

Managing
Conflicts of Interest
in the Public Sector



Guidelines

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INDEPENDENT
COMMISSION
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MISCONDUCT
COMMISSION



QUEENSLAND

Managing
Conflicts of Interest
in the Public Sector



Guidelines

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ISBN: I 920726 08X

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The community has a right to expect that all public officials will perform their duties in a fair and unbiased way, and that the decisions they make are not affected by self-interest, private affiliations, or the likelihood of personal gain or loss.

Community confidence in the integrity of public officials and public sector processes is also fundamental to the rule of law, one key principle of which is that every citizen is equal before the law and should receive fair and impartial treatment.

For these compelling reasons, it is crucial that public officials and public sector organisations protect the public interest by ensuring that private interests that conflict with it are identified and managed effectively.

They must also publicise and promote the work they do to identify and manage conflicts of interest, to guard against the damaging perception that public officials or organisations are being compromised by undeclared or unmanaged conflicts of interest.

A high proportion of the matters referred to the Crime and Misconduct Commission (CMC) and the Independent Commission Against Corruption (ICAC) concern actual, perceived or potential conflicts of interest.

This guide and the accompanying Toolkit have been produced jointly by the CMC and the ICAC to help public sector organisations develop and implement a conflicts of interest policy that is customised to their specific needs and risks, and to help individual public

officials identify, manage and monitor any conflict of interest that they may have.

The guide and Toolkit are intended to be practical and sensible.

We recognise that public officials are also individuals with their own private interests. Consequently, there will be times when their private interests will be in actual, perceived or potential conflict with their public duty to put the public interest first.

These resources are based on the understanding that conflicts of interest do occur in the normal course of public officials' work, and that identifying and disclosing such conflicts is an integral part of public official duties.

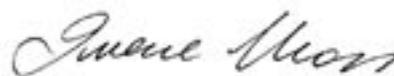
In our experience, problems arise when conflicts of interest are not dealt with openly and effectively. The catalyst for many cases of serious corruption and misconduct is an undisclosed or unmanaged conflict of interest.

These resources are intended to help public sector organisations create a workplace culture that encourages and supports the identification and disclosure of conflicts of interest and to help organisations establish a comprehensive framework for managing conflicts of interest effectively.

The integrity of individual officials within government and the existence of sound policies and procedures to guide the management of conflicts of interest are vital to ensuring a public sector that is not only free of corruption, but is perceived to be free of corruption.



Brendan Butler SC, Chairperson
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Acknowledgements

This document provides strategies and options for managing conflicts of interest in Australian public sector organisations. The document represents the first advisory publication jointly undertaken and produced by the Queensland Crime and Misconduct Commission (CMC) and the New South Wales Independent Commission Against Corruption (ICAC). The CMC and ICAC would like to formally acknowledge the various people and organisations who contributed to the development of this document.

Contributors to an initial Forum held in Sydney in June 2003, which explored the need for guidelines and practical tools for dealing with conflicts of interest as well as suggestions for a potential framework, included Janos Bertok, Public Governance Directorate, Organisation for Economic Cooperation and Development (OECD) and several senior representatives of Public Sector Commissions, Ombudsman's Offices, and anti-corruption agencies from various Australian states, the Commonwealth and New Zealand.



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The development of these publications occurred as a result of the commitment, dedication, innovation, and perseverance of a series of ICAC and CMC staff, including Alexandra Mills, Rod Marsh, Sue Bolton, Seckin Cetin, Peter Richardson, Jane Coulter, Andrew Marsden, Lynn Atkinson and Grant Poulton from ICAC and Narelle George, John Boyd, and Michelle Clarke from the CMC.

Finally, we would like to thank the external reviewers of these documents who provided valuable feedback on short notice:

Stephen Horne, Assistant Auditor General
(Performance Audit) (NSW)

Susan Johnson, Child Safety Director, Department of
Justice and Attorney General (Qld)

Rodney Metcalfe, Deputy Ombudsman (Qld)

Chris Wheeler, Deputy Ombudsman (NSW)

Dominic Riordan, Manager Investigations and Review,
Department of Local Government (NSW)



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Introduction

This guide and the accompanying Toolkit have been produced to assist public sector organisations in Queensland and New South Wales to develop and implement effective policies and procedures for managing conflicts of interest.

