assesses the application.</p>	<p>Perceived conflict</p>	<p>Although you do not assess the application yourself, as a town planner in a small unit some may consider your own private interests are relevant to, and may have influenced, the assessment of the development application.</p>
<p style="text-align: center;">↓</p> <p>Your supervisor allocates the file to you to assess a second development application submitted by your spouse's firm.</p>	<p>Actual conflict</p>	<p>As a town planner your private interests are relevant to your assigned official duties and could improperly influence your assessment, that is, your spouse is a related individual who stands to benefit or lose by the assessment outcome.</p>
<p style="text-align: center;">↓</p> <p>Your supervisor resigns and is not replaced quickly leaving you as the only town planner available to assess development applications, for a significant time period.</p>	<p>Potential conflict</p>	<p>As a town planner your private interests will be relevant to your assigned official duties any time during this period that your spouse's firm submits plans to your agency.</p>

Stage 2: Managing conflicts of interest

While conflicts of interest can be resolved or managed in a variety of ways, the choice of strategy will depend on an assessment of the:

- nature of the conflict
- complexity of the situation
- subtleties and severity of the case.

Each case will require detailed examination and careful application of various conflict resolution strategies.³ Often a combination of measures may be adopted. The six major options for managing conflicts of interest are:

- **register**
- **restrict**
- **recruit**
- **remove**
- **relinquish**
- **resign.**

Each of these options is dealt with separately on succeeding pages and is illustrated by a scenario and discussion to provide practical, supplementary information. Although you may find that the examples provided are not an exact match for the situation you face, the description of the options for conflict management and their application should assist you in selecting or adopting a management strategy that most effectively suits your requirements.

Once you have determined the most appropriate strategy for the conflict of interest you are managing, the strategy must be properly implemented. Tools 10.1–11.3 are relevant for registering interests and disclosing conflicts.

Whichever strategy you choose, transparent decision making and detailed record keeping are essential. You should ensure that the following are clearly recorded in formal documents:

- registration of relevant private interests, if required
- disclosure of the conflict of interest
- directions given about handling the conflict of interest
- decisions and arrangements made for resolving the conflict of interest
- steps taken in implementing the chosen management strategy.

These records will enable you and your organisation to demonstrate in an accountable manner, if necessary, that a specific conflict of interest has been appropriately identified and managed.

A brief word on conflict of duty...

Employees called on to wear two or more (official) hats may find that they have difficulty resolving tensions between their different roles. Given the potential for perceived conflict and misunderstanding, it is important that there be an open discussion of the way in which the individual will discharge their responsibilities.⁴

³ Australian Government Publishing Service – *Public Duty and Private Interest: Report of the Committee of Enquiry, July 1979*, Bowen N H (Chairman), Committee of Enquiry Concerning Public Duty and Private Interest, Canberra, ACT [The Bowen Report].

⁴ Australian National Audit Office 2003 – *Public Sector Governance, Guidance Paper No.6: Conflicts of Personal Interest and Conflicts of Role*.

REGISTERING INTERESTS

A common mechanism for managing potential conflicts of interest is to require certain public employees to register their pecuniary and non-pecuniary interests that may in the future conflict with some aspect of their work. This requirement is usually confined to people in very senior positions, in roles at higher risk of encountering conflicts or in particular types of public organisation (such as regulatory or investigative bodies). Tools 10.1–10.3 are model forms that can be used to register interests in these circumstances.

This section outlines procedures for pre-emptive registration of a statement of interests (pecuniary and non-pecuniary) by elected and appointed public officials. It also includes a suggested format for a statement of interests document and the range of interest categories that should be addressed.

What are statements of interests?

A *statement of interests* lists your relevant private and personal interests, and possibly those of people closely related to you, where the interests may cause a conflict of interest. Statements of interests may come in many different formats. They may be required by legislation on a prescribed form or a form developed by your agency. Statements of interest may be referred to by other descriptions in different jurisdictions, for example, declarations of interest and returns of interest.

Who is a related person?

Definitions may vary in different legislation but they generally include anyone who is part of your immediate family, such as your spouse or de facto spouse, a wholly or substantially dependent child or someone who is wholly or substantially dependent on you and whose affairs are closely linked to yours (e.g. an aged parent).

Related persons are not always restricted to family relationships but are often more broadly defined

as anyone whose affairs are closely linked to yours where there may be some type of direct or indirect beneficial relationship. Expressions used to define the additional relationship beyond yourself vary and include for example 'persons associated with me'. However, the intent is usually clear.

Why make statements of interests?

Statements of interest are usually required (and in most cases mandated) for elected representatives, senior appointed public employees and public sector staff of all levels in some critical or sensitive roles. In most cases these individuals are in a position to make decisions of vital concern to the community. At times these decisions could have some bearing on matters that affect them personally. Statements of interests allow a degree of transparency so that you cannot be accused of having ulterior motives for your decisions or secret reasons for making particular decisions.

This process needs to be empowered by a law or government policy to be enforceable. Where this applies, failure to provide a complete return when required could be made the subject of civil sanctions (e.g. disciplinary action for a public employee or a disqualification from public office for an elected official) or criminal sanctions, as required, in a particular case.

Who can inspect the registers?

Access to registers of interests for appointed public employees are usually not public; strict confidentiality policies and procedures should apply. Registers should be held securely with access restricted to the CEO and an organisationally nominated delegate to ensure accountability and transparency of operations and management.

Registers of interest for elected representatives are usually open to the public for inspection. However the register of interests for a related person would normally be restricted to, for example, a mayor/ premier, the CEO or an individual permitted by law to have access to information in the register,

such as a representative of the CMC/ICAC. People wishing to inspect an entry in the register of interests for an elected official must apply in writing to the appropriate authority, who must record who has been given access and inform the elected official.

Additional statement processes

An effective process should also require a public employee to identify assets disposed of during the reporting period, their value on disposal, how they were disposed of and to whom. This, along with an updating of new or changed assets or interests, can be achieved with a requirement to complete a *notification of alteration to statement of interests* form.

In addition, a formal statement could be lodged with the public employee's manager about private or personal associations that might have an influence, or be seen to have an influence, on how they carry out their public duties. This *advice of private associations* would not include confidential matters, such as financial details, required for a statement of interests but rather provide the manager with relevant information that would allow the efficient management and allocation of duties to help prevent conflicts of interest from occurring within the relevant work unit.

You still need to disclose conflicts of interest, including any material personal interests, at meetings or when conflict of interest situations arise, even if you have registered an up-to-date statement of interest. Statements of interests do not remove your obligation to disclose a conflict of interest or for you to take the appropriate action to resolve or manage the conflict of interest.

DISCLOSING CONFLICTS OF INTEREST

Responsibility of the individual

As a public employee you are expected to disclose any actual or potential conflicts of interest you may have in any matter where you are expected to be involved in a decision or action as part of your public duties. You are also expected to bring to notice any circumstances that could result in a third party reasonably perceiving a conflict of interest to exist.

It is your responsibility to make such disclosures whether or not there is a statutory requirement to do so. All disclosures should be made promptly, fully and appropriately.

Responsibility of the organisation

Disclosing some types of conflicts of interest is a legislative requirement for some public sector positions (e.g. local councillors regulated by the *Queensland Local Government Act 1993*). Disclosure policies for these positions should meet all legislative requirements as a minimum standard. For those types of conflicts of interest not covered by legislation, your organisation should ensure that it has in place robust disclosure procedures which should:

- be well known and well publicised among all staff
- provide transparent and accountable reporting channels
- help staff in making appropriate, prompt and full disclosure of conflicts of interest
- clearly inform staff of their rights and responsibilities
- provide for proper record keeping with regard to disclosure, management strategies adopted and the rationale for adopting them and the final outcomes of the management process
- be regularly reviewed.

The importance of proper disclosure should be explicitly and regularly communicated and reinforced in codes of conduct, staff circulars, pre-employment information, relevant meeting agendas and employment contracts.

All conflicts of interest disclosures should be properly recorded and kept in a formal register. Using a formal register enables your organisation to ensure all records of reported conflicts of interest are:

- captured (less likely to be mislaid or lost)
- consistent (see Tool 9.2: Management options ready reckoner, Tool 11.2: Sample form for disclosing conflicts of interest)
- informative (contain all necessary information)
- available for review
- reliable (less likely to be changed without authority).

Your organisation will need to develop appropriate record-keeping practices to ensure any information disclosed is kept confidential but accessible by those responsible for managing the conflict. Your organisation may choose to keep this type of register in a central location or at each regional office.

It is also practical for a copy of conflicts of interest disclosures to be held with the relevant manager so that it can be used as a planning and management tool. This will help ensure that those persons with registered conflicts and their managers know exactly what is recorded on the register.

If certain staff members repeatedly face conflicts of interest in the performance of their public duty, regular reviews of a formal register will ensure such patterns are more easily uncovered and managed.

Penalties for non-disclosure

If you fail to make the necessary disclosures about conflicts of interest, you may be in breach of your agency's conflicts of interest policy and code of conduct and be liable to disciplinary action.

Refusal to take any action directed by your agency to resolve a conflict of interest may also be in breach of the agency's conflicts of interest policy and code of conduct.

Tool 9.1: Options for managing conflicts of interest

This tool provides an overview of the main options available to effectively manage a conflict of interest – whether actual, perceived or potential. These options range from formal registration of the conflict to the resignation of the public official concerned from their position.

REGISTER

The register is where details of the existence of possible or potential conflicts of interest are formally registered.

When this option is suitable:

Recording the disclosure of conflicts of interest in a formal register is an appropriate management strategy for dealing with very low-risk and potential conflicts of interest. It is also an adequate response where the act of transparency through recording conflicts of interest is sufficient.

However, the registration or declaration of conflicts of interest does not in itself necessarily resolve the conflict. Additional measures to positively resolve or manage conflicts of interest should also be considered.

Strategies:

- ensuring your supervisor or manager is aware of the conflict so that effective supervision can be carried out
- informing likely affected persons that a disclosure has been made providing appropriate details and the agency's view that there is no actual conflict of interest, or that the potential for conflict is minimal, or that it is being managed to the agency's satisfaction.

When this option is not suitable:

- when continued participation would create a perception that your private interests may affect the performance of your public duty
- the conflict of interest is more significant or of higher risk
- the potential or perceived effects of a conflict of interest on the proper performance of your duties require more proactive management.

All conflicts of interest should be registered regardless of what additional management strategies are adopted.

RESTRICT

Where restrictions are placed on the public employee's involvement in the matter.

When this option is suitable:

Restriction is often the most appropriate management strategy when:

- (a) you, as the public employee concerned, can be effectively separated from parts of the activity or process
- (b) the conflict of interest is not likely to arise frequently.

Strategies:

- non-involvement in any critical criteria setting or decision-making role in the process concerned
- refraining from taking part in any debate about the issue

- abstaining from voting on decision proposals
- withdrawing from discussion of affected proposals and plans
- having restricted access to information relating to the conflict of interest
- being denied access to sensitive documents or confidential information relating to the conflict of interest.

When you use any of the above strategies to separate yourself from the decision-making process you should take particular care to ensure all affected parties to the decision know what management strategy was adopted and why.

When this option is not suitable:

- the conflict of interest is likely to arise frequently causing ad hoc restriction to be an unworkable option
- you are constantly unable to perform a number of your regular duties because of conflict of interest issues.

An ongoing conflict of interest is likely to indicate a problem that requires more serious attention in its management. In this situation one of the strategies outlined in the next three sections might be more appropriate.

RECRUIT

A disinterested third party is used to oversee part or all of the process that deals with the matter.

When this option is suitable:

Recruiting others into the management and decision-making process is a useful strategy where the potential effects (or perceived effects) of a conflict of interest on the proper performance of your duties are more significant and require more proactive management.

Recruiting strategies are most useful where it is not appropriate or desirable for you, as the individual with the conflict of interest, to remove yourself from the decision-making process. This is particularly relevant if you work in a small or isolated community where your particular expertise is necessary and genuinely not easily replaced.

Strategies:

- arranging for the affected decision to be made by an independent third party
- engaging an independent third party or probity auditor to oversee or review the integrity of the decision-making process – this strategy is particularly appropriate where there is a reasonably perceived, but not actual, conflict of interest or the conflict of interest is only identified at or near the conclusion of the process or after the making of the decision⁵

⁵ NSW Ombudsman, 2000, *Good Conduct and Administrative Practice* pp.A24-25.

- increasing the number of people sitting on decision-making committees to balance the influence of a single member who may have a conflict of interest but who has some special reason to remain on the committee
- seeking the views of those likely to be concerned about a potential, actual or reasonably perceived conflict of interest about whether they object to you having any, or any further, involvement in the matter.

