

It is **good governance** that those operating in the public sector deal properly with conflicts of interest – actual, perceived or potential. There is nothing unusual or necessarily wrong in having a conflict of interest. It is crucial however, that a conflict of interest is declared and managed to protect the public interest.¹

The community expects that anyone operating in the public sector, especially leaders and those charged with governance, will not be influenced or appear to be influenced by personal interests when making decisions. Conflicts or perceived conflicts of interest have the potential to undermine public confidence and the integrity of the entity. Poorly managed conflicts of interest are a risk not only to the reputation of the organisation as one that people can trust, but also to its principal shareholders, if it is a government business enterprise². It is essential that all public sector entities perform their duties in a fair and unbiased way and in the public interest.

Directors on a board of a public sector entity have a fiduciary duty under common law (and, if the government business is incorporated under the Corporations Act, under statute) to act in the best interests of the organisation they serve. Depending upon the jurisdiction, directors on a board of a public sector entity may also have specific duties under the relevant state or Commonwealth legislation, including provisions in legislation that apply to statutory authorities.

While members of the community can be considered customers of public services, the relationship between the community and government is more complex than in the business world. The community usually cannot 'shop

around' if it is dissatisfied with the services provided by government. Public sector entities are expected to operate with proper stewardship of public resources.

A conflict of interest in the public sector does not necessarily constitute corrupt conduct. It may be characterised as misconduct or a failure of integrity. Corrupt conduct can arise however, when a conflict of interest is improperly managed.

Conflicts of interest

In its guide on corruption prevention, the New South Wales Independent Commission Against Corruption (NSW ICAC) observed:

In simple terms, managing conflicts of interest is important because citizens rightly expect that public officials, or their close connections and associates, should never be in a position to obtain an undue personal benefit as a result of the public official doing their job. This reflects the view that public office is held for the public good, not the purposes or benefits of the officeholder.

More broadly, a failure by agencies to properly manage conflicts of interest is likely to contribute to a loss of confidence in the public sector.

A conflict of interest is a conventional expression that usually refers to circumstances in which someone's personal interests may conflict with their public duty.

A conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties.

There are four elements to consider when determining whether a conflict of interest exists.

1. See *Conflict of interest guidance for organisations*, Victorian Public Sector Commission at www.vpsc.vic.gov.au

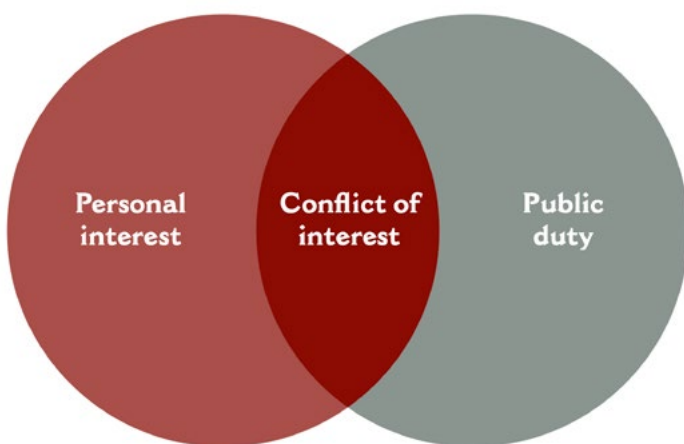
2. A Government Business Enterprise (GBE) can also be referred to as a state-owned enterprise (SOE) / corporation or a government owned corporation (GOC) across different state and Commonwealth jurisdictions. They are subject to the provisions of respective Commonwealth / State / Territory legislation. They are generally a combination of public ownership with private sector or equivalent corporate structure.

1. Does the official have a personal interest?
2. Does the official have a public duty?
3. Is there a connection between the personal interest and the public duty?
4. Could a reasonable person perceive that the personal interest might be favoured?

Personal interest refers to the interests that arise from an individual's private or work life that can bring financial or other material benefits or result in disadvantages to the public interest or to other people. Importantly, a public official's personal interests can include the interests of their close connections, including family connections, and/or the interests of associates.

Public duty is a broad concept that extends beyond simply performing the tasks assigned to a public official and complying with policy and procedure. It means a power, authority, duty or function that is conferred on a person as the holder of public office. It includes a duty to serve the public interest, the agency and the public in an ethical manner.

Figure 1: A conflict of interest arises where there is a connection between personal interests and public duty



© Diagram by 'Managing Conflicts of Interest in the NSW Public Sector' page 6

Acting in the public interest

An important aspect of managing conflicts of interest in the public sector is considering how those charged with governance can ensure that the public sector entity is acting in the public interest.