This guide¹ defines conflicts of interest and related terms and concepts; outlines the principles that should govern management of conflicts of interest; and provides guidelines for public sector organisations to follow when developing their conflicts of interest policies and procedures.

The Toolkit provides a range of tools to assist public sector organisations to both develop and implement an effective conflicts of interest policy that is customised to their organisation. The tools include checklists and templates to assist organisations on a step-by-step basis. The guide and accompanying Toolkit are intended to help government organisations:

- develop an effective conflicts of interest policy that fosters public confidence in the integrity of public officials and public decision making
- create a practical framework of principles, strategies and tools for managing conflicts of interest, and for ensuring its ongoing relevance in a continuously evolving environment
- promote a public sector culture where conflicts of interest are properly identified and resolved or managed in a clear, transparent, accountable and timely way
- support partnerships between the public sector and the business and not-for-profit sectors in accordance with clear public standards defining the parties' responsibilities for integrity.

The guide and Toolkit do not prescribe a single, rigid approach for managing all conflicts of interest. The decision on how to manage particular conflicts of interest is ultimately a matter for the organisation and employee concerned, and a range of options may be available.

A 'conflict of interest' involves a conflict between a public official's duty to serve the public interest, and the public official's private interests.

¹The guide has been based on the principles in the *OECD Guidelines for Managing Conflict of Interest in the Public Sector*, released by the Organisation for Economic Co-operation and Development (OECD) in June 2003.

Why managing conflicts of interest is important

The community expects that public officials will perform their duties in a fair and impartial way, putting the public interest first at all times.

The integrity of public officials and public sector processes is also fundamental to the rule of law, one key principle of which is that every citizen is equal before the law and should receive fair and impartial treatment.

While conflicts of interest should be avoided wherever possible, conflicts often happen without anyone being at fault. Conflicts of interest can – if not identified, disclosed and managed effectively – cause public officials to put private interests above the public interest; thereby compromising their work and creating a catalyst for serious misconduct and corruption.

Conflicts of interest are not wrong in themselves – public officials are also private individuals and there will be occasions when their private interests come into conflict with their duty to put the public interest first at all times – but such conflicts must be disclosed and effectively managed.

Public sector organisations must also ensure that conflicts of interest are seen to be managed in a transparent and accountable manner. The perception that conflicts of interest are not being managed properly can undermine confidence in the integrity of public officials and public sector organisations.

The scope of actual, perceived or potential conflicts of interest is arguably greater than in the past, as public–private sector partnerships and complex inter–agency relationships become increasingly common.

In this context, public sector organisations need to recognise that conflicts of interest will occur in the course of public officials' work, and must work to create a workplace culture that encourages and supports the identification and declaration of conflicts of interest.

They must work to dispel the misconception that a conflict of interest is wrong in itself and should therefore be kept quiet or hidden.

However, once a private interest has *in fact* compromised the proper performance of a public official's duties – i.e. a conflict of interest has been improperly acted on or has influenced actions or decision making – this conduct is more appropriately regarded as an instance of misconduct, abuse of office or even corruption.

Managing conflicts of interest properly brings a range of benefits for public sector organisations.

First and foremost, opportunities for corruption or improper conduct are reduced.

Second, effective policies and procedures for identifying, disclosing and managing conflicts of interest mean that unfounded accusations of bias can be dealt with more easily and efficiently.

Third, the organisation can demonstrate its commitment to good governance by addressing an issue that is commonly associated with corruption and misconduct.

A transparent system that is observed by everyone in an organisation as a matter of course will also demonstrate to members of the public and others who deal with the organisation that its proper role is performed in a way that is fair and unaffected by improper considerations.

Failure to identify, declare and manage a conflict of interest is where serious corruption often begins and this is why managing conflicts of interest is such an important corruption prevention strategy.

Conflicts of interest cannot always be avoided or prohibited. Unavoidable conflicts of interest need to be identified, disclosed and effectively managed.

Defining the key concepts

Public officials and organisations must have a clear understanding of what constitutes a conflict of interest in order to manage such conflicts effectively.

This section discusses and defines the key concepts and terms associated with conflicts of interest.

PRIVATE INTERESTS

An 'interest' in this context means anything that can have an impact on an individual or group. The term 'private interests' includes not only the personal, professional or business interests that each of us has, but also the personal, professional or business interests of the individuals or groups we associate with. This might include relatives, friends or even rivals and enemies. Whether we wish to see them benefit or be disadvantaged, we have a private interest in relation to such people.