When this option is not suitable:

- the conflict is serious and ongoing, rendering ad hoc recruitment of others unworkable
- recruitment of a third party is not appropriate for the proper handling of the matter
- a suitable third party is unable to be sourced.

REMOVE

Where a public employee chooses to be removed from the matter.

When this option is suitable:

Removal strategies will be most appropriate for ongoing serious conflicts of interest where ad hoc restriction or recruitment of others are not feasible or appropriate.

Such strategies aim to remove you, as the individual with the conflict of interest, from all duties related to the conflict of interest for as long as the conflict of interest exists.

Strategies:

- removing yourself from any involvement in the matter

- abstaining from any formal or informal discussion about the matter
- removing yourself from the situation where you may still exert, or be perceived to exert, a covert influence on decisions or actions taken in the matter
- re-arranging your duties and responsibilities to a non-conflicting function
- transferring you to another project
- transferring you to another area of the organisation
- transferring you to another organisation
- ensuring that the duties in which the conflict of interest had arisen are not reallocated to another officer who is supervised by you, the individual with the conflict.

Given the effect such major changes may have on you as the individual concerned, it is extremely important that this management strategy be developed in an ongoing dialogue that includes you, the affected employee.

When this option is not suitable:

- the conflict of interest and its potential or perceived effects are of low risk or low significance
- you are prepared to relinquish the relevant private interests rather than radically change your work responsibilities or environment.

Where possible, removal strategies should be considered in tandem with relinquishment.

RELINQUISH

Where the public employee relinquishes the private interest that is creating the conflict.

When this option is suitable:

Instead of managing the public duties involved in a conflict of interest, relinquishing the private interests giving rise to the conflict is often an equally valid alternative strategy.

There may be occasions when your commitment to public duty outweighs your attachment to your private interest. Alternatively you may prefer to relinquish the relevant private interest rather than radically change your work responsibilities or environment.

Where relinquishing is considered the most appropriate strategy you, as the individual affected, should be involved in the final decision-making process that concerns relinquishment.

Strategies:

- liquidating your private interest in an arm's-length transaction
- divesting yourself of or withdrawing your support for your private interest – the one case where divestment may not be appropriate is if the interest is an essential part of your qualifications for a position, such as membership of a professional body
- assigning your conflicting interest to a genuinely 'blind trust' or 'blind management' arrangement for at least the duration of the conflict.

Such arrangements place the assets causing your conflict of interest in the hands of a trustee or manager who is at arm's length from you. You may not have any power of management or control over assets held and managed in trust. The trustee

or manager, likewise, may not seek or accept any instruction or advice from you concerning the management or the administration of the assets. You are entitled however, throughout the duration of the agreement, to be kept informed of the basic value of your assets. In making such arrangements, your organisation may need to receive legal advice to properly evaluate the effectiveness of any 'blind trust' arrangement entered into by you.

When this option is not suitable:

- you are unable or unwilling, for various reasons, to relinquish the relevant private interest
- the conflict of interest and its potential or perceived effects are of low risk or low significance.

RESIGN

Where the public employee resigns from their position with the agency.

When this option is suitable:

Resignation is the most extreme solution to a serious conflict of interest. Although extreme, resignation should be a strategy available for consideration if the conflict of interest cannot be resolved in any other workable way. In short, public sector employees should be required to resolve a conflict of interest they may have or, if managerial remedial action is not effective, they may have no other choice than to resign from their public position.

There may be a situation in which you, as the individual affected, can not or will not relinquish your conflicting private interest when changes to your work responsibilities or environment are not feasible and the conflict of interest and its potential or perceived effects are of high risk or high significance.

Alternatively, you may choose to resign as a matter of personal principle when your private interest conflicts with a proposed action or position taken by your agency.

Strategies:

- resignation from your position with the agency
- request for transfer to another agency or jurisdiction
- early retirement if the option is feasible and available

When this option is not suitable:

- the conflict of interest and its potential or perceived effects are of low risk or low significance
- other options exist that are workable for you and your agency.

Any action under this strategy must take into account natural justice, procedural fairness, relevant employment law and any contractual provisions.

The agency's conflict of interest policy and employment contract provisions should state that an official position can be terminated in accordance with a defined procedure in such circumstances.

The following examples illustrate the main options available to effectively manage a conflict of interest – whether actual, perceived, or potential – ranging from formal registration of the conflict to the resignation of the public official concerned from their position.

TRAINING TIP: They can be used as part of a training session to illustrate these points.

Example of Management Option: REGISTER

Swings and roundabouts #1

Public Duty

You are working in the planning unit of your local council that has identified a vacant tract of land it wishes to develop as a local park and playground. You are requested to manage this project, which involves developing a plan for the proposed park and overseeing the procurement and installation of landscaping and children's recreational facilities.

Private Interest

Many years ago your father established a local playground equipment business but has since sold his interest to a national company. Although the local business still retains your father's name, and he enjoys attending occasional social functions hosted by the national company, he has no financial interest.

Identified Conflict

The private interests of you and your father are minimal and hold very little risk of influencing any decisions or actions you may take regarding the park development.

It is possible, however, that if playground equipment is purchased from the business still bearing your father's name, some people may still have a perception that you may have been influenced by:

- (a) sentiment
- (b) a desire to enhance your father's standing with the new company
- (c) residual financial interests (even if this is not the case).

Management Option

You formally declare and REGISTER the perceived conflict of interest. While this act of transparency and good faith through recording the conflict of interest is quite sufficient, you also ensure that anyone who may be affected by decisions about playground equipment is informed that a disclosure has been made and that the potential for conflict is minimal.

Example of Management Option: **RESTRICT**

Swings and roundabouts #2

Public Duty

You are working in the planning unit of your local council that has identified a vacant tract of land it wishes to develop as a local park and playground. You are requested to manage this project, which involves developing a plan for the proposed park and overseeing the procurement and installation of landscaping and children's recreational facilities.

Private Interest

Many years ago your father established a local playground equipment business but has since sold his interest to a national company. *However, you own \$10,000 worth of shares in the business.*

Identified Conflict

Your private interest in the local playground equipment business is substantial and you would have a very real conflict of interest if you became actively involved in any discussions, decisions or actions taken about the procurement of playground equipment for the park.

However, this is the type of conflict of interest that is not likely to arise frequently and your agency has the capacity to have you effectively separated from this part of the development process.

Management Option

*You formally register your conflict of interest and, while still contributing to the development plan for the proposed park, you **RESTRICT** yourself from any critical criteria setting or decision-making role in the assessment and purchasing of playground equipment. In addition, you ensure that you avoid any situation where you may still exert or be perceived to exert a covert influence on decisions or actions taken in the matter.*

Example of Management Option: **RECRUIT**

Swings and roundabouts #3

Public Duty

You are working in the planning unit of your local council that has identified a vacant tract of land that it wishes to develop as a local park and playground. You are requested to manage this project, which involves developing a plan for the proposed park and overseeing the procurement and installation of landscaping and children's recreational facilities.

Private Interest

Many years ago your father established a local playground equipment business but has since sold his interest to a national company. However, you own \$10,000 worth of shares in the business.

Identified Conflict

Your private interest in the local playground equipment business is substantial and you would have a very real conflict of interest if you became actively involved in any discussions, decisions or actions taken about the procurement of playground equipment for the park.

The community and, therefore, the council you work for is quite small and you are the only available member of staff with professional expertise in planning matters and assessment of sport and recreational facilities.

This is the type of conflict of interest that is not likely to arise frequently but your council does not have the capacity to effectively separate you from any part of the development process, including the needs assessment and procurement of playground equipment.

Management Option

*You formally register your conflict of interest but maintain oversight of the complete planning and development project. Additionally your council **RECRUITS** the deputy CEO to oversee the probity process for procurement and negotiates with a neighbouring council to use their planning and development manager to independently review your recorded plans and development proposals.*

Example of Management Option: **REMOVE**

Swings and roundabouts #4

Public Duty

You are working in the planning unit of your local council. The council has identified a vacant tract of land that it wishes to develop as a local park and playground. You are requested to manage this project, which involves developing a plan for the proposed park, and overseeing the procurement and installation of landscaping and children's recreational facilities.

Private Interest

Many years ago your father established a local playground equipment business but has since sold his interest to a national company. However, you own \$10,000 worth of shares in the business.

You have registered your conflict of interest and have adopted an appropriate management strategy that still allows you to continue to oversee the project.

However as the project commences, you learn that you have unexpectedly inherited (from a distant relative) some prime property that overlooks the proposed park.

Identified Conflict

Your private interest in the development of the park is very substantial because the nature of the development will have a direct impact on the ambience and future value of the property you have inherited. You would have a very real conflict of interest if you continued to be actively involved in any discussions, decisions or actions taken about any aspect of the park development.

Management Option

*You formally register your conflict of interest and **REMOVE** yourself completely from any involvement in the project. Your council engages an independent planning and development firm to prepare plans and proposals and manage the project. In engaging an outside firm the council ensures that you are not involved in any part of the tendering or contracting process.*

In consultation with you, as the affected individual, the council places you in charge of a different, unrelated project where you can not exert or be perceived to exert any covert influence on decisions or actions taken in the park development.

Example of Management Option: **RELINQUISH**

Swings and roundabouts #5

Public Duty

You are working in the planning unit of your local council. The council has identified a vacant tract of land that it wishes to develop as a local park and playground. You are requested to manage this project, which involves developing a plan for the proposed park, and overseeing the procurement and installation of landscaping and children's recreational facilities.

Private Interest

Many years ago your father established a local playground equipment business but has since sold his interest to a national company. However, you own \$10,000 worth of shares in the business.

You have registered your conflict of interest and have adopted an appropriate management strategy that still allows you to continue to oversee the project.

However as the project commences you learn that you have unexpectedly inherited (from a distant relative) some prime property that overlooks the proposed park.

Identified Conflict

Your private interest in the development of the park is very substantial because the nature of the development will have a direct impact on the ambience and future value of the property you have inherited. You would have a very real conflict of interest if you continued to be actively involved in any discussions, decisions or actions taken about any aspect of the park development.

However, you are not at all keen to be removed from the project, which you see as an important step in your professional career and an important asset for your community. You want to have the park developed most effectively and professionally and you wish to have close involvement in every aspect of the project.

Management Option

*You formally register your conflict of interest and, after consultation with the council, **RELINQUISH** your private interests so that you can continue managing the project.*

For the sake of personal integrity, you sell the inherited property in an arm's length transaction to a purchaser who has no personal connection with you or your family. However you still desire to hold onto the shares for sentimental reasons. Instead you opt to assign these shares to a 'blind trust' arrangement for the duration of your employment in a role involving possible decisions relating to playground equipment.

Example of Management Option: **RESIGN**

Swings and roundabouts #6

Public Duty

You are working in the planning unit of your local council. The council has identified a vacant tract of land that it wishes to develop as a local park and playground. You are requested to manage this project, which involves developing a plan for the proposed park, and overseeing the procurement and installation of landscaping and children's recreational facilities.

Private Interest

Many years ago your father established a local playground equipment business but has since sold his interest to a national company. However, you own \$10,000 worth of shares in the business.

You have registered your conflict of interest and have adopted an appropriate management strategy that still allows you to continue to oversee the project.

However as the project commences you learn that you have unexpectedly inherited (from a distant relative) some prime property that overlooks the proposed park.

Identified Conflict

Your private interest in the development of the park is very substantial because the nature of the development will have a direct impact on the ambience and future value of the property you have inherited. You would have a very real conflict of interest if you continued to be actively involved in any discussions, decisions or actions taken about any aspect of the park development.

However, although you could sell the inherited property, you have no desire to do so because you realise that it has the potential to dramatically increase in value after the park development is completed.

Moreover, you have no interest in taking on a different council project that potentially doesn't offer the same professional satisfaction as this current project.

Management Option

*You formally register your conflict of interest and, after consultation with the council, you reject the strategies the council offers to help you manage your conflict of interest. Instead you make a rational decision that it is to your economic advantage to **RESIGN** from your position with the council.*

Tool 9.2: Management options ready reckoner

This tool provides a quick reference chart to the six major options given for managing conflicts of interest. It also provides a brief description of the types of situation in which certain options would be considered most suitable, and when such options might be considered least suitable.

