



# Post-separation employment

## When employees move to the private sector

### In this advisory:

This advice highlights the risks of and offences relating to post-separation employment.

It covers:

- Risk factors
- Potential disciplinary and statutory offences
- Strategies to prevent corruption
- Further information and resources.

### Introduction

Over time, public sector officers acquire valuable skills, knowledge and contacts which make them highly employable, and many officers make the move into the private sector to enhance their careers. In the lead-up to, and often, separation from the public sector, special care must be taken to ensure that officers do not misuse their expertise to the detriment of the public interest.

This advisory will assist public sector agencies to manage the risks associated with employees moving on.

### Risk factors

Risks of corrupt conduct arise from the potential conflict of interest created by the new employment and are greatest when the new employer is a non-government organisation that:

- operates in a related field, is a public/private partner or competes commercially with the government agency
- receives contracts, funding, loans or similar from or through the agency
- comes under the licensing, regulatory or auditing authority of the agency
- engages in lobbying ministers, members of parliament or government agencies.

The major risks can be broadly categorised as undue influence, and misuse of information and resources.

## Undue influence

Public sector officers have a duty to act in the public interest until they separate from the public sector. The temptation for a departing employee to assist their future employer or disadvantage a competitor is one to be guarded against. Agencies should ensure that employees are not in a position which gives rise to a conflict of interest between the agency's interests and those of a new employer.

Once the officer leaves they have no more entitlement to public sector advice, access or information than any other member of the public. Nor are they in any special position to influence an agency's decision-making because of the officer's prior employment and relationships with staff.

## Misuse of information and other resources

Official resources are those paid for and owned by a public sector organisation. They may be assets, services or consumables, and can be either tangible (e.g. stationery, equipment or public housing) or intangible (e.g. information, internet access or employee time). These resources are intended to help employees carry out tasks associated with their work and provide efficient service to the community. They are not provided for the personal benefit of employees. (For more information on this subject, see the CCC corruption prevention advisory, [Use of official resources.](#))

## Information

Information is an intangible asset owned by the organisation and, like physical assets, it must be safeguarded. It differs from physical assets in that it is harder to put a price on and, once stolen, can be difficult to recover from those who have benefited from it.

The loss or misuse of confidential official or commercial information as a result of poor information security can damage an organisation's reputation, business activities and profitability. The loss of commercial-in-confidence information or intellectual property due to negligence or theft may open the organisation to legal proceedings for damages. If the public loses confidence in the integrity of an agency's processes and decisions, people may be less willing to participate in its legitimate attempts to gather information. (For more information on this subject, see the CCC corruption prevention advisory, [Information security and handling.](#))

Types of information open to misuse include:

- information protected by law, convention, or the [Queensland Government information security classification framework](#) (e.g. Cabinet-in-Confidence documents)
- commercial information (e.g. trade secrets, research, technical processes, information about competitors' business activities, client information to generate business leads)
- sensitive information about proposed changes and policies (e.g. political, industrial, legislative, regulatory or zoning)
- information provided to the agency in confidence (e.g. tenders, development proposals)
- personal information protected under the [Privacy Act 1988 \(Cth\)](#) (e.g. personal particulars and identity data, health information, criminal records)
- copyright materials and other intellectual property (e.g. technical inventions, manuals, artworks, journal articles, scientific results, teaching materials, statistics, survey results).

Departing employees put information and intellectual property at risk when they:

- provide particular documents, research findings or materials in order to impress or win favour with a new or prospective employer
- manipulate, conceal or destroy the organisation's information to benefit their future employer

- collect information and materials they think may be useful in their new role and take these to the new workplace
- take documents and materials which they had a substantial role in creating, mistakenly believing that these are their personal property, and use them in their new role. (For more information about this subject see the [Queensland Public Sector intellectual property principles factsheet](#).)
- contact former colleagues on a personal level requesting documents or information.

The most common avenues for unauthorised loss of confidential information are:

- taking or faxing hard copy documents
- emailing electronic files
- downloading electronic materials to memory devices (such as phones, CDs, USBs and laptops)
- retaining remote access to the computer network after separation.

## Other resources

Using official resources appropriately<sup>1</sup> is fundamental to a public sector employee's legal and ethical obligation to act in the public interest, as mandated in the [Public Sector Ethics Act 1994](#). Under the principles of "promoting the public good" and "accountability and transparency", employees are required to use and manage public resources effectively, efficiently and economically.

Appropriate use of official resources is also a requirement in the [Code of Conduct for the Queensland Public Service](#) (s. 4.3) and other public sector codes of conduct.

Misuse of official resources is a breach of public trust. Misuse includes:

- using resources such as phones, email, stationery, vehicles, equipment and work time for non-agency purposes
- directing or persuading other staff to use resources for non-agency purposes to benefit or impress their prospective employer.