Private interests, then, are those interests that can bring benefit or disadvantage to us as individuals, or to others whom we may wish to benefit or disadvantage.

Many conflicts of interest management policies divide private interests into two types: pecuniary and non-pecuniary.

Pecuniary interests (known as 'material personal interests' in some jurisdictions) involve an actual or potential financial gain or loss.

Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative or other close associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits (such as concessions, discounts, gifts or hospitality) from a particular source.

Statutory provisions exist for declaring and managing pecuniary interests in many areas of the public sector.

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

But private interests are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss. They also include many social and professional activities and interests. For example, a public official might be a member of a club, or have personal affiliations or associations with individuals or groups, including family and friends. Any of these relationships could be the source of interests that could conflict with the public interest in a particular situation.

Moreover, we all have our own personal opinions, prejudices and attitudes, which we are expected to set aside when performing our official duties. However, if personal values are likely to impact on the proper performance of public duty, then these can also lead to a conflict of interest.

Enmity as well as friendship can give rise to an actual or perceived conflict of interest.

NSW Ombudsman 2003 *Conflict of Interests fact sheet No 3*
July 2003

PUBLIC DUTY

All public sector officials have a duty to always put the public interest above their own personal or private interests when carrying out their official duties.

It is important to note that this principle applies to anyone engaged to deliver government programs and services, whether for remuneration or not. Such persons include employees of commonwealth, state and local governments, members of boards and committees, councillors, academic and non-academic staff of public universities, casual and contract staff, as well as consultants and volunteers.

The public interest can be defined as the interest of the community as a whole. It is *not* the sum of individual interests nor the interest of a particular group, but the collective interest of the entire community.

Determining the public interest in a particular situation can be complex, even problematic, but on a practical, day-to-day level public officials can best fulfil their public duty to put the public interest first by:

- carrying out their prescribed official duties fully and effectively
- carrying out their official duties within established ethical standards and frameworks
- identifying any actual, perceived or potential conflicts of interest that they have and ensuring these are managed effectively.

Formal ethical frameworks have been established for most Australian public sector employees, including those in the NSW and Queensland public sectors. In Queensland, the *Public Sector Ethics Act 1994* outlines the following five ethics principles for public officials:

- Respect for the law and the system of government
- Respect for persons
- Integrity
- Diligence
- Economy and efficiency²

The model code of conduct for the NSW public sector identifies five general principles that “all public sector employees need to follow”:

- Responsibility to the government of the day
- Respect for people
- Integrity and public interest
- Responsive service
- Economy and efficiency³

These two frameworks express principles and values found in many comparable jurisdictions to explain the meaning of public duty. Underpinning these principles and values is the concept that public employees are obliged to always put the public interest before any private interest they may have. As a result, public sector employees are expected to:

- restrict the extent to which a private interest could compromise, or be seen to compromise, their impartiality when carrying out their official duties
- abstain from involvement in official decisions and actions which could be compromised by their private interests and affiliations
- avoid private action in which they could be seen to have an improper advantage from inside information they might have access to because of their official duties
- not use their official position or government resources for private gain
- ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties

² *Public Sector Ethics Act 1994* (Qld)

³ Premier's Department 1997 *Model Code of Conduct for NSW public agencies: policy and guidelines*

- not take improper advantage of their official position or privileged information gained in that position when seeking employment outside the public sector.

Recognising and managing conflicts of interest helps public employees perform their official duties in the public interest. Consequently, it is crucial for people to be able to distinguish between their public and private roles. To achieve this, public sector organisations must ensure that their employees understand both the limits and obligations of their proper roles and the ethical obligations that apply to them.

The public duty of a public sector employee is to always act in the public interest by performing their proper role according to the accepted public sector ethical framework.

CONFLICTS OF INTEREST

The Organisation for Economic Cooperation and Development (OECD) has undertaken extensive work on conflicts of interest and has developed the following simple and practical definition:

A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private ... interests which could improperly influence the performance of their official duties and responsibilities.⁴

A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.

Conflicts of interest can be actual, perceived or potential.

- An **actual conflict of interest** involves a direct conflict between a public official's current duties and responsibilities and existing private interests.
- A **perceived or apparent conflict of interest** can exist where it could be perceived, or appears, that a public official's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- A **potential conflict of interest** arises where a public official has private interests that could conflict with their official duties in the future.

