



# Conflicting commitments

## Managing other employment and volunteering

### In this advisory:

This advice highlights the risks to a public authority arising from outside commitments by an employee of that authority including:

- other employment;
- volunteering and
- personal interests.

It covers:

- Risk factors
- Strategies to manage risks
- Further information and resources.

### Introduction

The *Public Sector Ethics Act 1994* establishes that the primary obligation of a public official<sup>1</sup> is to always act in the public interest.<sup>2</sup> (For ease of reading, “public official” will be referred to as “employee” or “staff”.)

Adhering to this obligation can be a challenge for employees in the face of conflicting responsibilities arising from other commitments. Examples of this, covered in the advisory, are:

**Other paid employment** – This includes employment as an employee or contractor, self-employment, involvement in a private business or partnership, provision of paid consultancy services, or service as a company director. These all involve a contract of employment that may create obligations that can conflict with government employment.

**Unpaid and volunteer work** – While this may not include a contract of employment, some of the same risks may apply as would apply to other paid employment. Consequently, the guidance provided in this advisory may equally apply to unpaid or volunteer work.

**Personal interests** – The risks associated with personal interests may be less noticeable than those relating to paid, unpaid or volunteer roles, but they may negatively affect work performance. Managers have an obligation under the *Public Service Act* s. 26(3) to proactively manage the work performance of their employees and to take action if the performance is unacceptable. Risks arising from personal interests are not covered in this advisory but are dealt with in the CCC publication *Managing Conflicts of interest in the Public Sector*.

1 *Public Sector Ethics Act 1994* Dictionary: “public official” includes officers and employees of both public service and public sector entities. It does not include a local government councillor. Similar obligations applicable to councillors are located in Part 2 of the *Local Government Act 2009*

2 *Public Sector Ethics Act 1994*, s. 6

## Risk factors

The risks associated with other employment depends on the nature of the roles of both the public sector employment and the other employment, and the functions of the public authority. (For ease of reading, “public authority” will be referred to as “agency”, but equally applies to all entities covered by the *Public Sector Ethics Act 2009*.)

Potential risks include:

- the creation of an actual or perceived conflict of interest between the public sector work and the other interests
- adverse effects on the public’s perception of the integrity and impartiality of your organisation
- using public resources, especially telephones, email and office consumables for the other employment
- unauthorised use of information and intellectual property, particularly where the employee has access to confidential agency information concerning their secondary employment or volunteer role
- diminished work performance resulting from fatigue, distraction or time pressures
- absenteeism due to clashing commitments
- increased load on co-workers who must “cover” the reduced performance of the employee.

The risks to your organisation are greatest when the other employer:

- has or is likely to have contractual dealings with your organisation
- is in, or may come into, commercial competition with your organisation
- has a regulatory relationship with your organisation.

Additional risks when employees have hobbies or undertake volunteer work in areas related to their public sector employment (e.g. employees in an environmental policy area who also volunteer with their local conservation group) can arise where:

- the employee may occasionally receive nominal payments from the volunteer work
- the volunteer work is partially supported by government grants or subsidies
- there is dispute between the policy direction implemented by your organisation and the position adopted by the external group.

## Corruption offences and disciplinary issues

Employees are not permitted to work for any company that is engaged in business with their own agency.<sup>3</sup> This is a criminal offence punishable by a fine and up to three years imprisonment.

*The Public Service Act 2008*<sup>4</sup> and your agency’s code of conduct requires employees to declare any conflict of interest so that it can be transparently managed in the public interest.

Where employees are conflicted between their official duties and external interests there is the risk that confidential information may be improperly accessed and used for non-authorised purposes. The misuse or ‘leaking’ of confidential information, or reckless or negligent conduct which results in the release of confidential information, may warrant disciplinary action against the responsible employee. Consequences may extend to dismissal, criminal prosecution or civil legal action against the individual and the agency.

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3 *Criminal Code Act 1899*, s. 89

4 *Public Service Act 2008*, s. 186

## Strategies to manage risks

It is acknowledged that the agency may not be the primary employer, for example the employee may work two days a week for the agency and three days a week for another (non-government) employer. Regardless of this, the requirement to work impartially and in the public interest outweighs all other considerations. Therefore, it is important to strike a balance between the need to maintain public confidence in the integrity of the agency whilst also catering for individual needs such as part time working arrangements. To achieve this it is recommended that agencies put in place mechanisms to manage the risks from, and effects of, any other commitments.

### Policy and procedures

To assist employees understand their obligations it is recommended that each agency have a readily available policy and procedure that provides clear guidance to managers and staff about other employment, including volunteering. The policy and procedure should cater for the following key areas of accountability.

