

# PREVENTION in focus

June 2018

## *Conflicts of interest — are you managing yours appropriately?*

### *What you should know*

A conflict of interest occurs when an employee's private interests interfere, or appear to interfere, with their duty to put the public interest first. A conflict can manifest itself in many ways and in various aspects of areas related to professional duties and obligations. The types of conflicts that most commonly occur involve:

- Family and close associates
- Secondary employment
- Previous employment
- Asset ownership (e.g. property, investments)
- Memberships (e.g. political, professional, sporting, social or cultural organisations).

It is inevitable that you will eventually be exposed to a conflict of interest, whether this be a personal conflict, awareness of a conflict on the part of another, or actively raising a conflict issue with management. You should ensure that you can answer these questions confidently:

- What is the difference between actual, perceived and potential conflicts of interest?
- What is the best way to avoid a conflict of interest?
- What do I do if I see what I believe to be a conflict of interest scenario involving a colleague or more senior officer?

Using case studies and scenarios, this publication seeks to raise awareness among agency staff and managers of the issues and, in some cases, allegations that can arise from a conflict of interest that is not properly identified, documented, managed and monitored.

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*A conflict of interest exists when the actions of a government employee are, or could be, influenced by their private interests*

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*The risks of having a conflict will increase where an employee's role includes the authority to make decisions.*

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## What is a conflict of interest?

A conflict of interest may be potential, perceived or actual and the risk of having a conflict will increase where an employee's role includes the authority to make decisions.

- An **actual** conflict of interest exists where your actions as a government employee, right now, could be influenced by your private interests.
- A **perceived** conflict arises where it appears that decisions you make in the course of your employment may be influenced by your private interests, whether or not this is in fact the case.
- If you are employed in a role where your future decision making may be influenced by your private interests, you have a **potential** conflict of interest.

Having a conflict of interest is not necessarily a problem. It is how (and how transparently) that conflict is managed that is important. If you identify that you have a conflict of interest then you should declare that conflict to your manager. Together, you and your manager should identify any risks that arise from that conflict and put in place management strategies to mitigate those risks.

Section 6 of the *Public Sector Ethics Act 1994* establishes that the primary obligation of a government employee is to always act in the public interest.

The *Public Service Act 2008* (sections 102 and 186) and your agency's Code of Conduct place an obligation on chief executives, senior executives and employees to disclose any interest they have that conflicts, or may conflict, with the performance of their official duties.

There are other policy and legislative requirements for certain agencies, such as the Public Service Commission Directives 03/10 and 01/15, that set out the requirements for disclosing employee or chief executive interests as required.

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## Conflict of interest scenarios

The following scenarios demonstrate how the various types of conflicts of interest may arise.

### Procurement

Bob works in procurement in a department where his job involves completing a range of administration tasks, including collating tender bids for consideration by senior management. Bob's brother owns a construction company that is interested in responding to a tender invitation released by the Department to build a new car park. Bob's position will give him access to confidential tender information that would be valuable to his brother. ***Even though Bob is not a decision maker, in this situation he has a potential conflict of interest.***

### Recruitment

Ryan is the Dean of Law at a University. The School of Law has advertised a vacancy for a new law lecturer. Ryan is not on the selection panel, however, he is the delegate who will sign off on the recommended appointment. Alice is a lawyer who is interested in making the transition from private practice to academia and is thinking of applying for the job. She is also Ryan's niece. ***If a family member applies for a job and Ryan is involved in the process as the delegate, he may have a conflict of interest in relation to the recruitment process.***

Neither of the conflicts outlined above are, of themselves, a problem. They do however need to be declared and appropriately managed.

## Complaints to the CCC

Corrupt behaviour – whether actual or perceived – has the potential to erode public confidence in an agency and damage an agency's culture and reputation. Conflicts of interest frequently give rise to allegations of corruption reported to the CCC.

Allegations that employees have misused their authority, which includes matters involving conflicts of interest, are the second most commonly received complaints at the CCC (after failure of duty). In the 2015–16 financial year the CCC received 1202 allegations involving misuse of authority, increasing to 1678 in 2016–17.

The activity associated with those allegations was most frequently identified as recruitment and selection (186 allegations), procurement (140), and supervision and employee relations (115).

## CASE STUDY

### **Senior officers' failure to manage conflicts of interest**

A public sector agency needed to conduct a series of consultations with stakeholders at different locations in Queensland. It undertook a procurement process to engage an external provider to facilitate those consultations.

