

## Conflicting commitments Managing other employment and volunteering

The aim of this advisory is to equip managers and agencies with information about the corruption risks that can arise when a public official<sup>1</sup> engages in employment or other commitments outside of their agency<sup>2</sup> and strategies to help manage those risks.

With increased awareness of these risks, managers and agencies will be better placed to identify and put in place measures to prevent corruption. In this advisory, the term “commitment” will be used throughout to refer to any secondary employment or personal interest, paid or unpaid.

### Introduction

The [Public Sector Ethics Act 1994](#) establishes that public officials must acknowledge the primacy of the public interest and resolve or manage conflicts of interest in favour of the public interest.<sup>3</sup>

Adhering to this obligation can be a challenge for employees in the face of conflicting responsibilities arising from other commitments, such as:

- **Other paid employment.** This includes employment as an employee or contractor, self-employment (including online trading or sales), involvement in a private business or partnership, provision of paid consultancy services, or service as a company director.
- **Unpaid and volunteer work.** While this form of work may not include a contract of employment, some of the same risks as those involved in paid employment may arise. Consequently, the guidance provided in this advisory may apply equally to paid or unpaid/volunteer work.
- **Personal interests.** This includes personal issues in the employee’s private life as well as membership of special interest groups related to leisure activities, hobbies, and advocacy for social, environmental or political change.

<sup>1</sup> *Public Sector Ethics Act 1994* Dictionary: “public official” includes officers and employees of both public service agencies and public sector entities. It does not include a local government councillor. However, similar obligations applicable to councillors are in Chapter 8 of the *Local Government Act 2009*. (In this advisory a “public official” will be referred to as “an employee” or “staff”.)

<sup>2</sup> The *Public Sector Ethics Act 1994* Dictionary defines a public service agency and a public sector entity. For simplicity, this advisory will refer to public service agencies and public sector entities as “agencies”.

<sup>3</sup> *Public Sector Ethics Act 1994*, s. 6(d)

## Conflicts arising from other commitments

Other commitments could give rise to two kinds of conflicts between personal interests and the public interest.

Firstly, the commitments may pose a conflict of interest arising from the nature of the employee's role with the agency and that of the other commitment. Examples include:

- Undertaking private contracting, employment or another business venture in an area regulated or funded by the agency that could give rise to concerns about misuse of information or authority
- Volunteer work for an entity that receives grants or subsidies from the agency and that results in nominal payments or other benefits being provided to the employee
- Social, environmental or political advocacy in a domain the agency is responsible for that could give rise to concerns about partiality or misuse of authority, especially where those policy positions diverge.

Other commitments may not represent a conflict arising from the nature of the employee's official responsibilities but may nevertheless give rise to pressures such as:

- Time commitments which encroach on official work responsibilities, and/or
- The need for additional resources (physical or financial) to meet other commitments which may result in misuse of public resources.

The level of risk may escalate depending on the seniority or importance of the role that the employee holds both in the agency and in relation to their other commitment.

## Early signs that conflicting commitments may be impacting duties

Work colleagues and managers should be alert to the behaviours of someone with conflicting commitments, which could include:

- Working late / building up flextime with little productivity
- Excessive use of office resources such as the internet, the photocopier or email
- Attempts to assert excessive control or input into certain policy or decision-making processes
- Unexplained or unwarranted inquisitiveness into work files, content or information, particularly information provided by third-party stakeholders, which is normally outside of their duties
- Escalating use of private phone calls, or unexplained absences from their desk or work area.

These issues give rise to performance concerns that require active management. In the course of managing this behaviour you may identify conflicting commitments as a driver of the concerning behaviour.

In most instances it is likely the employee will respond to their manager's concerns by improving their performance. However, repeated instances may require a more serious management response including disciplinary action or, if serious, dismissal.



## Corrupt conduct and disciplinary matters

The CCC commonly sees complaints containing allegations about employees failing to properly identify, disclose and manage a conflict of interest including those arising from other commitments.

The [Public Service Act 2008](#)<sup>4</sup> and your agency's code of conduct require employees to declare any conflict of interest so that it can be transparently managed in the public interest.

Importantly, employees are not permitted to work for any company that is engaged in business with their own agency.<sup>5</sup> This is a criminal offence punishable by a fine and up to three years imprisonment.

When employees are conflicted between their official duties and their other commitments there is the risk of deliberate, reckless or negligent conduct which may warrant disciplinary action. Consequences may extend to dismissal, criminal prosecution or civil legal action against the individual and the agency.