*Obligations for the organisation – the policy and procedure should:*

- require 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
- be reinforced through mechanisms such as induction training, ethics awareness sessions, and periodic reminders to ensure that all employees know and understand their obligations under the policy
- empower the agency to take disciplinary action against employees who fail to declare or do not cooperate in managing other employment
- provide for periodic reviews of the policy to ensure it is current
- cater for internal promotional opportunities or transfers, and require a new risk assessment to be carried out under the proposed new working arrangements and an updated management plan if required
- identify a suitable manager or delegate to make decisions about the management of other employment risks
- provide for regular training for managers and supervisors about:
  - the workings of the policy
  - the application and approval process
  - the need to ensure that the public authority is not disadvantaged as a result of approving other employment
  - the need to discuss with the employee to ensure they understand the importance of abiding by the requirement to always act and resolve any conflicts of interest in the public interest.

*Performance obligations for managers who are to:*

- understand and be able to explain the key issues, and provide clear guidance to the employee about the basis on which decisions about other employment are to be made
- be able to:
  - assess all potential risks (including risks not identified by the employee)
  - review and decide on the practicality of the mitigating steps the employee proposes to implement
  - discuss and seek agreement on a plan to manage the identified risks
  - implement a review process to ensure the mitigating steps are effective and to also identify emerging risks not previously identified

- remind the employee about their obligations to comply with mandatory policies such as conflict of interest, misuse of official resources, timekeeping and the code of conduct
- ensure the employee understands that compliance with legislation and policies relating to other employment continues to apply even when an employee is on leave (paid or unpaid) from the agency
- conduct periodic ad-hoc reviews of the employee's work to ensure the other employment is not affecting the employee's performance.

*The policy and procedure should inform the employee about their obligations to:*

- notify the agency about their proposed other employment and how to access pro-forma templates for the application process
- disclose specific information including the duties undertaken, name and location the of the other employer, hours worked and any current links the other employer has with the 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 on-going oversight of the approval (particularly for high risk matters) to ensure that the other employment 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
- promptly notify the agency of 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 to 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.

### **Declaration/approval process**

Every agency should have a mechanism that allows employees to apply for approval to have other employment. Within this process the employee makes a declaration about potential or actual conflicts of interest.

Once the employee has made an application, the employee's manager should consider whether there are any unacceptable risks arising from the proposed other employment. The employee and manager together are to develop and document a plan to manage the risks resulting from the proposed other employment. Usually, an approval for other employment will be accompanied by conditions which are recorded in an agreed management plan.

The manager should try to ensure that the employee is not unfairly disadvantaged, however, the primary consideration must be to ensure that work is done and any conflicts of interest are resolved in the public interest.

If the risks cannot be mitigated to the agency's satisfaction, the employee should be advised that the agency does not support the employee engaging in the other employment. While the agency cannot refuse to allow the employee to accept other employment, if they do so despite the agency identifying unacceptable risks their employment with the agency may be terminated on the basis of a breach of the code of conduct.

Special care is to be taken with potential employees who already have existing other employment and apply to work in your agency. In these circumstances the job application and interview process should disclose whether the potential employee wishes to take up the government role and also maintain their other employment. Where this occurs the declaration, application and risk management plan must be carried out to the agency's satisfaction before the potential employee is offered employment with the agency. If the potential applicant is unable to commit to the requirements of this process or the management plan, then the offer of employment should not be made.

Similarly, if a promotion or internal transfer opportunity arises for an existing employee who is already subject to a management plan, that plan should be revisited with the "recipient manager" under the proposed new working arrangements and be adjusted if required, and agreed to, before the promotion or transfer can be approved.

### **Management process**

Where risks are identified but manageable, and the agency decides to support the other employment, agencies are to implement a management plan which provides safeguards for the agency in relation to the perceived or potential conflict of interest arising from this approval, and to implement an on-going 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>5</sup>
- continue to ensure no actual conflict of interest arises from the other employment
- have an on-going role in evaluating whether the other employment 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 have responded to the obligation of working in the primacy of the public interest and there are continuing unresolved conflicts of interest, then 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 in the other employment, could be transferred to another position within the agency, or if neither of these is a viable option, the employee should consider resigning from the government position.

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

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5 *Public Service Act, s. 26(3)*

## 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:
  - [Advisory: Gifts and benefits](#)
  - [Advisory: Information security and handling](#)
  - [Advisory: Management of public records](#)
  - [Advisory: Use of official resources](#)
  - [Managing corruption risks: unauthorised use of confidential information](#)
- Crime and Misconduct Commission and Independent Commission Against Corruption 2004, [Managing conflicts of interest in the public sector: toolkit](#)

All Queensland legislation is available at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)



## Crime and Corruption Commission

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Please contact us if you would like further detailed guidance and information on any aspect of this advisory.

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