As part of this process, an Acting Director was asked by her Executive Director (ED) to nominate possible contractors. The Acting Director nominated three consultants, none of whom were on the existing standing offer arrangement. One of the contractors was her partner and she was friends with the other two. She claimed that when she nominated these contractors she disclosed the relationships to her ED, however the ED denied this occurred. In any case, it is clear that at this time the Acting Director failed to complete and submit any written declaration about these relationships as required by the agency's policies and procedures.

As the contractors had been nominated and recommended by an Acting Director, the procurement officer considered he did not need to undertake any further market analysis. Each of the contractors was invited to tender.

A three-person committee was then established to evaluate the tenders. There is some evidence that the members of this committee were aware that the Acting Director knew the tendering contractors on a professional basis and possibly as friends. Only one of the panel stated they were aware that the Acting Director was in a relationship with one of the contractors. While the Acting Director was not a member of this committee, the committee members gave evidence that the Acting Director had some involvement in the evaluation process, including expressing an interest in the scores given to each applicant, and providing comments on the ratings of each contractor.

The committee deemed all three contractors to be suitable. That same day each committee member and the Acting Director completed an "acknowledgement of obligation" form which dealt with confidentiality obligations and conflicts of interest.

The Acting Director's form was witnessed by her ED. It stated that she was friends with two of the parties, and that the third was her partner. The ED states that this was the first time she became aware of the closeness of the relationship between the Acting Director and the contractors, and that the Acting Director told her that "it was *okay with Procurement*". At this time the ED informed the Acting Director that she was to have no further involvement in the procurement.

The ED then approved the expenditure of up to \$100,000 to engage the three contractors, signed three letters of acceptance and sent them to the relevant parties. As the ED had not yet completed the requisite training that would give her the financial delegation to approve the expenditure, the payment was approved and signed off by the Acting Director.

Although the Acting Director had been directed to have no further involvement in the processes, the evidence obtained during the investigation makes it clear that she continued to direct the work of the consultants, allocate work to them and authorise the payment of invoices.

The investigation found that the allegation that the Acting Director failed to declare her conflict of interest in a timely and appropriate manner was capable of being substantiated. There was also evidence that, once declared, she failed to appropriately manage that conflict. She subsequently resigned from the agency.

An allegation of maladministration as regards the actions of the ED, and her failure to appropriately manage the conflict and the associated procurement, was also substantiated and referred to the agency to deal with.

## When could a conflict of interest involve or become a criminal offence?

Failure to declare and manage a conflict of interest may amount to a breach of the Queensland Public Service Code of Conduct. In some instances it may also amount to a criminal offence, the most common being:

1. abuse of office (section 92 of the Queensland Criminal Code)
2. misconduct in relation to public office (section 92A) and
3. public officers interested in contracts (section 89).

“Abuse of office” is largely self-explanatory and may be applicable where a public sector employee does something, or directs someone else to do something, that is clearly an abuse of their authority and is prejudicial to the rights of another. In the recruitment scenario above, if the Dean of Law had simply appointed his niece without complying with the university’s policies and procedures he may have committed an offence under this section.

A public sector employee may commit the offence of “misconduct in relation to public office” if they, with intent to dishonestly gain a benefit or cause a detriment for themselves or to another person:

- deal with information they gained because of their employment, or
- perform or fail to perform a function of their employment, or
- do an act in abuse of the authority of office.

In the procurement scenario above (see page 3), if Bob gave a family member information on the tenders of other parties, who then used that information to underbid them and secure the contract, Bob might be liable to be charged with an offence under section 92A of the Queensland Criminal Code.

*Criminal offences that can originate from a conflict of interest include “abuse of office” and “misconduct in public office”.*

Under section 89, it may be an offence for a person to fail to disclose that they have a private interest in a contract made on the part of a public sector agency in which they are employed.

## CASE STUDY

### **Misconceptions about conflict of interest result in disciplinary action**

Officer A, who is employed at Queensland Corrective Services (QCS), was a friend of Mr B, having grown up with him. He did not know Mr B's partner.

Mr B approached Officer A and told him that his partner, Prisoner C, was in custody, and asked him if he could check up on her. Officer A looked her up on the Integrated Offenders Management System (IOMS), the QCS's confidential database. Officer A indicated that while he was at a party he told Mr B's brother, whom he also knew, about Prisoner C being in prison.