The conflicts described above could create an environment where an employee may engage in one or more of the following behaviours that may amount to corrupt conduct or a criminal offence:

- **Misappropriation or unauthorised use of resources.** This can involve the fraudulent diversion of public property or funds (including the fabrication of information or dishonesty in claiming employee entitlements such as travel or shift allowances, various types of leave, or timesheet fraud), theft of public property or funds (such as retired or outdated assets or grant funds), and unauthorised use of public property or funds (including government resources such as equipment or facilities). Other examples include misusing intellectual property and public resources (such as telephones, email and office consumables) or work time by fielding phone calls, writing letters or emails, or taking time out of the office.
- **Misuse of authority.** This can involve misusing authority to act or omit to act to further one's own interests or to otherwise advance their other commitments. Examples include making decisions about how and when to apply government policy, approvals for access licences or permitted use of public land or water, or allocation of government grants.
- **Misuse of confidential information.** This can involve accessing or disclosing official information without a legitimate reason, unintentionally disclosing official information, falsifying information or records, acquiring or retaining information or records illegally, or inadequately safeguarding information. Examples include use of "insider information" before it becomes publicly known, sharing details about government program vetting or assessment criteria to give someone an unfair advantage, or using property ownership databases as a means of contacting those owners.

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<sup>4</sup> *Public Service Act 2008*, s. 186.

<sup>5</sup> *Criminal Code Act 1899*, s. 89.



## Strategies to manage risks

Monitoring some of the risks involved in an employee's other commitments may be difficult because they may not easily be observable by you as their manager or supervisor.

However, once you know your staff have outside interests that may conflict with their duties as a public servant, you are obliged to put in place strategies to reduce the prospect of corruption. Agencies should have in place strategies that support managerial controls to address the conflicts other commitments may present.

### Strong pre-employment and induction processes

An employment process comprises several phases in which employees – prospective, new or existing – can be asked about their other commitments.

#### *Pre-employment*

The best way to avoid difficulties is to ensure the preferred applicant for a role in your agency is fully advised about their obligations before they are offered employment. This means scrutinising the current employment arrangements of your shortlisted candidates and discussing with them their plans regarding their existing employment or other commitments in the event they are offered a position with you.

If the selection panel is not satisfied with an applicant's answers, the offer of employment should not be made.

#### *Induction*

If the applicant accepts the job, your induction processes should emphasise the public interest requirements and the employee's obligations when working for your agency.<sup>6</sup> Adopting an early approach to fully discussing the risks associated with other commitments presents the ideal opportunity to negotiate practical ways to minimise risks and set a strong platform for ongoing compliance with your agency's policies. This can be done by:

- Fully explaining the nature of conflicts of interest and how these can be effectively managed through a conflict of interest management plan.
- Completing the secondary employment application form, identifying whether there are any aspects of the other employment or commitment that may present a risk for the employee's role or your agency, and discussing how these risks will be managed and mitigated.
- Explaining to the employee that declaring the conflict of interest and completing the secondary employment application form does not end their disclosure or performance obligations. For example, they should be advised that managers are required to routinely monitor the workflow of their staff, including those who have completed a conflict of interest declaration or a secondary employment form. The CCC also advocates the use of documented management plans setting out the identified risks and those steps that the employee agrees to implement to mitigate those risks. Additionally, a new declaration and application are required each time there is a meaningful change in the employee's circumstances that could affect the performance, or the perceived performance, of their employment with your agency.

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<sup>6</sup> *Public Service Act 2008*, s. 26(2) requires public service managers to take all reasonable steps to ensure each public service employee is aware of their work performance and personal conduct obligations, the public service values (*Public Sector Ethics Act 1994* ss 6-9), and what constitutes corrupt conduct under the *Crime and Corruption Act 2001*.



Documentation of the above discussions should be provided to the employee. This will ensure there is no ambiguity about what was discussed and approved, the employee's rights and obligations under that approval, and your ongoing role as manager or supervisor in overseeing the employee's performance.

### Ongoing responsibility to declare

Employees must be advised that it is their responsibility to ensure their manager or supervisor knows about their other commitments. When there is a change of manager or supervisory arrangements, promotion or internal transfer, or the circumstances of their other commitments change, the obligation rests with the employee to proactively raise these issues with their (new) supervisor as soon as reasonably practicable to consider whether an updated risk assessment and/or management plan need to be implemented.

### Policy and procedures

Each agency should have a readily available policy and procedure that clearly sets out the respective obligations of the agency, the manager/supervisor and the employee in relation to the management of risks involved with conflicting commitments.