Options for managing conflicts of interest

Management Strategy	When most suitable	When least suitable
<p>Register</p> <p><i>Where details of the existence of a possible or potential conflict of interest are formally registered.</i></p>	<ul style="list-style-type: none"> for very low-risk conflicts of interest and potential conflicts of interest where the act of transparency through recording the conflict of interest is sufficient 	<ul style="list-style-type: none"> the conflict of interest is more significant or of higher risk the potential or perceived effects of a conflict of interest on the proper performance of the public employee's duties require more proactive management
<p>Restrict</p> <p><i>Where restrictions are placed on the public employee's involvement in the matter.</i></p>	<ul style="list-style-type: none"> the public employee can be effectively separated from parts of the activity or process the conflict of interest is not likely to arise frequently 	<ul style="list-style-type: none"> the conflict is likely to arise more frequently the public employee is constantly unable to perform a number of their regular duties because of conflict of interest issues
<p>Recruit</p> <p><i>Where a disinterested third party is used to oversee part or all of the process that deals with the matter.</i></p>	<ul style="list-style-type: none"> it is not feasible or desirable for the public employee to remove themselves from the decision-making process in small or isolated communities where the particular expertise of the public employee is necessary and genuinely not easily replaced 	<ul style="list-style-type: none"> the conflict is serious and ongoing rendering ad hoc recruitment of others unworkable recruitment of a third party is not appropriate for the proper handling of the matter a suitable third party is unable to be sourced
<p>Remove</p> <p><i>Where a public employee chooses to be removed from the matter.</i></p>	<ul style="list-style-type: none"> for ongoing serious conflicts of interest where ad hoc restriction or recruitment of others is not appropriate 	<ul style="list-style-type: none"> the conflict of interest and its perceived or potential effects are of low risk or low significance the public employee is prepared to relinquish the relevant private interest rather than radically change their work responsibilities or environment

Management Strategy	When most suitable	When least suitable
<p>Relinquish</p> <p><i>Where the public employee relinquishes the private interest that is creating the conflict.</i></p>	<ul style="list-style-type: none"> the public employee's commitment to public duty outweighs their attachment to their private interest 	<ul style="list-style-type: none"> the public employee is unable or unwilling, for various reasons, to relinquish the relevant private interest
<p>Resign</p> <p><i>Where the public employee resigns from their position with the agency.</i></p>	<ul style="list-style-type: none"> no other options are workable the public employee can not or will not relinquish their conflicting private interest and changes to their work responsibilities or environment are not feasible the public employee prefers this course as a matter of personal principle. 	<ul style="list-style-type: none"> the conflict of interest and its potential or perceived effects are of low risk or low significance other options exist that are workable for the public employee and the agency.

All conflicts of interest should be registered regardless of the additional management strategies adopted.

Tool 9.3: Tips for managing an organisation's conflicts of interest

This tool provides an overview of options available to organisations that have combined regulatory functions and active commercial roles – a situation that has the potential to create conflicts of interest at an organisational level, and thereby place their employees in difficult conflict situations.

MANAGING CONFLICTS AT AN ORGANISATIONAL LEVEL

The requirement to act fairly and impartially in the performance of public duty is as demanding on agencies as for any individual.

The combination of regulatory functions and active commercial roles within some agencies clearly has the potential to create conflicts of interest at the regulatory level, while the assumption of financial (entrepreneurial) risk can give rise to ethical hazard in agency dealings and decision making. Both situations have the potential to increase the risk of official misconduct.

Activities likely to have a major influence on agency operations or obligations need to be considered transparently and to be suitably quarantined from the day-to-day regulatory and statutory functions of the agency.

Indeed, in the event that an agency takes action that is not impartial, its employees may be placed in an invidious position. The ramifications include the potential for internal and external confusion in organisational roles and the creation of ethical dilemmas and conflicts of duty in the exercise of an individual's professional responsibilities.

Strategies:

- adopt appropriate structures and functional boundaries to separate any agency commercial activities appropriately from regulatory and control functions
- establish an ethics review committee or group to oversee and review potential organisational

conflict cases (this could be linked to an extended audit committee role)

- establish procedures for investigation to cater for any case of potential organisational conflict, including obtaining legal advice to ensure objective assessment of the issues
- outsource the consideration of development and planning matters and commercial activities, where appropriate
- take advantage of other sources of available expertise by referring matters to an independent external review group or panel, possibly in association with professional groups and other relevant agencies
- adopt exceptional measures to ensure transparency in related planning and development matters
- highlight the significance of the whistleblower role in organisational matters and for individual conduct.

Example:

Council as regulator and developer

Suppose a council wishes to provide funeral services for its area. It obtains an option to purchase land and negotiate with a firm of undertakers for the establishment of the premises as a funeral parlour. The firm then applies to the council for consent to use the premises in that way.

The council has a financial interest in the application being granted, while at the same time a duty to the public to assess the matter according to proper planning considerations. If a rival company wished to set up a similar business within the area should the council, with a commercial interest in the first matter, be responsible for determining both?

Clearly there may be a serious conflict between the roles of planner and development control authority on the one hand and developer on the other.⁶

⁶ ICAC 1991, *Conflicts of Interest and Local Government Discussion Paper*

Tool 10.1: Sample Statement of Interests form

This tool is a sample of a statement of interests form which could be used by an appointed or elected official for that individual and information of any related persons.

REGISTRATION OF PRIVATE INTERESTS	
STATUTORY DECLARATION	
I, _____ DO SOLEMNLY AND SINCERELY DECLARE that, to the best of my knowledge and belief, the attached Statement of Private Interests contains a complete and accurate statement of my private interests and those of the persons associated with me;	
AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and under and in accordance with the provisions of the <i>Commonwealth Statutory Declarations Act 1959</i> .	
Declared at _____)	
this _____ day of _____, 20____)	
before me _____)	_____
(Signature)	(Signature)
_____)	
Authorised Person*	
UNDERTAKING AS TO CHANGE IN INFORMATION DECLARED	
I, _____,	
HEREBY ACKNOWLEDGE	
the need for, and UNDERTAKE that so long as I am an employee of the (...organisation name...) [#] engaged by the (...organisation name...) to provide it with services, information or advice I will notify the (...organisation name...) by Statutory Declaration of any change or addition, coming to my knowledge, to any information declared in the attached Statement of Private Interests, within (.... e.g. 30 days....) of such change or addition occurring.	
Dated at _____ this _____ day of _____ 20____.	
Signature: _____	
Witness: _____	Print Name (_____)

* Authorised Persons before whom the Declaration may be made should be listed in ancillary guidelines.

Delete if inapplicable (the distinction between an officer of the organisation and a person engaged by the organisation to provide it with services, information or advice should be set out in the Explanatory Notes).

STATEMENT OF PRIVATE INTERESTS AND ASSOCIATIONS

1. Real Estate

I, and/or the persons associated with me, own interests in the following real estate:

<i>Owner</i>	<i>Location</i>	<i>Nature of interest</i>	<i>Purpose for which held</i>	<i>Years held</i>	<i>Initial cost⁷</i>	<i>Current value⁷</i>

2. Shareholdings

I, and/or the persons associated with me, own the following shareholdings, other than nominal shareholdings by way of qualification for membership of a credit union, building society or other co-operative society:

<i>Owner</i>	<i>Company</i>	<i>Nature of shares held</i>	<i>Initial cost</i>	<i>Approx. current value</i>

(Include equitable as well as legal interests, whether held directly or indirectly, which enable the exercise of control over the right to vote or dispose of the shares including interests held on behalf of you and/ or the persons associated with you by a nominee or nominee company).

3. Trusts/Nominees Companies

(a) I, and/or the persons associated with me, hold a beneficial interest in the following family or business trusts or nominee companies:

<i>Beneficiary</i>	<i>Trust or nominee company value</i>	<i>Nature of interest</i>	<i>Nature of operations of trust company</i>	<i>Approx. current value</i>

⁷ Optional – organisation to determine if the information involving current and past costs is significant throughout the statement.

(b) I, and/or the persons associated with me, are trustees of the following family or business trusts:

<i>Trustee</i>	<i>Trust</i>	<i>Beneficiaries</i>	<i>Nature of operations</i>	<i>Approx. current value</i>

4. Directorships in Companies (*Whether Public or Private*)

I, and/or the persons associated with me, hold the following directorships, whether remunerated or not:

<i>Director</i>	<i>Company</i>	<i>Public or private</i>	<i>Activities of company</i>	<i>Year incorporated</i>

5. Partnerships etc.

I, and/or the persons associated with me, are members of the following partnership(s):

<i>Person holding interest</i>	<i>Partnership Nature/ Purpose of operations</i>	<i>Year business formed</i>	<i>Nature of interest</i>	<i>Value of interest</i>	<i>Approx. current value</i>

6. Investments

I, and/or the persons associated with me, have the following investments in bonds, debentures, savings or investment accounts with banks or other financial institutions:

<i>Person holding investment</i>	<i>Type of investment</i>	<i>Body in which investment is held</i>	<i>Approx. current value</i>

(To be completed only if the cumulative value of investments exceeds, for example, \$2,000 unless any particular investment is of such a nature that it may be seen to give rise to a conflict with your public duty. Any such investment must be disclosed.)

7. Other assets

I, and/or the persons associated with me, have assets (other than those mentioned in items 1–6) as follows:

<i>Owner</i>	<i>Nature of assets</i>	<i>Initial cost</i>	<i>Year acquired</i>	<i>Approx. current value</i>

(Household or personal effects or motor vehicles for private use need not be mentioned. List each other asset, valued at over, for example, \$2000, including collections, and smaller amounts of such nature that they may be seen to give rise to a conflict with your public duty.)

8. Sources of income

I, and/or the persons associated with me, have the following sources of income:

<i>Recipient</i>	<i>Nature of income</i>	<i>Actual gross income for last financial year</i>	<i>Estimated gross income for current financial year</i>

(Salary from contract of employment with the agency, family allowance payments and income from investments not required to be disclosed under item 6 need not be mentioned. List each other source of income in excess of, for example, \$2000 per annum and smaller amounts of such nature that they may be seen to give rise to a conflict with your public duty.)

9. Gifts, sponsored travel or hospitality

I, and/or the persons associated with me, have received the following gifts and other financial benefits during the last 3 years:

<i>Recipient</i>	<i>Nature of gift etc.</i>	<i>Year received</i>	<i>Approx. current value</i>	<i>Value when received</i>

(Gifts and other financial benefits received in a purely personal capacity, such as from family and friends, need not be mentioned unless of such a nature that they may be seen to give rise to a conflict of interest with your public duty.)

10. Control over other assets etc.

I, and/or the persons associated with me, have effective control over the following assets (other than those referred to elsewhere in this statement):

<i>Person having control</i>	<i>Nature of assets</i>	<i>Year acquired</i>	<i>Approx. value when acquired</i>	<i>Approx. current value</i>

11. Liabilities

I, and/or the persons associated with me, have the following liabilities:

<i>Persons concerned</i>	<i>Nature of current liability</i>	<i>Creditor</i>	<i>Year of incurring liability</i>	<i>Current liability</i>

(Ordinary short term credit arrangements, such as credit cards or accounts, need not be mentioned unless the cumulative liability exceeds, for example, \$2000 or are of such a nature that they may be seen to give rise to a conflict with your public duty.)

12. Any other private interest

I, and/or the persons associated with me, have the following interests, financial (not referred to elsewhere in this statement) or otherwise, the nature of which gives rise to, or may be seen to give rise to, a conflict of interest with my public duty:

(Reference is to be made to all indirect and contingent interests.)

Tool 10.2: Sample form for notifying variation of interests

A sample of a form which could be used by an appointed or elected official to notify relevant authorities of any alteration to that person and their related persons' statements of interests.

NOTIFICATION OF ALTERATION TO STATEMENT OF INTERESTS

Surname: _____

Other names: _____

Additions

Category: _____

Details: _____

Deletions

Category: _____

Details: _____

I certify that the information provided in this statement properly reflects, as far as I am aware, my registrable interests and the interests of any other related persons and that the information provided is in accordance with the guidelines for declaring interests.

Signature (employee)

Date / / .

Tool 10.3: Sample form for advising of private associations

This tool is a sample of a form which could be used by a public employee to advise their manager of private or personal associations that may have an influence on how they carry out their official duties. This advice of private associations would not include confidential matters, such as financial details required for a statement of interests, but provide the manager with relevant information that would allow the efficient management and allocation of duties to help prevent conflicts of interest from occurring within the work unit.

ADVICE OF PRIVATE ASSOCIATIONS

Surname: _____
Other names: _____

Private associations:

I certify that the information provided in this statement properly reflects, as far as I am aware, my private and personal associations and those of any other related persons, where they may have an influence, or be seen to have an influence, on how I carry out the duties that I am expected to perform in my role as a public official. I acknowledge this information is provided to management to assist in the efficient allocation of duties and to help prevent conflicts of interest from occurring within the work unit.