For more detail on the differences between these types of conflicts of interest, refer to the accompanying Toolkit.

Understanding and defining the differences between actual, perceived or apparent and potential conflicts of interest assists in identifying when a conflict exists and determining which type of management approach may be the most appropriate.

It is important to recognise that a poorly-managed *perceived or apparent* conflict of interest can be just as damaging as a poorly-managed *actual* conflict of interest. The critical factor is that public officials must not only behave ethically, they must also be seen to behave ethically.

There is nothing unusual or necessarily wrong in having a conflict of interest. How it is dealt with is the important thing.

⁴ OECD guidelines, 2003, para 10.

CONFLICTING DUTIES – ANOTHER TYPE OF CONFLICT

So far this guide has referred to situations where there could be conflict between an official's proper role, which reflects the public interest, and another personal role that is characterised by a private interest of some kind. There are two other situations that public sector organisations should be aware of when they are establishing a framework for managing conflicts.

The first situation is where a public official has multiple roles and could be said to wear two hats. In addition to their principal job, an individual may find that part of that job involves taking on another public sector or community-based role as well. A common example is when a position in a major government department includes being a member of the board of a statutory authority that the department has some responsibility for.

Where individuals have more than one official role it may be difficult to keep the roles separate. The result can be poor performance of one of the roles, at best, and unlawful or improper decision making at worst.

The risk of the duties of these positions conflicting is more likely where a public sector employee has two roles in organisations with a competitive relationship, or where one has a regulatory or review role in relation to the other. Good corporate governance processes in public organisations usually address this issue by segregating functions and areas of work from each other. Nevertheless, conflicts between the duties of these roles can arise, particularly in small communities where staff numbers are limited or where there is a lack of competition. The conflicts in these circumstances are not always recognised because no private interest is involved or apparent. This situation is usually described as one of **competing interests** or a **conflict of duty**.

The second situation, which often arises from a public official having multiple roles, is the problem of officials acquiring confidential information in the course of their proper role that could be useful in relation to their work in another role.

The corruption risk in this situation is that the public sector employee may be tempted to use the information improperly, to give advantage to the second public organisation, or create bias against or prejudicial treatment of another group or person.

These situations should be considered at the same time as conflicts of interest because the underlying principles for managing them are the same. As for conflicts of interest, the principle that all public decisions must be impartial and based on the merits of the situation without regard to improper considerations still applies. Many of the mechanisms for managing conflicts of interest can also be used to manage these situations.

The primary goal of systems to manage conflicts of interest is to ensure that decisions are made – and are seen to be made – on proper grounds, for legitimate reasons and without bias.

Identifying a conflict of interest

It is not always easy to decide when private interests and public duty are, or might be, in conflict with each other. The key test is whether an individual public official could be influenced, or appear to be influenced, by a private interest in carrying out their public duty.

This is an objective test – when applied it should focus on the official role and the private relationships and interests of the person concerned, and whether a reasonable disinterested person would think these relationships and interests could conceivably conflict or appear to conflict with the person's public role.

Balancing public duty and private interest

A conflict between public duty and private interest is not always avoidable, as public officials are also private citizens with private interests. Additionally there are other circumstances where conflicts of interest cannot be reasonably avoided. For example, where a person's involvement is essential to a matter, or where there is a policy of affirmative action, or where local preference rules apply.

When a conflict of interest arises there are a number of different management options that can be adopted to deal with the conflict and these options are presented in the Toolkit.

The challenge facing public sector organisations is to develop conflicts of interest policies and management strategies that strike a balance between the public and private interests of employees. Getting the balance right means being able to identify risks and choose appropriate management strategies whilst satisfying probity requirements of the public sector.

An approach that is too strict or attempts to corral private interests too tightly may impinge upon the rights of the individual, or prove unworkable. There is also the risk that overly strict provisions will discourage employees from disclosing conflicts of interest, or deter people from working in the public sector.

Four guiding principles

This guide draws on four principles that should guide and underpin the development of systems, policies and procedures to manage conflicts of interest. The principles reflect values that already exist in most public sector ethics frameworks.

1. PROTECT THE PUBLIC INTEREST

Serving the public interest is central to the public duty of public sector employees. Ensuring that the public interest is not compromised should be the overriding objective of any conflicts of interest management strategy.