Prisoner C made a complaint after Officer A, who she identified as being friends with Mr B, apparently started telling her friends that she was in prison.

As part of the investigation, QCS audited Officer A's use of the IOMS and identified that he had accessed Prisoner C's IOMS records.

In his interview, Officer A's responses suggested that he did not understand what a conflict of interest might involve.

He did not think that his relationship with Mr B could cause a conflict, as Mr B was not in custody. He also thought he could only have a conflict of interest if he was "someone with power or influence". As he did not have any power to make decisions about Prisoner C, he did not think he had a conflict that needed to be reported.

Training records indicate that Officer A had attended conflict of interest training. Based on that training, he should have identified that he had a conflict of interest that he needed to declare.

After investigation, the QCS recommended that three allegations against Officer A were able to be substantiated: failure to declare a conflict of interest regarding Prisoner C, accessing Prisoner C's records on IOMS when he was not lawfully entitled to do so and releasing confidential information about Prisoner C to Mr B's brother.

This matter is currently with the relevant decision maker to determine appropriate disciplinary action.

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*If you suspect that you have a conflict of interest, take immediate action to ensure that it is declared and managed. If you are unsure, it is **always** best to declare.*

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## What can I do as an individual?

### Regularly review your circumstances

As an individual you should regularly consider your circumstances and how it might impact on your public sector role. Ask yourself questions including:

- Are you engaging in secondary employment?
- Do you or your close family members have a private business?
- Could you be influenced by your hobbies or volunteer interests, political, professional or union affiliations?
- Who do you have significant relationships with, and what do those people do?
- Do you have hostility or bias towards any person or group?

### Know your agency's policies and procedures

In answering these questions you should then ask yourself if any of the responses might suggest a conflict with your employment. If they do, you should refer to the relevant policies and procedures of your agency and discuss the matter with your supervisor/manager. It is important that you immediately take action to appropriately declare and manage any conflict. If you are unsure, it is always best to declare.

## How can agencies mitigate corruption risks associated with conflicts of interest?

The first step in developing an effective organisational approach to conflicts of interest is to identify the areas of risk, and describe the kinds of conflicts of interest that are likely to occur.

### Identify corruption risks and do appropriate assessments

A corruption risk assessment should identify conflicts of interest as a current and emerging risk in significant business areas that are vulnerable to a range of corruption risks. Such an assessment should be able to identify some or all of the following:

- An employee with a friend or family member who will potentially benefit from a purchase or contract either through employment or as an owner or shareholder of the business
- An employee who has feelings of ill-will towards a supplier or prejudices against a particular product or service which could unfairly bias the selection process
- An employee who has a second job with a supplier who is about to do, or is already doing, business with your agency
- An employee who owns property that will be positively or negatively affected by the activities of your agency.

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## Use prevention and detection strategies to manage risk

There are many things that can be done to ensure that employees are meeting their obligations in relation to conflicts of interest.

- Have a readily available policy and procedure that provides clear guidance about conflicts of interest, secondary employment and other commitments. The policy and procedure should set out key areas of accountability:
  - obligations for employees
  - performance obligations for managers (e.g. risk assessments, mitigating actions, ongoing reviews)
  - obligations for the agency (e.g. requirements, training, ethics awareness sessions, periodic reminders, advanced detection mechanisms, disciplinary actions and organisational deterrent effects).
- Demonstrate leadership commitment to your agency's conflicts of interest policy by having managers at all levels model compliance and appropriate behaviour.
- Develop and implement a mechanism that allows employees to make declarations about potential or actual conflicts of interest in writing (e.g. the application process).
- Develop and implement a process that enables managers and delegates to manage the risks resulting from a declared conflict of interest, resulting in an agreed management strategy (i.e. conditions) with the employee (e.g. the management process).
- Develop and implement a mechanism for managers (as representatives of the agency and the public interest) to monitor employees in adhering to the agreed conditions in the management plan (e.g. the monitoring process).
- Take appropriate action where employees do not appear to have responded to the obligation of working in the public interest, and where there are continuing unresolved conflicts of interest.

## Read more:

For further information about conflicts of interest, see:

- [Conflicting commitments: Managing other employment and volunteering](#)
- [Queensland public sector responses to corrupt conduct incidents in recruitment activities: summary audit report](#)
- [Managing and responding to conflicts of interest involving council employees: summary audit report](#)

For more general information see: [www.ccc.qld.gov.au/corruption-prevention](http://www.ccc.qld.gov.au/corruption-prevention)