Signature (employee)

Date / / .

Tool 11.1: Model procedure for disclosing conflicts of interest

The purpose of this tool is to assist you to follow a course of action that helps ensure probity and transparency, after you have identified actual, perceived or potential conflict of interest.

PROCEDURES FOR DISCLOSING CONFLICTS OF INTEREST

Establish that a conflict of interest exists

If you are unsure that you have a conflict of interest, refer to the checklists in this Toolkit (Tools 8.1: Checklist for identifying a conflict of interest and 8.2: Checklist for identifying a pecuniary interest). If your manager considers that the matter requires closer scrutiny or opinion, they should separately seek legal or other advice.

Disclose the conflict of interest

To maintain openness and transparency in disclosing conflicts of interest you should observe the following steps.

Step 1

- Register details of your conflict of interest in writing to allow the conflict of interest to be formally recorded. Tool 11.2: Sample form for disclosing conflicts of interest is included overleaf.

The information you provide should be assessed to determine if it contains sufficient detail to enable informed decisions to be made about appropriate management options. Ensure you provide details of:

- your identification
- the matter under consideration
- the role or actions you would normally be expected to perform as part of your official duties

- the private interests that you or your agency have identified as having the potential to impact on your ability to carry out, or be seen to carry out, your official duties impartially and in the public interest.

Step 2

- Report the conflict of interest to your manager or supervisor.

- On your disclosure form ensure that you and your manager state that the conflict of interest declaration has been appropriately made. Tool 11.2: Sample form for disclosing conflicts of interest also provides for a record to be made of:

- notations made during a meeting to discuss the conflict of interest
- the proposed agreed action to be taken in resolving or managing the conflict of interest
- adjustments later made to this agreed action
- a statement that the conflict of interest has been resolved and the matter finalised.

Step 3

- Inform likely affected persons that a disclosure has been made, providing appropriate details and your organisation's position on how the conflict is being managed to the organisation's satisfaction.

When a written declaration is not immediately practicable

There may be times when you are in a situation that does not allow you to disclose your conflict of interest in writing before taking action. For example, you may be in a meeting where, without prior warning, a matter is introduced in which you may recognise that you have a conflict of interest. In such instances you should observe the following steps.

Step 1

- Verbally disclose your interest.
- Ensure that this disclosure is recorded in the minutes of the meeting.
- Record this disclosure in your own meeting notes.
- Remove yourself from the meeting while the matter is discussed, or even have the meeting stopped or postponed.

Step 2

- Register details of your conflict of interest in writing and lodge this disclosure with your organisation, to allow the conflict of interest to be formally recorded.
- Report the conflict of interest to your manager or supervisor and ensure that a statement is made by you and your manager that the conflict of interest declaration has been appropriately made.

Adequate reporting and recording are only the first steps, they do not resolve the issue. Additional assessment and management are required.

Tool 11.2: Sample form for disclosing conflicts of interest

This tool is a sample of a form which could be used by an appointed or elected official to disclose and formally record conflicts of interest. This form also makes provision for the ongoing management of conflicts of interest to be recorded.

CONFLICT OF INTEREST DECLARATION

Surname: _____

Given names: _____

Position: _____

Unit/Division: _____

Matter under consideration:

Expected role/duties to be performed by the employee in dealing with this matter:

Private interests identified which have the potential to impact on the employee's ability to carry out, or be seen to carry out, their official duties impartially and in the public interest:

The conflict of interest has been identified as an *(please check the appropriate boxes)*:

Actual conflict of interest

Perceived conflict of interest

Potential conflict of interest

Pecuniary interest

Non-pecuniary interest

I hereby declare that the above details are correct to the best of my knowledge and I make this conflict of interest declaration in good faith.

Signature (*officer*)

Date / / .

I hereby declare that I have received and appropriately noted this conflict of interest declaration.

Signature (*manager/supervisor*)

Date / / .

STATEMENT OF CONFLICT OF INTEREST RESOLUTION OR MANAGEMENT

Proposed action to be taken to resolve or manage conflicts of interest:

The above action has been agreed on to resolve conflicts of interest declared by *(insert officer's name)* on *(insert date)*.

_____	_____
Signature <i>(officer)</i>	Signature <i>(manager/supervisor)</i>
Date / / .	Date / / .

STATEMENT OF ADJUSTMENT TO CONFLICT OF INTEREST RESOLUTION MANAGEMENT

Adjustment to action taken to resolve or manage conflicts of interest:

The above action adjustment has been agreed on to resolve the conflicts of interest declared by *(insert officer's name)* on *(insert date)*.

_____	_____
Signature <i>(officer)</i>	Signature <i>(manager/supervisor)</i>
Date / / .	Date / / .

STATEMENT OF FINALISATION OF CONFLICT OF INTEREST

The conflict of interest declared by *(insert officer's name)* on *(insert date)* has now been resolved and no further action is required.

_____	_____
Signature <i>(officer)</i>	Signature <i>(manager/supervisor)</i>
Date / / .	Date / / .

Tool 11.3: Model procedure for reviewing conflicts of interest disclosures

The purpose of this tool is to help your organisation review conflicts of interest disclosures: to determine that an actual, perceived or potential conflict of interest exists; to help ensure probity and transparency in such assessment; and to inform the type of strategy adopted to manage the conflict of interest.

REVIEWING CONFLICTS OF INTEREST DISCLOSURES

When all necessary details of the matter have been recorded the information should be reviewed at the next available opportunity in the agreed procedure. This would occur preferably with the input of the individual who has disclosed a conflict of interest and the relevant supervisor or manager.

Responsibility of the organisation

The organisation will need to develop procedures for reviewing conflicts of interest disclosures. These procedures should take at least the following questions into account when developing an approach to managing conflicts of interest:

- Who will review reports of conflicts of interest (e.g. line manager, senior manager, committee)?
- Who will take final responsibility for the outcomes of the review process?
- How will responsibility for ongoing management or monitoring be delegated?
- What avenues of appeal will exist for staff who disagree with the outcomes of the review process?
- How will review decisions be implemented?

- How and where will records be kept of review decisions and the reasoning behind them?
- Will the policy require changes to other organisational documents (e.g. your organisation's code of conduct or statement of business ethics)?
- What sanctions will be developed for breaches of the policy?

You should be aware that there may also be additional issues affecting your organisation as a result of particular organisational functions.

The central objective when reviewing the conflicts of interest disclosure is to make an initial decision to see if further management action is required. Your organisation will need to determine the responsible individual for making final decisions.

Review Checklist

Is there a conflict of interest?

Those responsible for making decisions about further management action must first address the following question:

Does a conflict of interest (actual, perceived or potential) exist? YES NO

Regardless of the answer, a record needs to be made of this assessment and the reasons for making it. Further monitoring may be necessary if it appears that a conflict of interest does not exist at present but circumstances are such that one may appear in the future.

If it appears that a conflict of interest exists, some further questions must be answered.

Does it relate to a conflict of role? YES NO

Is the conflict of interest the result of a conflict between private interests and public duties or the result of a conflict of roles within the functions performed by your organisation?

Conflicts of interest arising from an organisation having competing interests when performing its public duty require specific management strategies. A local council acting as consent authority and developer/owner is an example of such competing interests in practice. In such cases, your organisation must take reasonable steps to ensure conflicts of interest pertaining to competing organisational roles or functions are properly addressed.

Does it relate to a private interest?

Our main concern with this Toolkit is specifically orientated towards managing conflicts between the private interests and public duties of individual public sector employees. If the conflict of interest is of this latter type, the next questions that need to be asked as part of your organisation's review are:

What effect is the conflict of interest likely to have on the proper performance of the affected individual's public duties?

What risk does the actual or perceived or potential conflict of interest present to your organisation's proper performance of its public responsibilities?

The answers to these two questions will influence the type of management strategy chosen. Whatever strategy is selected, a record of the assessment needs to be made and the reasons supporting it identified.

Stage 3: Monitoring the management of conflicts of interest

Monitoring is an essential component of any strategy adopted to manage conflicts of interest. Ongoing monitoring and regular reviews allow changes to be made to the management strategy and the way in which it is implemented before problems have an opportunity to arise.

To ensure the chosen management strategy remains relevant until conflicts of interest are resolved, it is important to regularly review and assess the:

- original situation that has given rise to declaring the conflict of interest
- initial determinations and management decisions
- strategy put in place to manage the conflict of interest
- actions taken in implementing the management strategy
- changes in the situation that may have an impact on the management strategy
- perceptions held by others that the conflict of interest is having an improper influence on the matter
- reassessments and management decisions made about the continued management of the conflict of interest
- changes made to the management strategy and its implementation.

If changes to the situation are quite significant, you may need to re-start the complete management process, that is, commencing with a formal identification of the current situation and any conflicts of interest that may apply before adopting a revised management strategy.

Formal records should be kept of all reassessments and decisions made and actions taken.

Monitor perceptions also...

Even when the management strategy and the manner in which it is being implemented are assessed as still being appropriate to the situation, it is equally important to consider any perceptions that may be held, or continue to be held, by others. The perception that a conflict of interest is having an improper influence on a matter being handled by the agency – that is, that it is not being adequately managed – can be just as damaging as if this was actually the case. If this is an issue, your management strategy will need to be adjusted to also manage the perception.

Tool 12.1: Checklist for monitoring conflicts of interest management (individuals)

This tool provides a checklist to help individuals monitor and regularly review and assess the management of their conflicts of interest and the situations to which the management strategies have been applied.

Checklist for Monitoring

Ability to monitor and review	YES	NO
• Have I been able to adequately monitor the situation in which I have identified my conflict of interest?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I been able to adequately monitor the actions taken to implement my management strategy?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I need assistance from my manager or an objective third party to continue to monitor and/or reassess the situation?	<input type="checkbox"/>	<input type="checkbox"/>
Choosing the management strategy		
• Have my original determination and management decisions allowed me to act, and be seen to act, in a fair, impartial and objective manner?	<input type="checkbox"/>	<input type="checkbox"/>
• Are there any residual tensions between my original determination and any decisions taken by management?	<input type="checkbox"/>	<input type="checkbox"/>
• If there are any tensions, have I taken steps to discuss and/or resolve these with my manager?	<input type="checkbox"/>	<input type="checkbox"/>
Implementing the management strategy		
• Have I properly implemented the strategy selected to manage my conflict of interest?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I carried out all actions and decisions involved within this management strategy faithfully and transparently?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I ensured that my actions or decisions have not breached the boundaries set by the management strategy?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I experienced any problems implementing this management strategy which may have an impact on the situation?	<input type="checkbox"/>	<input type="checkbox"/>
Changes to the situation		
• Are there any changes to the situation since I implemented the management strategy?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I notified my manager of any changes to the situation?	<input type="checkbox"/>	<input type="checkbox"/>
• Is the management strategy still relevant to the situation?	<input type="checkbox"/>	<input type="checkbox"/>

- | | YES | NO |
|---|--------------------------|--------------------------|
| • Are there significant changes that have happened within the situation since this chosen management strategy was implemented? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have I notified my manager of these significant changes that have happened within the situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have I received any reports of perceptions held by others that the conflict of interest is having an improper influence on my actions and/or decisions? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is the management strategy still adequate or appropriate for the changed situation? | <input type="checkbox"/> | <input type="checkbox"/> |

Making adjustments

- | | | |
|--|--------------------------|--------------------------|
| • Do I need to make formal adjustments to the conflict of interest declaration that I have already registered about this situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do I need to declare and register further conflicts of interest that have impacted on this situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Should my management strategy be adjusted in any way to suit the changed situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Can I determine what needs to be changed in the management strategy to ensure impartiality, fairness and protect the public interest? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do I need to seek further advice from my manager or an independent third party to help determine the most appropriate changes to my management strategy? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If I do not need to change my management strategy, do I still need to make changes to the manner in which it is implemented? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do the planned changes to my management strategy and/or its implementation still ensure openness and transparency? | <input type="checkbox"/> | <input type="checkbox"/> |

Maintaining transparency

- | | | |
|--|--------------------------|--------------------------|
| • Have I identified and documented the facts and circumstances governing my review and assessment of, and decision on, how I should continue to handle the situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have I formally recorded all declarations, reassessments, further decisions made and actions taken? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have I ensured that everyone, including my manager, affected by any changes to this management strategy and/or its implementation has been notified? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do my management strategy and its implementation based on this review and assessment allow me to continue to act, and be seen to act, in a fair, impartial and objective manner? | <input type="checkbox"/> | <input type="checkbox"/> |

Tool 12.2: Checklist for monitoring conflicts of interest management (managers)

This tool provides a checklist to help managers monitor and regularly review and assess the management of conflicts of interest and the situations to which the management strategies have been applied.