## Potential disciplinary and statutory offences

The [Public Sector Ethics Act 1994](#) places obligations on employees to always act in the public interest<sup>2</sup> (not in self-interest), and the [Public Service Act 2008](#) requires employees to declare interests which may conflict (conflict of interest) with their duties<sup>3</sup>. A failure to declare a conflict of interest may result in disciplinary action under the relevant Code of conduct.

It is a criminal offence (punishable by a fine and up to three years imprisonment) for a public service employee to knowingly hold, directly or indirectly, a private interest in any contract or agreement with their own agency (subject to certain conditions).<sup>4</sup>

Under the [Integrity Act 2009](#):

- former senior government representatives<sup>5</sup> are prohibited from making any contact which attempts to influence state or local government decision making in any area in which they had official dealings during their last two years in office<sup>6</sup>

1 [Public Sector Ethics Act 1994](#) s. 7(c) Promoting the public good – public service agencies, public sector entities and public officials accept and value their duty to manage public resources effectively, efficiently and economically.

2 [Public Sector Ethics Act 1994](#) s. 6

3 [Public Service Act 2008](#) s. 186

4 [Criminal Code \(Qld\)](#) s. 89

5 [Integrity Act 2009](#) s. 45(1)

6 *ibid.* s. 70

- government representatives\* are prohibited from knowingly
  - permitting a person who has been a former senior government representative or former Opposition representative for less than two years to carry out lobbying with them<sup>7</sup>
  - dealing with unregistered or restricted lobbyists.

\*“Government representatives” include the Premier, Ministers, assistant ministers, councillors, ministerial staff members, and CEOs and employees of any government entity including departments, government owned corporations, local governments, courts and tribunals, and any other entity that is assisted by public funds.<sup>8</sup>

Such breaches reflect poorly on the integrity of both the staff involved and the organisation.<sup>9</sup>

- The organisation or person who engaged the lobbyist is also in breach of the [Integrity Act 2009](#) if they offer the lobbyist any success fee<sup>10</sup> (and liable to a maximum penalty of 200 penalty units which equates to \$25,230.00 as at 1 July 2017)<sup>11</sup>.
- Lobbyists are required to be registered before undertaking lobbying activities, and are required to adhere to the [Lobbyists code of conduct](#).

Unlawfully disposing of (including destroying, damaging, abandoning, transferring, donating, giving away or selling) a public record or any part of a public record is a criminal offence under the [Public Records Act 2002](#). The maximum fine for an individual is 165 penalty units.

Inadequate management or inappropriate use of public records can constitute corrupt conduct<sup>12</sup>. It may also render the person liable to disciplinary action (including dismissal) and/or result in civil legal action against both the individual and the organisation involved.

Being unable, without reasonable excuse, to produce a requested public record is a criminal offence under the [Right to Information Act 2009](#). The maximum fine for an individual is 100 penalty units.

Misuse of official resources is a breach of the [Code of Conduct for the Queensland public service](#) (s. 4.3) and equivalent other public sector Codes of conduct, and may result in disciplinary action, up to and including dismissal.

If the misuse includes corrupt conduct or a criminal offence (such as theft or fraud) a person can be charged under the [Criminal Code \(Qld\)](#) for offences including official corruption<sup>13</sup>, computer hacking/misuse<sup>14</sup>, misconduct in relation to public office<sup>15</sup>, abuse of authority (abuse of office)<sup>16</sup> and other offences. Convictions for these offences carry various penalties of imprisonment of up to 10 years.

7 *Integrity Act 2009* s. 70

8 *ibid.* ss. 44 – 47B

9 *Ibid.* s. 71(3)

10 *ibid.* s. 69(1)

11 As at 1 July 2017, 1 Penalty Unit = \$126.15. The *Penalties and Sentences Act 1992* provides an annual mechanism to revise this figure, and users are advised to review the value of a penalty unit each year.

12 *Crime and Corruption Act 2001* s. 15: Corrupt conduct is conduct that involves the exercise of a person’s official powers in a way that is not honest or not impartial, or involves a breach of the trust placed in a person as a public officer, or involves a misuse of official information or material, and would, if proven, be either a criminal offence or a disciplinary breach providing reasonable grounds for dismissal.

13 *Criminal Code (Qld)* s. 87

14 *Ibid.* s. 408E

15 *Ibid.* s. 92A

16 *Ibid.* ss. 87-97

## Strategies to prevent corruption

Managers have an ongoing responsibility to implement efficient and effective controls in order to minimise the harm that could arise when an employee leaves their organisation. The principal strategy is to foster a culture of ethical conduct throughout the organisation such that employees understand their obligations when they leave. The following steps will help managers to anticipate, minimise and manage risks before, during, and after separation.

