



Conflicts of Interests

Guidelines for the Western Australia Public Sector

“A conflict of interest is a situation arising from conflict between the performance of public duty and private or personal interests.”

“It isn’t wrong or unethical to have a conflict of interest, what is important is that it is identified and appropriately managed”

The Integrity Coordinating Group

The Integrity Coordinating Group (ICG) was formed to promote and strengthen integrity in Western Australian public authorities. ICG members support integrity through their independent roles under their own legislation, and also work collaboratively across the public sector.

Integrity in decision making

Decision makers need to demonstrate integrity by:

- serving the public interest
- using powers responsibly
- acting with honesty and transparency
- addressing improper conduct.

The Integrity in Decision Making guidelines

ICG supports building the capacity of public authorities, and their employees, to demonstrate integrity when making decisions.

These guidelines provide public authorities with information and practical tools about integrity in decision making, which can be used to strengthen and sustain their decision making processes.

What is a conflict of interest?

A conflict of interest is a situation arising from conflict between the performance of public duty and private or personal interests.

Conflicts of interest may be actual, or be perceived to exist, or potentially exist at some time in the future.

Perception of a conflict of interest is important to consider because public confidence in the integrity of an organisation is vital.

Is it wrong to have a conflict of interest?

No. It is not necessarily wrong or unethical to have a conflict of interest. However, identifying and managing the situation is important.

Public officers have a responsibility to always serve the public interest in performing their duties. Personal interests, whether these are financial, or relate to family, friends or associates, should not influence public duty.

It is not always possible to avoid a situation where a conflict of interest exists, particularly in small communities, or some specialist industries. It is vital that these situations are correctly managed to ensure the public interest is protected.

Who is responsible for identifying and managing conflicts of interest?

Although CEOs and senior managers have a particularly important role in ensuring conflict of interest situations are managed appropriately within an organisation, identifying a conflict of interest is an individual responsibility.

How can officers identify if a conflict of interest exists?

There is no one 'right' way to identify every situation, however a good starting point is for officers to consider the 6 Ps:

The 6 Ps

Public duty versus private interests

Do I have personal or private interests that may conflict, or be perceived to conflict with my public duty?

Potentialities

Could there be benefits for me now, or in the future, that could cast doubt on my objectivity?

Perception

Remember, perception is important. How will my involvement in the decision/action be viewed by others?

Proportionality

Does my involvement in the decision appear fair and reasonable in all the circumstances?

Presence of mind

What are the consequences if I ignore a conflict of interest? What if my involvement was questioned publicly?

Promises

Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action/decision?

How can conflicts of interest be managed appropriately?

There are many ways to effectively manage conflicts of interest. The choice of strategies will be dependent on the operating environment, legislative requirements and practical solutions. Often a combination of strategies will be required.

The 6 Rs

The major options, or 6 Rs¹, for officers and supervisors to manage conflicts of interest are:

Record/Register

Recording the disclosure of a conflict of interest in a register is an important first step, however this does not necessarily resolve the conflict. It may be necessary to assess the situation and determine whether one or more of the following strategies is also required:

Restrict

It may be appropriate to restrict your involvement in the matter, for example, refrain from taking part in debate about a specific issue, abstain from voting on decisions, and/or restrict access to information relating to the conflict of interest. If this situation occurs frequently, and an ongoing conflict of interest is likely, other options may need to be considered.

Recruit

If it is not practical to restrict your involvement, an independent third party may need to be engaged to participate in, oversee, or review the integrity of the decision-making process.

Remove

Removal from involvement in the matter altogether is the best option when ad hoc or recruitment strategies are not feasible, or appropriate.

Relinquish

Relinquishing the personal or private interests may be a valid strategy for ensuring there is no conflict with your public duty. This may be the relinquishment of shares, or membership of a club or association.

Resign

Resignation may be an option if the conflict of interest cannot be resolved in any other way, particularly where conflicting private interests cannot be relinquished.

Are there laws relating to conflicts of interest?

Conflicts of interest need to be considered within an ethical framework that requires public officers to act with integrity, impartiality, in good faith, and in the best interests of the organisation they serve. In some cases, organisations are required by law to manage conflicts of interest in a particular way.

The key legislation applicable to conflicts of interest includes:

- *Public Sector Management Act 1994*²
- Western Australian Public Sector Code of Ethics
- *Financial Administration and Audit Act 1985* (FAAA)
- *State Supply Commission Act 1991*
- *Local Government Act 1995* and associated regulations
- *Members of Parliament (Financial Interests) Act 1992*

What are some of the conflict of interest risk areas?

Almost all functions performed in the public sector can potentially lead to conflict of interest situations.

Identifying areas of risk in the organisation is the first step to managing conflicts of interest.

Some common risk areas³ include:

- managing procurement processes, tenders and contracts
- sponsorship from the private sector
- allocation of grants for community-based services
- dual roles as a public officer
- boards and Committees with representative members
- gifts, benefits and hospitality
- filling a public sector vacancy
- secondary employment.

How should organisations deal with conflicts of interest?

The Organisation for Economic Co-operation and Development (OECD) promotes four core principles⁴ for organisations to deal with conflict of interest situations, to promote integrity, and for maintaining public confidence:

- Serving the public interest
- Supporting transparency and scrutiny
- Promoting individual responsibility and personal example
- Engendering an organisational culture which is intolerant of conflicts of interest

Organisations should consider incorporating these principles in a policy⁵ on conflicts of interest, or include a section on managing conflicts of interest in the organisation's Code of Conduct.

Where can officers get additional information or advice?

The best starting point is to discuss the situation with a supervisor, or senior colleague. There may be specific legislative or policy requirements that need to be considered, as well as the agency Code of Conduct.

For additional information and enquiries visit:

www.publicsector.wa.gov.au/icg

References

¹The 6 Rs have been adapted from: Crime and Misconduct Commission/Independent Commission Against Corruption (2004) Managing Conflicts of Interest in the Public Sector: Toolkit (available at www.cmc.qld.gov.au)

²Under s.9 of the Act, all public sector bodies and employees must comply with public sector standards and the Western Australian Public Sector Code of Ethics and any applicable code of conduct

³For further information refer to Conflict of Interest Scenarios (available at www.publicsector.wa.gov.au/icg)

⁴OECD (2003) Recommendation of the Council on guidelines for managing conflict of interest in the public service (available at www.oecd.org/dataoecd/13/22/2957360.pdf)

⁵Guidance on developing a policy is available in Crime and Misconduct Commission/Independent Commission Against Corruption (2004) Managing Conflicts of Interest in the Public Sector: Toolkit (available at www.cmc.qld.gov.au)

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Disclaimer

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