Checklist for Monitoring

Ability to monitor and review	YES	NO
<ul style="list-style-type: none">• Has your staff member been able to adequately monitor for themselves the situation in which they identified their conflict of interest, and the actions they have taken to implement the strategy?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">• Have you been able to adequately monitor your staff member's involvement in the matter in which they have disclosed a conflict of interest?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">• Has such monitoring included a review of their actions and decisions in the matter and the outcomes of such actions and decisions?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">• Have you needed to call on the assistance of an objective third party to help continue to monitor and/or reassess the situation?	<input type="checkbox"/>	<input type="checkbox"/>
Choosing the management strategy		
<ul style="list-style-type: none">• Have the original determination and management decisions allowed the staff member to act, and be seen to act, in a fair, impartial and objective manner?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">• Are there any residual tensions between your staff member's original determination and any decisions taken by you as their manager?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">• If there are any tensions, have you taken steps to discuss and/or resolve these with your staff member?	<input type="checkbox"/>	<input type="checkbox"/>
Implementing the management strategy		
<ul style="list-style-type: none">• Has the staff member properly implemented the strategy selected to manage their conflict of interest?	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">• Have they carried out all actions and decisions involved within this management strategy faithfully and transparently?	<input type="checkbox"/>	<input type="checkbox"/>

- | | YES | NO |
|--|--------------------------|--------------------------|
| • Have you ensured that any actions or decisions that they have taken have not breached the boundaries set by the management strategy? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have they experienced any problems in implementing this management strategy which may have an impact on the situation? | <input type="checkbox"/> | <input type="checkbox"/> |

Changes in the situation

- | | | |
|--|--------------------------|--------------------------|
| • Are there any changes that have happened within the situation, since the management strategy was implemented? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Has your staff member notified you of any and all changes that have happened within the situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is the management strategy still relevant to the situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Are there significant changes that have happened within the situation since the chosen management strategy was implemented? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Are you aware or have you been notified of these significant changes that have happened within the situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have you received any reports of perceptions held by others that the conflict of interest is having an improper influence on your staff member's actions and/or decisions? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Is the management strategy still adequate or appropriate for the changed situation? | <input type="checkbox"/> | <input type="checkbox"/> |

Making adjustments

- | | | |
|---|--------------------------|--------------------------|
| • Does the staff member need to make formal adjustments to the conflicts of interest disclosure that has already been registered in relation to this situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Does the staff member need to disclose and register further conflicts of interest that have impacted on this situation? | <input type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|--|--------------------------|--------------------------|
| • Should the management strategy be adjusted in any way to suit the changed situation? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Can you and your staff member together determine what needs to be changed in the management strategy to ensure impartiality, fairness and protection of the public interest? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do you need to seek further advice from an independent third party to help determine the most appropriate changes to the management strategy? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If there is no need to change the management strategy, are changes to the manner in which it is implemented still required? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do the planned changes to the management strategy and/or its implementation still ensure openness and transparency? | <input type="checkbox"/> | <input type="checkbox"/> |

Maintaining transparency

- | | | |
|--|--------------------------|--------------------------|
| • Have I identified and documented the facts and circumstances governing the review and assessment of, and decision on, how the situation should continue to be handled? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have all declarations, reassessments, further decisions made and actions taken been formally recorded? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Has everyone who will be affected by changes to this management strategy and/or its implementation been notified? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do the management strategy and its implementation based on this review and assessment allow my staff member to continue to act and be seen to act in a fair, impartial and objective manner? | <input type="checkbox"/> | <input type="checkbox"/> |

Section 4: Training resources

Frequently asked questions

GENERAL

Is it wrong to have outside interests?

No, it is near impossible not to have interests outside your work. It is how they are managed, if in conflict with your public duties, that is important.

Why should I worry about conflicts of interest?

Managing conflicts of interest is important because the public has entrusted you and others with powers and public resources and expect you to carry out your official duties without bias.

What is meant by public perception?

Public perception is what a fair and reasonable member of the public would believe when observing or being made aware of a situation and your involvement.

Why should I worry about public perception if my conscience is clear?

The effectiveness of your agency depends on public confidence in the integrity of its staff. If the public has real doubts, your reputation and that of the organisation will be damaged.

Isn't it better to keep quiet about conflicts of interest?

No, conflicts of interest are better if they are managed with transparency. Things kept behind closed doors are more likely to attract suspicion and allegations of possible misconduct.

Won't people think I behind am biased if I tell people I have a conflict of interest?

Not necessarily but it is important to manage public perception. Things kept closed doors are more likely to attract suspicion.

Do conflicts of interest requirements apply to all levels of government?

Yes, all levels of government, state, local and federal have similar expectations.

Do the same rules apply to elected representatives and government employees?

All States are different but generally elected representatives and senior government executives will have greater obligations and their registers will be accessible to the general public.

How do I know what laws and policies I am expected to follow?

You can check with your supervisor or chief executive officer. Refer to the legislation applicable to your agency, its policy or procedures manual or contact an external agency such as the ICAC or CMC.

Why do conflicts of interest requirements apply to the public sector and not to private enterprise?

Conflicts of interest requirements do apply to some sectors of private enterprise. They are, however, particularly relevant to public officials because they have certain powers and responsibilities entrusted to them which they exercise on behalf of the community.

Why do public officials need to register their interests?

Public officials must be held to account for the use of their powers and public resources including public monies. Interests are declared to ensure transparency.

How do I register or declare my interests?

Organisations and legislation will vary, but generally there will be a standard form – known as a Statement of Interests – to complete. Once completed it is held by your chief executive officer or designated officer for safe keeping.

What types of interests should be registered?

The standard form will generally require you to list financial and non-financial interests. Check relevant legislation or your agency's policy.

How often should I update my declaration of interests?

That will depend on the legislative and policy requirements for your organisation. Some registers must be updated within three months of your circumstances changing, others must be updated every year. For interests that can change on a daily basis it is recommended that a detailed diary or running sheet be maintained and attached to the register at regular intervals.

If I have registered my interests in the organisation's register of interests, is that all I have to do?

No. Conflicts of interest will also need to be disclosed as they arise during the course of your work.

Should I get something back in writing when I've registered or declared my interests?

It is recommended that you obtain a receipt or acknowledgement when you lodge your statement of interests.

Who will have access to my declaration of interests?

If you are an elected member the register of interests may be open for public inspection. If you are an employee the register of interests will be accessible by the chief executive officer and any other individual permitted by law, but will generally not be available to the public.

REGISTERING INTERESTS

Will I have to register all my interests?

Legislation and policy may vary, however most registers require you to register: financial interests over a certain value, such as hospitality over \$500; and all significant non-financial interests, such as membership of associations and political parties.

Which employees should have to register their interests?

This varies and will generally be a matter of policy for your agency or it may be specified in legislation. It is recommended that staff with discretionary powers or delegated authority in regulatory, procurement and financial functions complete a declaration of interests.

Will I have to register how much money I have in the bank, or how much I owe on my house?

Some registers require you to disclose assets or liabilities over a certain value, however you generally name the institution you have the loan or shares with, not the value of your asset or liability.

How do I register interests that change often, such as interests in the stock market?

That will depend on the legislative requirements and policy requirements for your organisation. Some registers must be updated within three months of your circumstances changing, others must be updated every year. For interests that can change on a daily basis it is recommended that a detailed diary or running sheet be maintained and attached to the register at regular intervals.

Does the amount of money involved matter?

No.

Does my family have to register their interests?

In some States related persons or associates will have to complete a statement of their interests when you do.

Why should my family's interests be of concern to my work?

Their potential benefit or loss may influence or appear to influence the performance of your public duty.

IDENTIFYING A CONFLICT OF INTEREST

Who decides whether there is a conflict of interest?

You do, in consultation with your manager. The Guidelines and Toolkit will help to identify if you have a conflict of interest.

How will I know if I have a conflict of interest?

You may not but if you suspect that you have an interest that may impact on your work, consult with your manager. It is also important to attend conflicts of interest training offered by your organisation.

What do I do if I think I have a conflict of interest?

You can assess your situation using the checklist in Tool 8.1. You can also identify the type of interest you have using Tool 8.3. Again talk it over with your supervisor and disclose it in accordance with your organisation's policies and procedures.

DISCLOSING A CONFLICT OF INTEREST

How do I disclose a conflict of interest?

Depending on the legislation and policy applicable to your organisation generally you would be required to formally register details of the conflicts of interest and report the conflicts to your supervisor. However the situation may arise where you may need to disclose your conflicts of interest verbally (e.g. in a meeting).

Who do I tell if I have a conflict of interest?

Organisation procedures will vary but generally you will inform your supervisor, the chief executive officer or the board/council. You may also choose to advise those affected by the matter.

Do I still need to disclose conflicts of interest if there is no financial benefit or loss involved?

Yes, conflicts of interest cover a range of activities that is wider than financial concerns therefore your personal relationships, emotions and associations should also be taken into account.

What follows from disclosing a conflict of interest?

It should be assessed, managed, monitored and recorded. You may need to work through some or all of these processes with your manager but it is your personal responsibility to properly manage any conflicts of interest that you have.

MANAGING A CONFLICT OF INTEREST

How should I deal with a possible conflict of interest?

Recognise that it could be a conflict of interest. You may need to do no more than bring it to your supervisor's attention, record it and then monitor the situation.

What can I be asked to do if I have a conflict of interest?

You can be asked to register the interest, attend meetings with your manager to discuss, and come to some agreement about, how the interest will be managed. Refer to Tool 9.1 for ways to manage a conflict of interest.

I am a manager and one of my employees has come to me with a potential conflict of interest – what do I do?

Discuss the situation with your employee and request them to register the potential conflict of interest. Additionally you could discuss strategies with managerial colleagues/mentors, ensuring any confidentiality are not breached. You need to maintain on-going liaison with the employee and generally monitor the situation.

I am a manager and one of my employees wants to start up their own business. I think it conflicts with their official duties – what can I do?

Definitely discuss this with them and choose a strategy that is workable for them and the organisation.

REPORTING A CONFLICT OF INTEREST

What do I do if I suspect a colleague has a conflict of interest?

Depending on the circumstances and severity of the issue, you could bring the matter to your colleague's attention, raise it with your supervisor or, if necessary, lodge a formal complaint in accordance with your organisation's internal reporting guidelines.

SANCTIONS

Will I be in trouble if I don't disclose a conflict of interest?

Yes, you will be in breach of your organisation's conflicts of interest policy. Penalties imposed may be covered by legislation and the organisation's code of conduct.

What are the penalties?

Penalties can range from disciplinary action, termination, fines and even imprisonment, depending on the legislation applicable to your State and your organisation's policy.

Can I be prosecuted?

Yes, if your action can be proved to be a legislative offence.

ADVICE AND INFORMATION

Where can I go for advice?

Initially make contact with your supervisor or the chief executive officer or check your organisation's policies and procedures. External organisations, such as the ICAC and CMC may have useful resources or prevention officers to guide you.

Will I be protected if I have received advice?

In some States elected representatives can receive advice that will protect them from action with respect to conflicts of interest, however in a serious matter you are advised to seek legal advice. The best way to protect yourself is to formally disclose the conflict of interest and be guided by your organisation's policies and procedures.

Should I get legal advice?

You don't usually have to get legal advice, however conflicts of interest can be a difficult area and may require legal interpretation.

Where can I go to get more information?

You can go to your organisation's policies and procedures, its intranet, the ICAC or CMC websites, or see the list of resources in this Toolkit.

TRAINING

It is recommended that your organisation conduct a *training needs analysis* to see if a training program for management and staff is required to ensure that they are aware of their obligations under the new conflicts of interest policy. Advice on how to conduct the assessment is contained in Tool 6: Sample training needs analysis.

The generic training module

This generic training module can be used with staff and management to explore conflicts of interest and further promote application of the conflicts of interest policy. You may decide to use the entire module or some of the exercises in training. The generic training module can be used as part 1 of a training session in your organisation.

It will be necessary to extend the session to allow time to review and discuss your organisation's specific conflicts of interest policy. This section, Part 2, will require content development for staff and management of your organisation.

The generic training module is a two-hour workshop. It consists of the following:

- 1. Training session overview** of resources needed to conduct the training workshop, learning outcomes and module assessment.
- 2. Facilitator notes** to guide delivery of the workshop and use of all resources in the module. A section on your organisation's conflicts of interest policy and other resources that guide staff and governance issues will need to be added to this resource.
- 3. Powerpoint presentation** for use in the workshop.