Acting in the public interest means acting with the highest ethical and professional standards for the greater good of the community. This includes adopting values and behaviours that create the highest public value in service provision relative to costs when directing actions or making decisions. It also includes the responsibility to identify and manage risks that consider both current and future generations. It may require optimising the achievement of short-term results whilst also working towards long-term value creation.

Public value may be defined in terms of community well-being, prosperity, viability and country competitiveness.

Potential conflicts with the public interest may also arise when major benefits may not be apparent within the electoral cycles of governments, public servant tenure and contractual arrangements with service providers.

Advice provided to governments on key policy direction, recommendations in reports, budget preparation and actions in plans should explicitly assess the long-term public interest, public value and address risks. Any actual, perceived or potential conflicts of interest of those providing the advice or making decisions should be disclosed, options for mitigating actions discussed and actions taken to address them.

Risk management

The appearance of impropriety is one of the biggest risks of poorly managing a conflict of interest. It is important that the public sector entity can demonstrate that there are appropriate policies and procedures in place. In order to discharge their duties, those charged with governance need to know and properly assess the nature and magnitude of risks faced by the entity. Conflicts of interest need to be part of a formal risk assessment when making key decisions in public sector entities.

Examples of types of conflicts of interest

The following are examples of interests, provided in the NSW ICAC guidance, that could conflict with public duties and which need to be considered as risk factors when forming a view about the existence of actual, perceived or potential conflicts of interest:

- Financial and economic interests, such as direct and indirect assets, liabilities, earnings and costs
- People who are more than acquaintances
- Connections to people and entities that have provided or may provide income
- Connections to organisations and clubs and people connected to them
- Connections to people or entities who have given benefits or favours
- Other people or matters that are closely connected to the public official.

Potential sources of conflicts of interest / circumstances where conflicts of interest may arise	
Personal Interests	A relationship (or previous relationship) with a person who is more than an acquaintance such as a spouse, relative (including relatives by marriage and people who are close to family members), friends, current romantic partners, close colleagues, mentors and social connections
	Enmity towards, or competition with, another individual or group
	Any current provider of secondary or other employment
	Current or former business partners
	Customers, significant suppliers or contractors or a private business
	Customers, significant suppliers or contractors of a secondary employer
	Future employment or business opportunity / potential future employer
	Relationships with former employees and colleagues, especially if there is ongoing social contact
	Connections with for-profit and non-profit organisations, sporting clubs, clubs and associations
	Connections to people and entities who have given benefits or favours such as gifts, benefits or hospitality that is more than token in nature, favours or valuable advice, discounts on the provision of goods and services, borrowing equipment or other items, sponsorship or donations to causes associated with a public official
Financial interests	Sources of income, including secondary employment
	Ownership or lease of land, buildings and property
	Shares or investments in companies, partnerships or other entities
	Beneficial interest in a trust or deceased estate
	Loans or debts
	An option to buy or sell an asset or any other anticipated future financial benefit

Managing conflicts of interest

In order to ensure that officials, contractors, consultants and volunteers understand what it means to have a conflict of interest and how to deal with any actual, perceived or potential conflicts, public sector agencies should develop a conflict of interest policy and procedure. The policy, procedure and any other guidance materials should be made available on the intranet. Publication on the agency's website should also be considered. For contractors and consultants, the policy can be incorporated into contracts or terms of engagement.

It is also important to actively manage the broader control environment. High-risk units, branches and roles should be identified in a risk management framework and additional specific conflict of interest prevention strategies employed. These could include additional awareness raising activities, training, additional standard operating procedures, staff rotation, segregation of duties, additional record keeping requirements, access restrictions, more frequent auditing of registers, electronic logs and use of data analytics to identify red flags.

The policy and / or procedure should detail how staff can avoid unnecessary conflicts of interest, how to disclose and register a conflict of interest or personal interest (e.g. senior officials, councillors and board members are usually required to complete a pecuniary interest register) and the consequences for breaching the policy. When looking to identify an actual, perceived or potential conflict of interest, an objective assessment should be made from the perspective of how a reasonable person may view the scenario or situation.

It is **good governance** that any conflicts of interest identified and registered are regularly reviewed and opportunity provided for updates to be made (e.g. quarterly review / update of conflicts of interest register). Executive management, board chairs, secretariats or governance and ethics units can initiate this regular register review and update.

It is also important to consider whether the risk assessment of a specific conflict of interest disclosure indicates that a management plan is required. At a minimum, actions implemented to manage a conflict of interest should be documented. A conflict of interest management plan would include detail of the

assessment, consideration of management options, the chosen response and the implementation and monitoring process.