Public officials should only make decisions and provide advice based on relevant law and policy. In doing so, they should act within the limits of their proper roles, and focus on the merits of each case without regard for private interests, personal attitudes or opinions. In particular, decisions that apply policy to individual cases should be impartial and not prejudiced by religious, professional, party–political, ethnic, family, or other personal preferences, alignments, or enmity.

In order to meet their public duty obligations, public officials must not only act within the law but must also apply broader public service values such as impartiality, integrity and serving the public interest.

2. SUPPORT TRANSPARENCY AND ACCOUNTABILITY

Conflicts of interest must be seen to be managed fairly and effectively. To achieve this, the processes for identifying, disclosing and managing conflicts of interest must be transparent – that is, the processes should be open to scrutiny and help maintain accountability.

Strategies such as the registration of interests, and the removal of officials from tasks or duties that involve a conflict of interest are useful in this context. Disclosure of private interests or affiliations that

could compromise, or be seen to compromise, the unbiased performance of an official's work is the first step towards the effective management of the conflict.

By taking a consistent and open approach to resolving or managing conflicts, organisations will encourage staff to follow policy and procedures. If members of the public, stakeholders, partner agencies and client groups are aware of the organisation's policies and procedures for managing conflicts of interest they can be more confident that the organisation and its employees will not act prejudicially or improperly.

3. PROMOTE INDIVIDUAL RESPONSIBILITY AND PERSONAL EXAMPLE

Resolving or managing conflicts of interest in favour of the public interest demonstrates the integrity and professionalism of individuals as well as organisations.

Managing conflicts involves input from all levels of an organisation. The management of an organisation is responsible for establishing systems and policies. Because private interests are usually known only to individuals, it is equally important for employees to take responsibility for identifying and acknowledging their own conflicts of interest.

All public employees are individually responsible for arranging their private affairs as far as reasonably possible to prevent conflicts of interest arising. Managers have an additional role in setting an example to their staff by demonstrating commitment to established policies and procedures.

4. BUILD A SUPPORTIVE ORGANISATIONAL CULTURE

Public sector managers are also responsible for providing and implementing a policy environment that helps and encourages effective decision making when conflicts of interest arise.

Organisations can provide, implement and promote management policies, processes, and practices that create and sustain a culture of integrity by:

- assisting staff with guidance and training to promote understanding of the established rules and practices, and their application to the working environment
- encouraging open communication and dialogue so that staff are comfortable disclosing and discussing conflicts of interest in the workplace
- protecting information about disclosed conflicts of interest from misuse by others
- including staff in any development or change in organisational policies and procedures, to encourage ownership and adherence.

The purpose of systems to manage conflicts of interest is to maintain the integrity of official policy and administrative decisions, and support public confidence in government. Individual public sector organisations can help to achieve this outcome by developing:

- specific standards for promoting integrity set in codes of conduct and elsewhere
- processes for identifying risk and dealing with emerging conflicts of interest
- appropriate external and internal accountability mechanisms

- management approaches (including sanctions) that aim to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards.

Conflicts of interest may be discovered and still have an impact after an individual has left an organisation.

Guidelines for managing conflicts of interest

FRAMEWORK

No single set of guidelines can address every conceivable situation because conflicts of interest arise in many different ways. The elements of this guide have been chosen for their broad applicability, their effectiveness and their proven utility across all parts of the public sector.

In some cases, organisations will be required by legislation to manage conflicts of interest in a particular way. Legislation generally provides a minimum standard while the recommendations here and in the Toolkit provide examples of best practice.

The information in this section is generic and can be applied to individual agencies regardless of the legislative or regulatory requirements that bind them. Many of the models and suggestions in this guide go beyond most legislative provisions for managing conflicts of interest.

When putting the guidelines into practice, it is important to recognise that in many instances, there is likely to be more than one way to effectively manage a conflict of interest. The choice of models should be informed by the operating environment, legislative requirements and any other available options.

There are seven basic steps for developing and implementing a comprehensive conflicts of interest policy which will allow the organisation to manage conflicts of interest before problems arise.

1. **Identify** the different types of conflicts of interest that typically arise in the organisation.
2. **Develop** an appropriate conflicts of interest policy, management strategies and responses.
3. **Educate** staff, managers and the senior executive and publish the conflicts of interest policy across the organisation.
4. **Lead** the organisation through example.
5. **Communicate** the organisation's commitment to its policy and procedures for managing conflicts of interest to stakeholders, including contractors, clients, sponsors and the community.
6. **Enforce** the policy.
7. **Review** the policy regularly.