4. Participant resources for use during the session. A copy of your organisation's conflicts of interest policy will need to be added to this document.

5. Evaluation sheets to assess the effectiveness of the workshop.

Customising the module for your organisation's needs

It will be necessary for you to customise the module and augment the content to suit your organisation's core business, identified risk areas, conflicts of interest policy and other key policies and procedures.

Further development of the module to meet the needs of those tasked with the day-to-day management of the policy is also necessary. This can be done after your policy has been finalised and adopted.

Please contact staff at the CMC or ICAC if you require more guidance to customise and augment the generic training module.

IMPORTANT MESSAGE TO NSW AND QUEENSLAND COUNCILS

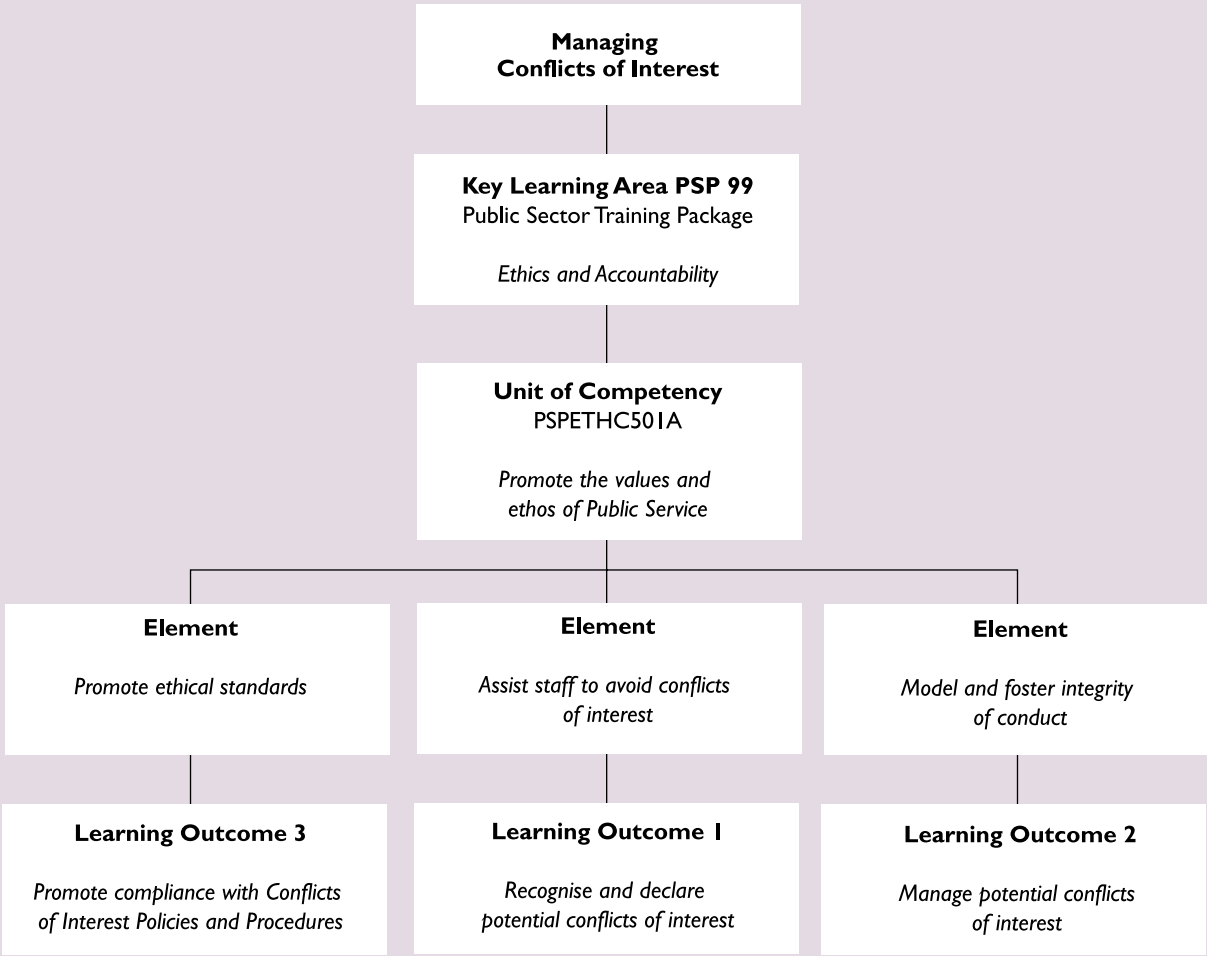
NSW Councils can contact the ICAC to obtain a conflicts of interest training module that references NSW legislation, guidelines, regulatory requirements and other related policies and procedures. Copies of the video-based training resource, *In whose best interest*, can also be obtained from the ICAC.

Queensland Councils can access the *Councillor Information Kit 2004* that contains Queensland legislation, guidelines relating to material personal interest¹¹ and conflicts of interest requirements for Queensland. The kit and other training materials are available from the CMC website www.cmc.qld.gov.au.

¹¹ Important note: Queensland Councils should refer to the provisions of s.6 *Local Government Act (Qld) 1993* for a definition of material personal interests.

Module Name:	Introducing the Conflicts of Interest Policy – Part 1	
Nominal Duration:	2 hours	
Module Purpose:	To provide the participant with the skills to identify, disclose, manage and monitor potential conflicts of interest between their personal lives and their public duty in accordance with the conflicts of interest policy.	
Relationship to Competency Standards:	PSPETHC501A – Promote the Values and Ethos of Public Service	
Delivery:	Modes: Instructor-led	Key Activities: lecture, group discussion, small group activities
Module Assessment Strategy:	Learning Outcome 1 2 3	Method Multiple choice quiz Short answer activity Group discussion (formative assessment)
Learning Outcome 1:	Identify and disclose potential conflicts of interest.	
Assessment Criteria:	<ol style="list-style-type: none"> 1. Identify circumstances in which an individual's private interest might interfere with their capacity to maintain impartiality in public decision making. 2. Describe the provisions of the conflicts of interest policy for managing conflicts of interest. 	
Learning Outcome 2:	Conflicts of interest policy	
Assessment Criteria:	<ol style="list-style-type: none"> 1. Identify organisational strategies for reducing conflicts of interest. 2. Identify organisational strategies for reporting and investigating conflicts of interest. 	
Learning Outcome 3:	Promote compliance with conflicts of interest policies and procedures.	
Assessment Criteria:	<ol style="list-style-type: none"> 1. Describe opportunities for incorporating practical application of the conflicts of interest policy into standard workplace activities. 	
Resource Requirements:	<p>This module can be delivered by NSW and QLD State public sector agencies and Councils in Queensland – Session plan and overhead slides presentation required. A copy of the conflicts of interest policy and code of conduct is required.</p> <p>The ICAC has developed a specific workshop module for NSW Councils that references NSW legislation, guidelines and regulatory requirements. This module can be obtained from the ICAC.</p>	
Teacher/Trainer Qualifications:	<p>Relevant Work Experience: Substantial experience in the public sector. Knowledge of ethics or related discipline desirable.</p> <p>Training/Teaching Qualifications: <i>Certificate IV in Workplace Training & Assessment</i> or other education qualification desirable.</p>	
OH&S Requirements:	Standard office-based OH&S considerations.	

RELATIONSHIP TO COMPETENCY STANDARDS



LEARNING OUTCOMES

By the end of this session it is anticipated that participants will be able to:

Part 1: identify, disclose, manage and monitor potential conflicts of interest between their private interests and their public duty to serve the public interest (generic training module).

Part 2: increase their understanding of and capacity to comply with the provisions of the conflicts of interest policy and procedures (segment to be developed by your organisation).

ASSESSMENT CRITERIA

Participants will:

- Identify circumstances in which an individual's private interest might interfere with their capacity to maintain impartiality in public decision making.
- Describe the provisions of the conflicts of interest policy for managing conflicts of interest.
- Identify organisational strategies for reducing conflicts of interest.
- Identify organisational strategies for reporting and investigating conflicts of interest.
- Describe opportunities for incorporating practical application of the conflicts of interest policy into standard workplace activities.

RESOURCES



Conflicts of interest policy, code of conduct and other relevant documents, policies and procedures.



Powerpoint slides on the CD Rom at the front of the Toolkit.



2 hours + time to discuss your organisation's conflicts of interest policy.



Whiteboard/butchers paper and markers.

IMPORTANT NOTE

This module can be delivered by NSW and Queensland State public sector agencies and Councils in Queensland.

The ICAC has developed a *specific workshop module for NSW Councils* that references NSW legislation, guidelines and regulatory requirements. This module can be obtained from the ICAC.


ACTIVITIES

This session has been designed to be interactive, including group discussions and scenario-based, short answer quizzes. There should be opportunity for the group to discuss each activity with the presenter.

TIMETABLE

Topic	Time
Part 1	
Outline of session	5 minutes
What is a conflict of interest?	5 minutes
Why is it important?	5 minutes
Types of conflicts of interest?	15 minutes
Recognising a conflict – common sources	15 minutes
Conflicts of interest quiz	15 minutes
Conflicts of interest policy	50 minutes
Part 2	
Conflicts of interest policy (session for management/staff)	to be determined
Closure and evaluations	10 minutes

INTRODUCTION – PART 1

 **Show slide 1** – *Introducing the conflicts of interest policy*

 **5 minutes** **Outline of session**

Facilitator explains that the organisation has a conflicts of interest policy that requires compliance from all members of staff, management and external stakeholders.

Explain that in this module we will be exploring ways that the participant can identify, disclose, manage and monitor conflicts between private interests and the responsibilities associated with public duty to serve the public interest.

Explain that conflicts of interest have increasingly become a matter of public concern worldwide as governments more and more call upon the private sector to assist them in the exercise of their functions, for example through outsourcing, contracting, privatisation, sponsorship. This public/

private interface can complicate, and potentially compromise, the integrity of a government unless appropriate steps are taken to manage the risks.

Explain that the conflicts of interest policy guides the identification and resolution or management of conflicting interests and has clear procedures for identifying, managing and monitoring conflicts of interest.

Management workshop: Explain that we will explore the provisions of the conflicts of interest policy concerning the management of staff disclosures and review of interests.



5 minutes **What is a conflict of interest**



Show slide 2 – *A Conflict of Interest...*

Explain that a conflict of interest is where someone's personal or private interests interfere, or *appear* to interfere, with their duty to put the public interest first.

The Organisation for Economic Co-operation and Development (OECD) uses the following definition in their *Guidelines for Managing Conflict of Interest in the Public Service* (May 2003):

*A conflict of interest involves a conflict between the **public duty** and **private interests** of a public employee, in which the public employee has private-capacity interests which could **improperly influence** the performance of their official duties and responsibilities.*

Public sector employees (or people working in or for a public authority) have the responsibility to perform their role efficiently, effectively and fairly. When making decisions in their public capacity (however minor) they should not be influenced by their personal situation, inclination or preferences.

Case Study: A procurement manager in a public sector organisation learns that her friend's husband can offer identical vehicles at a cheaper price through his car dealership than the approved government supplier.

The procurement manager is not benefiting financially if she proceeds with the purchase through the local car dealer.

The umbrella term, conflict of interest, can be used to describe situations of:

- **Actual conflict of interest** involves a direct conflict between a public official's current duties and responsibilities and their existing private interests. In situations where the private interest actually motivates or influences the exercise of public duty, the conflict of interest can become corruption.
- **Perceived (or apparent) conflict of interest** where it could be perceived, or appears, that a public official's private interests could improperly influence the performance of their public duties – whether or not this is in fact the case.
- **Potential conflict of interest** arises where a public official has private interests that could interfere with their official duties in the future.

(OECD Guidelines)

Explain that sometimes it is not easy to determine whether there is a conflict of interest. In 1979, the then Prime Minister, Malcolm Fraser, established a committee of inquiry to consider conflicts of interest in the federal sphere. This was known as the Bowen Committee.

That committee devised the following test.



Show slide 3 – The Bowen Committee test

If it is likely that the individual with the interest could be influenced by that interest, or that a reasonable individual would believe that he or she could be so influenced, a conflict could arise.

This was an important development because some legislation at the time focused only on direct monetary gain meaning that non-financial or non-direct gain could not be addressed (e.g. NSW *Local Government Act 1919*).

Trainer's Note: An important component of these decisions is whether or not the interest was *motivating* or able to be perceived as motivating.

A personal interest which has no real proximity to the person's public duty, or which is so *remote* or *insignificant* that it is unlikely to influence public decision making in any way, is unlikely to lead to a conflict of interest.