### Assess the risk

Agencies should conduct a detailed assessment of risks relating to separation. The risks will vary depending on the departing employee's role and classification and the nature of the job to which the employee is going. The roles creating the most risk will be chief executive officers and senior officers, and specialist positions such as those in research and development, and technical areas.

The risk assessment should be reviewed regularly.

### Implement policies and procedures

Based on the risk assessments, appropriate strategies, policies and procedures should be developed to manage the identified risks.

In particular, [Queensland Government Information Standard 18 Information security](#) Principle 3, "Human resources management" requires agencies to develop and implement procedures for the separation of employees from, or movement within, the agency, to maintain the security of information.

Consider developing policies and procedures and training programs that cover the following:

#### Recruitment and ongoing employment

- Ensure that security vetting, declarations of interests and criminal history checks are carried out before people are appointed to positions with access to sensitive information.
- Consider introducing contractual provisions preventing senior officials or other officers in positions where there is a serious risk or sensitivity from taking employment in specific fields for specified periods after leaving your agency.
- Limit job offers from external agencies to organisation employees by including contract clauses restricting successful tenderers from employing agency employees who managed or were materially involved in the tender process (for a specified period during and after the process).
- Require certain employees to declare job offers.
- Maintain registers of interests.
- Improve information security.
- Promote awareness of confidentiality requirements.
- Detail a process for preventing, managing and recording any contacts by former senior government representatives who, under the [Integrity Act 2009](#) s. 45, are restricted from lobbying government on any matter with which they had dealings as an official for a period of two years after leaving government service.

#### Pre-separation

- Introduce a separation declaration that reminds departing staff of their obligations regarding conflicts of interest, post-separation restrictions and lobbying.

- When an officer gives notice, make it their manager's responsibility in each case to ensure that there are no actual or perceived conflicts of interest.
- Remind employees that giving notice does not end their obligation to declare any possible conflict of interest and to cooperate in managing it.
- The departing employee's manager should carry out a risk assessment on the vulnerabilities of those assets available to, or under the control of, the employee and implement additional controls when there are heightened risks associated with the impending departure.
- Develop a separation checklist to ensure that identification cards, agency equipment and official documents are returned and computer network rights are revoked.
- Ensure that staff are aware of the legal restrictions on post-separation dealings with the agency.

### **Align with your code of conduct**

Ensure that your agency's code of conduct includes clear statements of employees' obligations regarding:

- putting the public interest above all private interests
- declaring and transparently managing conflicts of interest
- information security
- contacts and dealings with lobbyists
- gifts and benefits
- separation processes, including management of potential conflicts of interest
- post-separation employment.

### **Provide training and awareness programs**

Ensure that key issues are covered at induction, and importantly, also provide periodic reminders and refresher training. For example, when a departing staff member goes to a client organisation, business or competitive industry, remind remaining staff that the departing employee is to be given no better or different treatment or service than any of your agency's other clients.

It is important to educate your staff on the policies and procedures that may affect them directly when they leave your employment, especially their obligations in regard to conflicts of interest, lobbying and information security.

### **Maintain high ethical standards**

Government agency employees should demonstrate the highest ethical standards, and are not to benefit from confidential information in the possession of the agency when they move to the private sector. Implementation of a policy specifically dealing with the ethical and legal obligations of staff when transitioning out of the organisation will assist employees to understand their ongoing role to work in the public interest. Publishing and promoting such standards will help to reassure the public that the government sector can be relied on to behave ethically.

#### **Note**

Leaders are referred to the CCC corruption prevention advisory [Conflicting commitments: managing other employment and volunteering](#) for information on dealing with the risks associated with employees who maintain their public service employment but who may have competing interests outside of that employment.

## Further information and resources

- [Crime and Corruption Act 2001](#)
- [Criminal Code Act 1899](#)
- [Integrity Act 2009](#)
- [Public Records Act 2002](#)
- [Public Sector Ethics Act 1994](#)
- [Public Service Act 2008](#)
- [Queensland Government information security classification framework](#)
- [Queensland Government Information Standard 18 Information security](#)
- [Queensland State Archives website](#)
- [Right to Information Act 2009](#)
  
- Crime and Corruption Commission:
  - [Advisory: Conflicting Commitments: Managing other employment and volunteering](#)
  - [Advisory: Information security and handling](#)
  - [Advisory: Use of official resources](#)
- Crime and Misconduct Commission & Independent Commission Against Corruption 2004
  - [Managing conflicts of interest in the public sector - guidelines](#)
  - [Managing conflicts of interest in the public sector - toolkit](#)
  - [Identifying conflicts of interest in the public sector - checklist](#)
- Crime and Misconduct Commission 2008, [Public duty, private interests](#)

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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