In the following section, each of these steps is explained in detail. The tools to implement them are provided in the Toolkit.

1 IDENTIFY THE DIFFERENT AREAS OF RISK FOR 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. Most organisations have a cluster of issues that are likely to arise from the particular functions they perform. These issues should form the basis for the design of a conflicts of interest policy and accompanying management strategies.

Effective management of conflicts of interest is predicated on an organisation being able to identify specific conflicts of interest when they occur. Ideally, the aim is to be able to minimise the occurrence of *actual* or *perceived* conflicts of interest by identifying and managing them while they remain *potential* conflicts. Clearly identifying at-risk functions and the positions or organisational areas that perform them is the first step in managing the risk that conflicts of interest present.

Staff participation in this process of identification is important. Not only will staff involvement ensure better coverage of relevant conflicts of interest risks, but staff are more likely to feel they own the policy and contribute to its effective implementation if they have played a part in its development. Examples of how staff might be encouraged to participate can be found in the accompanying Toolkit.

Some examples of private interests that could create pecuniary and non-pecuniary conflicts of interest include:

- financial and economic interests (such as debts or assets)
- family or private businesses
- affiliations with for-profit and not-for-profit organisations
- affiliations with political, trade union or professional organisations and other personal interests

- involvement in secondary employment that potentially conflicts with an official's public duties
- undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household)
- enmity towards, or competition with, another person or group

Areas of work or organisational functions that create a high risk for potential conflicts of interest include (but are not limited to):

- interacting regularly with the private sector
- contracting and procurement
- inspecting, regulating or monitoring of standards, businesses, equipment or premises
- issuing qualifications or licences
- providing a service where demand exceeds supply
- allocating grants of public funds
- issuing, or reviewing the issue of, fines or other sanctions
- providing subsidies, financial assistance, concessions or other relief to those in need
- making determinations or handing down judgement about individuals or disputes
- having discretion concerning planning or development applications
- carrying out regulatory tests and procedures
- making appointments to positions.

Functions that are subject to close public or media scrutiny should also receive specific attention.

The process of identifying risk areas should be consistent with the definitions, principles and essential requirements of the legislation and regulations that apply to the organisation and its employees.

2 DEVELOP APPROPRIATE STRATEGIES AND RESPONSES

Once likely risk areas have been identified, strategies and practices can be developed to manage the variety of conflicts of interest that staff may face. Effective management depends on staff and managers being aware of an organisation's approach to conflicts of interest and their responsibilities within it.

Rules about what is expected of staff and management should distinguish between individual responsibilities and the responsibilities of the organisation, and ensure that staff and managers are able to:

- recognise all actual, perceived and potential conflicts of interest as they arise
- disclose conflicts of interest and clearly document the strategies implemented to manage them
- monitor the effectiveness of strategies chosen to manage identified conflicts of interest.

To help organisations meet these responsibilities, a model management approach with practical examples is provided in the accompanying Toolkit.

3 EDUCATE STAFF AND SENIOR MANAGERS

The effective implementation of a conflicts of interest policy will require the ongoing education of *all* members of the organisation, from contract workers, volunteers and external agents, to senior managers and board members.

All employees should have access to policies and other information that will help them to identify and disclose a conflict of interest. Managers need to know how to manage conflicts of interest effectively to help maintain the organisation's functional integrity.

Conflicts of interest education should be included in organisational induction programs, and be part of ongoing education for staff and management.

As a first step, education programs should ensure all employees understand the concept of a conflict of interest. An education program is also a useful place to point out the specific conflicts of interest and high-risk areas identified in the first phase of developing the organisation's conflicts of interest policy, as well as any differences in the way the policy applies to staff (i.e. depending on their seniority, roles and functions).

Training materials can give clear and realistic descriptions of the circumstances and relationships that can lead to conflicts of interest, and focus on practical examples of ways to resolve them. This is particularly important in rapidly-changing grey areas such as private-sector sponsorships, privatisation and deregulation programs, relations with non-government organisations, political activity, public-private partnerships, and the interchange of personnel between the public and private sectors.