Example: Lewis works for a government agency. When a large insurance company offered shares to the public, Lewis and his family invested \$2500 in the company. They also insured their home and car with the same insurance company.

The insurance company also happens to provide the insurance policy for the government agency which employs Lewis. Because of the nature of his role, Lewis has no influence at all over which insurance company the agency uses. Therefore, there is no conflict of interest.

 **5 minutes** **Why is it important?**

 **Show slide 4** – *Why is it important*

Explain that conflicts of interest, if badly managed or not managed at all, can have consequences for the organisation.

An undisclosed or unmanaged conflict can:

- undermine the **public confidence** in the organisation or the individual involved

Example: Local councils have the responsibility (among other things) to maintain and promote the culture and environment of a region. If a councillor (or other decision maker) encourages development in which they stand to benefit financially and which may not be in the interest of the area, this could undermine public confidence in the council's integrity to make other decisions in the area's best interest.

- lead to an inefficient or **irresponsible use of public assets**, including a misdirection of funds, inappropriate allocations of resources or goods and services not actually reaching the best audience


Example: The government department responsible for ageing and disability care has the responsibility for funding services for individuals who are unable to support themselves independently. Non-government agencies need to make submissions for funding. An unmanaged conflict of interest could mean that the wrong types of services are sponsored by the government at the expense of other services that are better placed to meet the needs of the client group.

- provide opportunities or incentives for persons to place their personal interests ahead of the public interest. Tax controls and procedures around the making of disclosures and managing conflicts enable people to use ignorance as an excuse

Case Study: An administrative assistant for a public hospital was regularly required to organise couriers to transport bulky medical equipment. She used a courier company that her family owned, directing considerable business their way.

When challenged about this, she claimed that she had no knowledge at all of conflicts of interest or of any policies prohibiting this.

 **15 minutes** **Types of conflicts of interest**

 **Show slide 5** – *Types of Conflicts of Interest*

This is what we call the distinction between **pecuniary** and **non-pecuniary** interests.

Pecuniary interests – A situation where the private interest is of such a nature that the public employee could generate a personal **financial** interest from their official duties (or there is the potential to gain financially from their public position). For example, a local council employee makes decisions about development applications for their family business.

 **Show slide 6** – *Pecuniary Interest*

A pecuniary interest might result from:

- owning property
- holding shares
- having a position in a company
- having unpaid debts to others
- receiving gifts, benefits or bribes
- receiving hospitality or travel.

This list is not exhaustive. You will notice that many of the examples don't involve a direct exchange of money, but may involve an exchange that can equate to a financial value, for example, the discharge of a debt or the receipt of goods and services that have a market value.

The public employee does not need to directly experience the financial gain or loss to give rise to a conflict of interest. It will remain a conflict of interest if a family member, close associate or someone with some proximity has the pecuniary interest (*Conflicts of Interest and Local Government Discussion Paper*, ICAC July 1991).

Case Study: A pharmacist at a NSW hospital sent an email to various pharmaceutical companies offering them confidential information and unobtainable data in exchange for sponsorship of his overseas trip. He also offered these companies assistance in marketing their products within the hospital.

The above case study has been embellished and included in the participant's resources (see below).

Example: Julius is a doctor who occasionally works as a renal specialist in a large public hospital. He is hoping to attend a symposium in China on the emerging field of commercial kidney donation for transplants, and is seeking sponsorship of his trip. The hospital has declined because they do not have sufficient funding or interest in this symposium. Julius sends an email to various pharmaceutical companies offering them confidential information and unobtainable patient data (from the hospital database) in exchange for sponsorship of his overseas trip. Julius is seeking to obtain personal financial gain based on the professional knowledge he has obtained at the hospital.

Non-pecuniary interests – Situations where an individual has a personal, **non-financial** interest in their official duties.



Show slide 7 – Non-Pecuniary Interest

Case study: A probation and parole officer with the Department of Corrective Services made sure that she was on the panel which classified her son as a low security inmate.

There was some dispute about whether she had disclosed her personal relationship before going on the panel, and it seems that she did follow correct procedure. However, this could have generated a perception that she had influenced the other members of the classification panel.

All accepted definitions of conflicts of interest warn that public officials should avoid involvement in any activity that might give the *appearance* of conflict (e.g. Bowen Committee test, OECD Guidelines).

It doesn't matter so much whether the individual with the conflict of interest *would* act on the temptation but whether a reasonable individual would have the confidence that they *would not* act on the temptation.



Show slide 8 – Competing Interests

There are other grey areas where you may not have a direct personal interest in your official work but where an organisation or a body close to you might have a personal interest. For example, you may belong to a political party or a sporting association or a local council (these might be financial or non-financial interests). These associations may intersect with your work from time to time.

The following example is included in the participant's resources. There is space in the workbooks for participants to record suggestions about what Van Hoa should do.

Example: Van Hoa works for the children's services unit in the department responsible for community services and is an active member of a privately run Vietnamese community group. Amongst other things, the community group purchases property to develop child-care options at a heavily reduced cost for members of the community. The community group has asked Van Hoa to provide advice about how they can have their application for their child-care licence sped up.

Van Hoa would not stand to benefit directly from this arrangement, though there may be some indirect gain for him if his community as a whole benefits from his professional knowledge.



Ask the group **What should Van Hoa do?**
Record responses on the whiteboard.

Allow 5 minutes for small group discussion and 3 minutes for comparing and discussing responses as one large group.

When processing this exercise ensure that participants consider the following:

- It would be inappropriate for him to be involved in any decision making about the licensing application.
- It may be appropriate for him to provide general information about improving an application, in line with the type of information that he might provide any applicant.
- It would not be appropriate if he provided specific information about what to include in the application, or to whom they should speak.
- This may be an ongoing conflict of interest if his private and public work are both related to the same activity.

- There would likely be a perception of a conflict of interest, even if there was no actual conflict.

Optional Group Discussion:

You have been asked to organise a major seminar in your area, including booking the venue, the catering and the accommodation. You are also a lifetime member of the local Leagues club, and you coach a junior team for them. Last time you visited their complex for a meal you were absolutely dazzled by the facilities, and impressed with the service. You also know that the revenue raised from the club goes back into buying better players and facilities for the team. What should you do?



15 minutes Recognising a Conflict – common sources



Show slide 9 – *How do I decide if there is a conflict of interest?*

Because you have a personal interest outside of work, it doesn't automatically mean that there is going to be a conflict of interest if something arises at work that is associated with those interests.

There are a number of factors you need to consider when making a decision about whether your public duty and your private interests are in conflict. These include whether you:

- have financial and economic interests, such as debts or assets
- have family or private businesses
- are engaged in secondary employment
- have affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations
- have affiliations with political, trade union or professional organisations and other personal-capacity interests

- have obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household
- have enmity or competition with another individual or group
- have significant family or other relationships with clients, contractors or other staff working in the same (or a related) organisation
- have highly specialist skills in an area where demand for the skills frequently exceeds supply
- have future employment prospects or plans (i.e. post-separation employment)
- would be happy if your colleagues became aware of your involvement
- would be happy if your involvement appeared in the local paper.

If you have decided that you have a conflict of interest, you need to take steps to manage the problems that might occur as a result of it.



Show slide 10 – Conflict Hot Spots

Explain that almost every type of function performed in the public sector can be vulnerable to conflicts of interest. Below are some examples of how conflicts of interest can manifest in different activities.

Allow 7 minutes for participants to consider their responses and 3 minutes to discuss as a large group.

Tendering and purchasing

Julie is the project manager who is responsible for assessing tenders for a fleet contract. She has shares in one of the companies that have submitted a bid.

Staff recruitment

David is a member of a selection panel recruiting for an administrative position. His cousin is one of the applicants.

Secondary employment

Tara works in the local driver's licence application processing office. She also works part time as a driving instructor for a private company.

Dealing with former public officials

While working as a senior public employee, Rashid awarded a number of valuable contracts to an IT consultancy. Shortly after awarding the contracts he left the public organisation and has joined the successful consultancy.

Gifts, benefits and hospitality

A regular supplier offers Jane, the purchasing officer for an area health organisation, a free personal computer.

Licensing

Rod, a health inspector, is friendly with the owner of the local butcher's shop and he regularly receives extra meat. Rod is also responsible for inspecting the butcher's shop to ensure it complies with health regulations.

Elected officials

Judy was elected to the local council partly because of her outspokenness on the potential for commercial growth in the region. She operates the most successful tourist attraction in the area. As a councillor, Judy is required to make decisions on commercial activities and zoning and development applications (*Practical Guide to Corruption Prevention*, ICAC, October 1997).

Trainers Note: Time permitting, write each of the above character's name on the whiteboard and ask the group to explain what is wrong with each of these situations, and how they could be avoided.



15 minutes CONFLICTS OF INTEREST QUIZ

Refer participants to the Multiple Choice Quiz in their workbooks. Allow 10 minutes to complete the quiz and 5 minutes to process the answers.

Participants are asked to record if they believe that there is a conflict of interest and, if so, what type?

Scenario	Actual/ Perceived/ Potential/ No Conflict	Pecuniary/ Non-pecuniary
Amber works as a nurse for the Department of Health in a regional hospital. Her husband, Lucas, works as a private GP in a different town. Lucas has never had occasion to visit Amber's hospital although he has referred some of his patients there for emergency procedures.	Potential	Pecuniary if Amber were to refer patients to Lucas' private practice.
Kelly is active in her community, particularly providing counselling services for young women who are the victims of domestic violence. She gets paid a small amount for this work although she works part-time as a registrar at the Local Court (Attorney-General's Department) to make ends meet. She often refers the women she meets at the Court applying for apprehended violence orders (AVOs) to her counselling service.	Actual	Pecuniary. Kelly obtains financial benefit from the referrals she makes from women seeking AVOs.
Rod works as a parking officer at the Vista Council. Rod's brother, Ted, is a builder who lives in the Vista Council area. This month parking officers are targeting builders who park over driveways and who impede the flow of traffic in the area. Rod is certain Ted will receive an infringement.	Potential	Non-pecuniary. Rod does not have a financial interest in his brother's affairs. His interests are social or emotional.
Andrew works for the Department of Commerce in a procurement role. He is a keen sportsman and is a member of the Department's soccer team. The team nominated Andrew for sponsorship. Andrew asked all of the companies he had recently awarded contracts to as part of his work if they would like advertising in exchange for free team jerseys.	Perceived	Non-pecuniary. While the jerseys have a financial value, the value Andrew would obtain through support of his team is social.



5 minutes **Managing the conflict**

Now that we have developed some skills about identifying if there is a conflict of interest, we need to think about what we can do.



Show slide 11 – *Having the Interest*

It is not always possible to avoid having a conflict of interest, particularly in smaller communities or specialist industries. What is important is what you do (or don't do) once you become aware of the conflict of interest.

Think back to the case of the probation and parole officer whose son came before the parole assessment panel. She probably couldn't help the fact that he was up for parole but what she should have done was to disclose to her supervisor that she has a personal interest in this matter so that she and her supervisor could make an informed decision about whether or not she should have been involved.



Show slide 12 – *Conflicts of Interest Policy*

Introduce your conflicts of interest policy

You will need to include a section about the provisions of your conflicts of interest policy, including its intention and the procedures and processes to be followed by staff and management.

Listed below is an outline of how this section of training may be approached, however it will require development against the content of your organisation's policy.

PART 2: SESSION FOR MANAGEMENT – CONFLICTS OF INTEREST POLICY

or

PART 2: SESSION FOR STAFF – CONFLICTS OF INTEREST POLICY

Facilitator's note:

You may like to work through the case studies provided and take them to the next level – what the individual should do in these circumstances based on the procedures identified in your organisation's code of conduct and/or conflicts of interest policy. You could simply add a question like:

- What should [name] do in this situation?
- What obligations do they have under our organisation's policies and guidelines?
- What do you think the manager should do?
- Could the situation be avoided?
- How could the conflict of interest be managed?

This section of the training might include:

1. main provisions of the policy
2. procedures for disclosing and recording conflicts of interest
3. managing the conflicts
4. disclosure should be ongoing, circumstances change over time
5. consequences of non-disclosure to individuals and the organisation
6. staff responsibilities (slide 13)
7. management responsibilities (slide 14)
8. who to contact for further guidance and information.



Optional: Ask the group to discuss whether they can foresee any practical problems with the application of the policy.

- **Disclose** the interest.
- **Discuss** the risks (actual or perceived).
- **Decide** how you can manage the conflict to protect yourself and your organisation.