It is considered **good governance** for all agencies to provide regular fraud and corruption risk awareness and training. This can assist everyone to be aware of red flags and to be proactive in looking for conflicts of interest, the possibility for a conflict of interest to arise and in what scenario, part of the organisation, function or process it is most likely to occur.

Higher risk activities for fraud and corruption within organisations include procurement activities, recruitment and selection activities, asset disposal, regulation and inspection processes, issuing or rescinding fines or penalties, awarding grants or subsidies, granting access to natural resources, conferring qualifications or licences or granting regulatory approvals.

An ethical culture

An organisation's culture is the sum of its shared values and behaviours. Culture can be measured by looking at the extent to which the ethical framework of an organisation is perceived or is actually embedded within day-to-day practices. See *Managing Culture: a good practice guide*.

Culture, ethics and values are a critical area of governance focus for boards in all sectors.

Both the government of the day and the public require confidence in government officials and the manner in which their decisions are made. Boards of public sector entities will benefit from having frameworks that will assist them in making ethical decisions as part of good public administration. Public sector entities should develop and implement a framework that encourages ethical behaviour and integrity in decision-making. Such a framework should be based on the concepts of public transparency and accountability.

Most governments incorporate into their public sector legislation specific provisions and requirements relating to codes of conduct and regard should be had to these prescribed requirements. Those charged with governance should also consult reference material dealing with conflicts of interests, probity and ethical behaviour as published on the websites of various

integrity bodies and as required with their jurisdictions. References to resources can be found at the end of this guide.

It is for the individual entity to choose the most appropriate framework for its needs unless otherwise specified by legislation. The important issue is for the entity to consider the appropriate structures, including policies, for boards and employees to refer to for guidance concerning ethics, behaviour, rules, probity and managing conflicts of interest. See *Governance Principles for boards of public sector entities in Australia*.

An important aspect of effectively implementing a conflict of interest policy is having a workforce that is proactive in looking for actual and potential conflicts and freely discloses them. Any conflict of interest policy should emphasise that conflicts of interest are not inherently 'bad' and encourage disclosure.

A 'speak-up culture' encouraging disclosure will greatly assist the implementation of a conflicts of interest policy. A tone will need to be set from the top with the leaders of the organisation leading by example in demonstrating transparency and integrity when dealing with conflicts.

Resources

- *Good Governance Guide: Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests* (which has been developed for private sector entities)
- *Governance principles for boards of public sector entities in Australia*
- *Managing Culture: a good practice guide*.

Commonwealth

- Australian Public Service Commission
<https://www.apsc.gov.au/conflicts-interest>

New South Wales

- *Independent Commission Against Corruption*
www.icac.nsw.gov.au
Publication – *Managing Conflicts of Interest in the NSW Public Sector*

Queensland

- Crime and Corruption Commission Queensland
<http://www.ccc.qld.gov.au>
Publication – *Prevention in Focus – Conflicts of*

Interest – are you managing yours appropriately?

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

South Australia

- Independent Commissioner Against Corruption and Office for Public Integrity
<https://icac.sa.gov.au>
- Office of the Commissioner for Public Sector Employment
<https://publicsector.sa.gov.au>
The Code of Ethics for the South Australian Public Sector
<https://publicsector.sa.gov.au/documents/20150709-code-of-ethics-for-the-south-australian-public-sector/>

Tasmania

- Integrity Commission Tasmania
<https://www.integrity.tas.gov.au>
- Publication – *Good decision making in the public interest*

Victoria

- Independent Broad-based Anti-corruption Commission (IBAC)
<https://www.ibac.vic.gov.au>
- Victorian Public Sector Commission (VPSC)
<https://vpsc.vic.gov.au>
- *Conflict of Interest Guidance for Organisations*
<https://vpsc.vic.gov.au/resources/conflict-of-interest-guidance-for-organisations/>

Western Australia

- Corruption and Crime Commission
<https://www.ccc.wa.gov.au>
- Public Sector Commission of Western Australia
<https://publicsector.wa.gov.au>
- Code of Ethics
<https://publicsector.wa.gov.au/document/good-governance-guide---code-ethics-and-code-conduct>

Australian Capital Territory

- ACT Integrity Commission (proposed)
<https://www.cmtedd.act.gov.au/industrial-relations-and-public-sector-management/act-integrity-commission>

Northern territory

- Office of the Independent Commission Against Corruption
<https://icac.nt.gov.au>