



Conflict of Interests

Public officials should avoid situations in which their private interests conflict or might reasonably be perceived to conflict with the impartial fulfilment of their official duties and the public interest. Public officials should not allow the pursuit of private interests to interfere with the proper discharge of their public duties.

The meaning of the term ‘conflict of interests’

The term ‘conflict of interests’ refers to situations where a conflict arises between public duty and private interest which could influence the performance of official duties and responsibilities. Such conflict generally involves opposing principles or incompatible wishes or needs.

Conflict of interests can involve pecuniary interests (ie, financial interests or other material benefits or costs) or non-pecuniary interests. They can involve the interests of the public official, members of the official’s immediate family or relatives (where these interests are known), business partners or associates, or friends. Enmity as well as friendship can give rise to an actual or perceived conflict of interests.

Conflict of duties

A distinction can be drawn between ‘conflict of interests’ involving actual, potential or reasonably perceived conflicts between public duty and private interests, and ‘conflict of duties’ involving a conflict between competing or incompatible public duties.

In some circumstances a conflict of duties is acceptable, or at least unavoidable, for example where the holding of one public sector position or office is the prerequisite or qualification for the holding of another position or office.

In most other circumstances, as a matter of principle a conflict of duties is either unacceptable and to be avoided, or at the least a problem to be disclosed and carefully managed. These circumstances would include where a public official holds positions in or otherwise performs duties for more than one public sector agency:

- where those agencies have interests or objectives that are, or are likely to be, competing or incompatible

- where issues concerning one agency or position are, or are likely to be, considered or decided by the other agency or the holder of the other position, and such consideration or decision-making is required to be impartial, or
- where the activities of one agency are, or are likely to be, regulated or subject to review or oversight by the other agency.

Where conflict of interests can arise

Sometimes, by virtue of their public official status, position, functions or duties, public officials have the power to make decisions or act in ways that can further their own private interests (eg, to gain financial or other benefit for themselves, their immediate family, relatives, business associates or friends). This may cause a real or reasonably perceived conflict between the public official’s private interests and the public interest.

It matters little whether a conflict of interests is actual or merely a conflict that could be reasonably perceived to exist by a third party. Both circumstances negatively impact on public confidence in the integrity of the system.

A real or reasonably perceived conflict may exist even if a public official is not the ultimate decision-maker. For example, it may be that as a result of the official’s conflict of interests, there had been a failure to collect all relevant facts or ask the necessary questions, or otherwise to carry out a proper investigation or assessment of the facts on which the ultimate decision was based.

It is not always easy to identify a conflict of interests. Human nature being what it is, if a person has, or has the potential to have, a personal or otherwise private interest in a matter, it is unlikely to be in the person’s interests to recognise or identify the existence of such a conflict if this would preclude them from further involvement in the matter.

It is sometimes unrealistic or even undesirable to expect that the official dealing with a matter will be someone having no prior connection with the person or issues concerned. Some matters may have significant histories that involve the same members of the public and the same agency staff. Simple acquaintance with a person concerned, or the fact that an official has previously had official dealings with that person, is not sufficient in itself to indicate that the official has a real or reasonably perceived conflict. There must be something more, or something particular to the matter in question.

Disclosure of conflict of interests

Decision-makers, and people advising or reporting to decision-makers, should promptly, fully and appropriately disclose any actual or potential conflict of interests they may have in a matter under consideration. Where this conflict involves the interests of a public official's family or friends, those interests should be disclosed to the extent they are known to the public official.

Public officials should also bring to notice any circumstances that could result in a third party reasonably perceiving a conflict of interests to exist (ie wherever a reasonable person could perceive that an official may not bring an impartial and unprejudiced mind to the making of a decision due to an actual or perceived conflict of interest or bias).

Such disclosures must be made at the first available opportunity to an appropriate senior officer of the agency for a decision as to what action should be taken to avoid or deal with the conflict.

Issues to be considered in assessing whether there is a conflict of interests

In assessing whether a public official has an actual, potential or reasonably perceived conflict of interests, it may be helpful to ask the following questions:

- How serious is the matter and does it directly impact on the rights or interests of any person or of the general public?
- Does the official have a current or previous personal, professional or financial relationship with an interested party and if so, how significant is or was the relationship (eg, is the relationship one of simple acquaintance, previous work experience, close friendship, business partnership)?
- Would the official or anyone associated with the official benefit from or be detrimentally affected by a decision or finding in favour of, or adverse to, any interested party?
- What does any relevant code of conduct require in relation to conflict of interests?

Options to avoid or deal with a conflict of interests

Where a disclosure of an actual, potential or reasonably perceived conflict of interests (including a pecuniary interest) is made to an appropriate officer, depending on the circumstances of the case, the options available include:

- taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision
- informing likely affected persons that a disclosure has been made, giving details and the agency's view that there is no actual conflict or the potential for conflict is minimal
- appointing a 'probity auditor', or independent third party to review or oversee the integrity of the process/decision (this will be particularly appropriate where there is a reasonably perceived – but not actual – conflict of interests or the conflict is only identified at or near the conclusion of the process or after the making of the decision)

- appointing further persons to a panel/committee/team to minimise the actual or perceived influence or involvement of the person with the actual or reasonably perceived conflict
- where the persons likely to be concerned about a potential, actual or reasonably perceived conflict are identifiable, seeking their views as to whether they object to the person having any, or any further, involvement in the matter
- restricting the access of the person to relevant information that is sensitive, confidential or secret
- directing the person to cease supporting a third party whose actions may conflict with the agency's interests (for example a person or organisation taking legal proceedings against the agency)
- requesting the person to relinquish or divest the personal interest which creates the 'conflict' (where the position of such an interest is not prescribed as a qualification for the person's official position)
- requesting the person to make arrangements for the relevant private interest to be held and managed in a 'blind' trust
- removing the person from duties or from responsibility to make decisions in relation to which the 'conflict' arises and reallocating those duties to another officer (who is not supervised by the person with the 'conflict')
- transferring the person to some other area of work within the agency, or some other task or project
- transferring the person to some other agency
- persons with a 'conflict' who are members of boards, committees or councils absencing themselves from or not taking part in any debate or voting on the issue
- in serious cases, requesting or directing the person to resign, or terminating the person's employment or appointment (having complied with the rules or procedural fairness).

For further information on this and related topics see *Good Conduct and Administrative Practice* (2nd edition) NSW Ombudsman, June 2003.

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