For the agency, these include:

- Prohibition of certain categories of staff from engaging in other employment or categories of employment due to the unacceptable risks such other employment may pose (for example, senior staff may be prohibited from engaging in other paid employment or procurement officers may be prohibited from working with a supplier to your agency).
- A requirement that written declarations of and applications for other employment, including reasons for approval or rejection, are retained with staff records for future reference and audit purposes.
- A requirement to use a documented management plan which records the identified risks and each party's role in mitigating those risks until such time as the conflict of interest ceases.
- Use of mechanisms such as induction training, ethics awareness sessions, and periodic reminders to ensure that all employees know and understand their obligations under the policy and how to access pro-forma templates for the application process.
- Periodic checks to ensure official resources are not misused (for example, internal audit may conduct timesheet reviews or IT system log reviews to ensure staff are not carrying out activities related to other commitments during work time).
- Identification of a suitable delegate to make decisions about the management of risks associated with other commitments.
- Management responsibility to provide clear guidance to their employees about the basis on which decisions about other commitments are to be made, and to remind them of their obligations to comply with legislation and mandatory policies such as those relating to conflicts of interest, misuse of official resources, timekeeping and the code of conduct, even when on leave (paid or unpaid) from the agency.
- Periodic ad hoc reviews of the employee's work to ensure the other commitment is not affecting the employee's performance.
- Ensuring this information is passed on to new supervisors so they can be watchful for any potentially corrupt behaviour.



The policy should set out that the employee is obliged to:

- Notify the agency about their proposed other employment or commitment via the pro-forma application templates.
- Disclose specific information about the other commitment, including name and location, duties undertaken, hours worked and any current links it may have with your or other government organisations.
- Self-identify any potential conflicts of interest, possible risk factors and document how they will manage those risks.
- Comply with the management plan or other contractual conditions including ongoing oversight of the approval (particularly for high-risk matters) to ensure that the other commitment does not have a negative impact on either the performance of the employee's duties or on the reputation of the agency or the public sector generally.
- Not commence other employment until the approval is provided.
- At all times, be pro-active in continually monitoring the potential risks raised by the other employment or commitment and promptly notify the agency of these risks or any change of circumstances that may need to be managed or which indicate that conditions associated with the approval may need to be reconsidered.
- Submit to an annual review of the approval and understand that any approval can be revoked.
- Ensure that any other employment and functions relating to it must not be carried out during work time or using agency resources.
- Declare an interest at every meeting or work-related discussion on every occasion that the potential for an actual or perceived conflict of interest could arise to allow others at the meeting to make decisions about how to proceed.

### Management process and intervention

Where risks to the agency are identified but are manageable, and a decision is made to support the other commitment, the employee's manager or supervisor should implement a management plan which provides safeguards for the agency. The employee and manager together should develop and document a plan to manage the risks resulting from the other commitment. Usually, any approval will be accompanied by conditions that are recorded in an agreed management plan.

While the manager is to ensure that the employee is not unfairly disadvantaged, the primary consideration must be to ensure that their agency work takes priority, and any conflicts of interest are resolved or managed in favour of the public interest.

The management plan should mitigate or negate any perceived or potential conflict of interest arising from the approval, and implement an ongoing review process to ensure that the controls are effective.





Managers (as representatives of the agency and the public interest) are entitled and obligated to:

- monitor the employee to ensure they continue to perform their job efficiently, effectively and safely<sup>7</sup>
- continue to ensure no actual conflict of interest arises from the other commitment
- have an ongoing role in evaluating whether the other commitment may compromise, or has compromised, the reputation of the agency or other government agencies.

If the manager considers that the employee does not appear to be resolving the conflict in favour of the public interest, as part of the management plan the manager is obligated to discuss these concerns with the employee. This includes discussing whether the employee will cease involvement with their other commitments or be transferred to another position within the agency. If neither of these is a viable option, the employee should consider resigning from their position.

If the risks cannot be mitigated to the agency's satisfaction, the employee is to be advised that the agency does not support the employee engaging in the other commitment.

Ultimately, if the employee is unable to resolve these conflicts in favour of the public interest to the manager's satisfaction, and does not resign, then the manager is obliged to progress disciplinary action against the employee based on their failing to adhere to the management plan and a breach of the code of conduct, which may result in the employee being dismissed.

## Further information and resources

- [Crime and Corruption Act 2001](#)
- [Criminal Code Act 1899](#) (Part 3, Chapter 13)
- [Public Sector Ethics Act 1994](#) (Part 4 Codes of conduct for public officials)
- [Public Service Act 2008](#)
  - Chapter 1 Part 3 General public service principles
  - Chapter 6 Disciplinary action for public service employees and former public service employees
- Crime and Corruption Commission: [Corruption Prevention Advisories](#)
- All Queensland legislation is available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

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<sup>7</sup> *Public Service Act 2008*, s. 26(3)



## Contact details

✉ Crime and Corruption Commission  
GPO Box 3123, Brisbane QLD 4001

☎ Level 2, North Tower Green Square  
515 St Pauls Terrace,  
Fortitude Valley QLD 4006

📞 07 3360 6060 or  
Toll-free 1800 061 611  
(in Queensland outside Brisbane)

📠 07 3360 6333

## More information

🌐 [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au)

@ [mailbox@ccc.qld.gov.au](mailto:mailbox@ccc.qld.gov.au)

🐦 @CCC\_QLD

f CrimeandCorruptionCommission

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