10 minutes Closure and Evaluation

Close the session by asking the participants if they have any questions that they would like to discuss about managing conflicts of interest.

Either:

- thank participants for their participation and request that they complete an evaluation form before leaving OR
- introduce the next module and explain how this links to the just completed session.

EVALUATION

Thank you for your participation in today's session. To evaluate if we were able to meet your needs and our objectives, we would appreciate your honest feedback on the design, presentation and value of the session.

Presenter: _____

Topic: *Introducing the Conflicts of Interest policy*

Date: _____

As a result of attending this session, have your skills or knowledge increased?

- not at all
- very little
- to some extent
- in most aspects
- great extent

Comments:

What session was most beneficial to you? Why?

What session was least beneficial to you? Why?

How relevant was this session to the work that you do?

- not at all relevant
- slightly relevant
- quite relevant
- very relevant
- highly relevant

Comments:

Will you work differently as a result of this session?

- not at all
- very little
- to some extent
- in most aspects
- great extent

Comments

How would you rate the presenters?

- poor
- fair
- good
- very good
- excellent

Comments:

Was the session pitched at a suitable level?

- way too easy for me bit easier would suit me excellent bit harder would suit me way to hard for me

Comments:

Was the session appropriately paced?

- way too slow bit slower would be better excellent bit faster would be better way too fast

Comments:

How would you rate the session overall?

- poor fair good very good excellent

Comments:

Thank you for your feedback

Participant's resources

LEARNING OUTCOMES

By the end of this session it is anticipated that you will be able to:

Part 1: identify, disclose, manage and monitor actual, perceived and potential conflicts of interest between your private interests and your public duty to serve the public interest (generic training module).

Part 2: increase your understanding of and capacity to comply with the provisions of your organisation's conflicts of interest policy and procedures.

You will:

- Identify circumstances in which an individual's private interest might interfere with their capacity to maintain impartiality in public decision making.
- Describe the provisions of the conflicts of interest policy for managing conflicts of interest.
- Identify organisational strategies for reducing conflicts of interest.
- Identify organisational strategies for reporting and investigating conflicts of interest.
- Describe opportunities for incorporating practical application of the conflicts of interest policy into standard workplace activities.

ACTIVITIES

This interactive session includes group discussions and scenario-based, short answer quizzes. There should be opportunity for the group to discuss each activity with the presenter.

All case studies and scenarios are fictional (unless otherwise indicated) and are intended to stimulate discussion and encourage you to think about how the issues might apply to your workplace.

WHAT IS A CONFLICT OF INTEREST

A conflict of interest is where a public official's private interests, or private life, interferes, or *appears* to interfere, with their duty to put the public interest first.

The Organisation for Economic Co-operation and Development (OECD) uses the following definition in their *Guidelines for Managing Conflict of Interest in the Public Service* (May 2003):

A conflict of interest involves a conflict between the public duty and private interests of a public employee, in which the public employee has private-capacity interests which could improperly influence the performance of their official duties and responsibilities

In 1979, the then Prime Minister, Malcolm Fraser, established a committee of inquiry to consider conflicts of interest in the federal sphere. This was known as the Bowen Committee.

That committee devised the Bowen Committee test:

If it is likely that the individual with the interest could be influenced by that interest, or that a reasonable individual would believe that he or she could be so influenced, a conflict could arise.

Public sector employees have the responsibility to perform their role efficiently, effectively and fairly. When making decisions in their public capacity (however minor) they should not be influenced by their own personal situation, inclination or preferences.

Your organisation's code of conduct will probably contain a similar definition of a conflict of interest, possibly with some examples that may apply to the type of work that you do.

TYPES OF CONFLICTS OF INTEREST

The umbrella term, conflict of interest, can be used to describe situations of:

- **Actual conflict of interest** involves a direct conflict between a public official's current duties and responsibilities and their existing private interests. In situations where the private interest actually motivates or influences the exercise of public duty, the conflict of interest can become corruption.
- **Perceived (or apparent) conflict of interest** where it could be perceived or appears that a public official's private interests could improperly influence the performance of their public duties – whether or not this is in fact the case.
- **Potential conflict of interest** arises where a public official has private interests that could interfere with their official duties in the future.

PECUNIARY OR NON-PECUNIARY?

Conflicts of interest can also be classified into **pecuniary** and **non-pecuniary** interests, depending on whether there is a financial advantage involved.

A **pecuniary** interest is a situation where the private interest is of such a nature that the public employee could generate a personal **financial** interest from their official duties (or there is the potential to gain financially from their public position).

A pecuniary interest might result from:

- owning property
- holding shares
- having a position in a company
- having unpaid debts to others
- receiving gifts, benefits or bribes
- receiving hospitality or travel.

This list is not exhaustive. Many of the above examples don't involve a direct exchange of money, but may involve an exchange that can equate to a financial value, for example, the discharge of a debt or the receipt of goods and services that have a market value.

The public employee does not need to directly experience the financial gain or loss to give rise to a conflict of interest. It will remain a conflict of interest if a family member, close associate or someone with some proximity has the pecuniary interest (*Conflicts of Interest and Local Government Discussion Paper*, ICAC July 1991).

Example: Julius is a doctor who occasionally works as a renal specialist in a large public hospital. He is hoping to attend a symposium in China on the emerging field of commercial kidney donation for transplants, and is seeking sponsorship of his trip. The hospital has declined because they do not have sufficient funding or interest in this symposium.

Julius sends an email to various pharmaceutical companies offering them confidential information and unobtainable patient data (from the hospital database) in exchange for sponsorship of his overseas trip.

Julius is seeking to obtain personal financial gain based upon the professional knowledge that he has obtained at the hospital.

A non-pecuniary interest is one where an individual has a personal, non-financial interest in their official duties.

Example: Lisa works at the Department of Housing, and is running for manager of the body corporate of the very large apartment complex in which she lives. Lisa is very ambitious. Her dream is to influence and lead the community towards better accommodation, and she has very strong ideas about the development of her complex. She has been campaigning very strongly, and has used her position at Housing as her platform. She thinks that this management role would be a stepping stone to further career enhancements.

If Lisa were elected she would stand to obtain great personal satisfaction from her role as manager, though she would not receive any financial benefit.

Case study – A probation and parole officer with the Department of Corrective Services ‘made sure’ that she was on the panel which classified her son as a low security inmate.

There was some dispute about whether she had disclosed her personal relationship before going on the panel, and it seems that she did follow correct procedure. However, this could have generated a perception that she had influenced the other members of the classification panel.

COMPETING INTERESTS

There are other grey areas where you may not have a direct personal interest in your official work, but where an organisation or a body close to you might have a personal interest. For example, you may belong to a political party or a sporting association or a local council. These associations may intersect with your work from time to time.

Example – Van Hoa works for the children’s services unit in the department responsible for delivering community services and is an active member of a privately run Vietnamese community group. Amongst other things, the community group purchases property to develop child-care options at a heavily reduced cost for members of the community. The community group has asked Van Hoa to provide advice as to how they can have their application for their child care license sped up.

Van Hoa would not stand to benefit directly from this arrangement, though there may be some indirect gain for him if his community as a whole benefits from his professional knowledge.



5 minutes: small group discussion

3 minutes: large group discussion

What should Van Hoa do?

IDENTIFYING A CONFLICT OF INTEREST

Just because you have a personal interest outside of work, it doesn't automatically mean that there is going to be a conflict of interest if something arises at work that is associated with those interests.

There are a number of factors that you need to consider when making a decision about whether your public duty and your private interests are in conflict. These include whether you:

- have a financial and economic interest, such as debts or assets
- have family or private businesses
- are engaged in secondary employment
- have affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations
- have affiliations with political, trade union or professional organisations, and other personal-capacity interests
- have obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity, or relationships to people living in the same household
- have enmity or competition with another individual or group

- have significant family or other relationships with clients, contractors or other staff working in the same (or a related) organisation
- have highly specialist skills in an area where demand for the skills frequently exceeds supply
- have future employment prospects or plans (i.e. post-separation employment)
- would be happy if your colleagues became aware of your involvement
- would be happy if your involvement appeared in the local paper.

CONFLICT HOT SPOTS

Almost every type of function performed in the public sector can be vulnerable to conflicts of interest.

Some examples of how conflicts can manifest themselves in different activities are identified below. Beneath each example there is space to record why each individual's interest may create a problem for their work. You have 7 minutes to consider the following:

Tendering and purchasing

Julie is the project manager who is responsible for assessing tenders for a fleet contract. She has shares in one of the companies that has submitted a bid.

Staff recruitment

David is a member of a selection panel recruiting for an administrative position. His cousin is one of the applicants.

Secondary employment

Tara works in the local driver's licence processing office. She also works part time as a driving instructor for a private company.

Dealing with former public officials

While working as a senior public employee, Rashid awarded a number of valuable contracts to an IT consultancy. Shortly after awarding the contracts, he left the public organisation and has joined the successful consultancy.

Gifts, benefits and hospitality

A regular supplier offers Jane, the purchasing officer for an area health organisation, a free personal computer.

Licensing

Rod, a health inspector, is friendly with the owner of the local butcher's shop and he regularly receives extra meat. Rod is also responsible for inspecting the butcher's shop to ensure it complies with health regulations.

Elected Officials

Judy was elected to the local council partly because of her outspokenness on the potential for commercial growth in the region. She also operates the most successful tourist attraction in the area. As a councillor, Judy is required to make decisions on commercial activities and zoning and development applications.

CONFLICTS QUIZ



10 minutes: small group discussion

5 minutes: large group exploring answers

Scenario	Actual/ Perceived/ Potential/ No Conflict	Pecuniary/ Non-pecuniary
<p>Amber works as a nurse for the Department of Health in a regional hospital. Her husband, Lucas, works as a private GP in a different town. Lucas has never had occasion to visit Amber's hospital although he has referred some of his patients there for emergency procedures.</p>		
<p>Kelly is active in her community, particularly providing counselling services for young women who are the victims of domestic violence. She gets paid a small amount for this work although she works part time as a registrar at the Local Court (Attorney-General's Dept) to make ends meet. She often refers the women she meets at the Court applying for apprehended violence orders (AVOs) to her counselling service.</p>		
<p>Rod works as a parking officer at the Vista Council. Rod's brother, Ted, is a builder who lives in the Vista Council area. This month parking officers are targeting builders who park over driveways and who impede the flow of traffic in the area. Rod is certain Ted will receive an infringement.</p>		
<p>Andrew works for the Department of Commerce in a procurement role. Andrew is a keen sportsman and is a member of the Department's soccer team. The team nominated Andrew for sponsorship. Andrew asked all of the companies he had recently awarded contracts to as part of his work if they would like advertising in exchange for free team jerseys.</p>		

THE CONFLICTS OF INTEREST POLICY

Having the interest is not necessarily a problem, it is how it is managed that is important!

It is not always possible to avoid having a conflict of interest, particularly in smaller communities or specialist industries. What is important is what you do (or don't do) once you become aware of the conflict of interest.

The conflicts of interest policy has a number of ways of resolving conflicts of interest and the process for disclosing. A copy of the conflicts of interest policy is attached for discussion in this workshop of its practical application.

Your manager is also available to help you if you have any questions about the policy or if you need further guidance for identifying and disclosing a conflict of interest.

Remember, it is always better that you disclose and discuss a possible conflict of interest than to conceal the matter.

There are a number of ways of managing the conflict of interest. The endorsed strategies for managing the conflict are detailed in our conflicts of interest policy.

Section 5: Other resources

LEGISLATION

Queensland

Public Service Act 1996

Local Government Act 1993

Public Sector Ethics Act 1994

New South Wales

Local Government Act 1993

Local Government (General) Regulation 1999

Public Sector Employment and Management Act 2002, s.59

WEBSITES

The Independent Commission Against Corruption
<http://www.icac.nsw.gov.au>

The NSW Ombudsman
<http://www.nswombudsman.nsw.gov.au>

Crime and Misconduct Commission: Misconduct Prevention Best Practice Advice Portal – Conflicts of Interest http://www.cmc.qld.gov.au/MPAP_CONFLICTS.html

Organisation for Economic Cooperation and Development (OECD)
<http://www.oecd.org/dataoecd/13/22/2957360.pdf>

Queensland Integrity Commissioner
<http://www.integrity.qld.gov.au/>

TRAINING RESOURCES

CMC 2002, *The Grassroots of Ethical Conduct: a guide for local government staff and councillors*, CMC, Brisbane.

ICAC 2004, *In whose best interest: An educational resource designed to provide guidance to local councillors on how to resolve conflicts of interest* (video and print based interactive training resource), ICAC, Sydney.

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