Broad corporate awareness and reinforcement of the potential for conflicts of interest to arise, and appropriate strategies for their management, will assist in ensuring compliance. Such awareness and reinforcement will also help anticipate at-risk areas where further prevention work may be necessary.

Private sector partner organisations and contractors should also be made aware of the organisation's approach to managing conflicts of interest where relevant. They may also benefit from training to encourage their compliance and support for organisational policies.

4 LEAD BY EXAMPLE

All public officials are expected to manage their private interests in a way that preserves public confidence in their own integrity and that of their organisation. However, effective implementation of a conflicts of interest strategy requires thought, effort and commitment from the top.

Managers will need to demonstrate leadership commitment to the organisation's conflicts of interest policy by modelling compliance and appropriate behaviour. This top-down approach relies on managers actively supporting the policy and associated procedures – not only by word and deed, but also by being clearly and unambiguously seen to do so by staff. Mere lip service to a narrow interpretation of an organisation's conflicts of interest policy is not generally sufficient to encourage public confidence in the integrity of an organisation or its staff.

Managers should also encourage their staff to disclose conflicts of interest and be prepared to exercise judgement to help staff resolve or manage a conflict of interest by:

- considering carefully whether a reasonable person who is in possession of the relevant facts would be likely to think that the organisation's or individual's integrity was at risk from an unresolved conflict of interest

- weighing the interests of the organisation, the individual, and the public interest when determining the most appropriate solution to resolve or manage the conflict of interest
- considering and weighing other factors, which may include the level and type of position held by the staff member concerned, and the nature of the conflict of interest.

Managers have the power to influence staff in how the conflicts of interest policy is implemented and how well the procedures are followed. If ethical management of conflicts of interest is considered a priority by senior management, then others in the organisation will follow this lead.

5 COMMUNICATE WITH STAKEHOLDERS

The range of stakeholders in this context is broad and includes the general community. As this document emphasises, the *perception* that a conflict of interest is not being managed properly can be very damaging – regardless of how well it is in fact being managed. This is one reason why public sector organisations should communicate their commitment to their policies and procedures for managing conflicts of interest to all their stakeholders, including the general community.

Public sector organisations that have significant interactions with the private sector or the not-for-profit sector should identify the conflicts of interest that might arise. Safeguards can then be developed to prevent confidential information, authority or influence gained through such involvement from being improperly used.

It is important for public organisations to inform the people they deal with about their conflicts of interest policies and the potential consequences of non-compliance – such as the termination of a contract, or criminal prosecution for corruption. Many public sector organisations have statements of business ethics that they use to communicate their ethical and accountability obligations to their business partners and contractors.

Two-way communication with the private and not-for-profit sectors can also help to keep conflicts of interest strategies relevant and effective. Client, stakeholder and partner organisations can play a role in developing conflicts of interest management strategies in several ways, for example by:

- being involved in jointly reviewing high-risk areas – such as the handling of privileged or commercial-in-confidence information – in order to identify and develop appropriate preventative mechanisms to protect both sides in a potential conflict
- providing feedback on a draft conflicts of interest policy
- developing and maintaining up-to-date mechanisms for identifying and resolving real or potential conflicts of interest. This step is essential when involving representatives from other sectors in the work of the organisation – or conversely, when members of the organisation are involved in the activities of such bodies.

Involving partners and other stakeholders in the design of new integrity measures to identify or negotiate mutually acceptable solutions, helps ensure that proposed standards reflect actual public expectations, and encourages cooperation in the implementation process.

Above all, in creating partnerships for integrity, it is vital that the organisation ensures that, whatever the proposed activity or involvement with other bodies, decision-making procedures at all stages can be audited for integrity and transparency, and can be justified.

6 ENFORCE THE POLICY

It is clear that both individuals and organisations have responsibilities for implementing a conflicts of interest policy.

Individuals are responsible for supporting the policy both by their own compliance and by encouraging others' compliance – particularly those they supervise. The management of an organisation is responsible for properly enforcing the policy and the effectiveness of its related procedures.

Once the policy is in place – i.e. fully implemented with all employees made aware of the policy requirements and their personal responsibilities – it is essential to strictly enforce this policy. Moreover, it must be seen by all to be enforced. To help achieve this, consequences for non-compliance, which are proportional to the seriousness of the offence, should also be clearly set out and employees made aware of these.

Non-compliance might range from a simple failure to register a relevant private interest as required, to refusal to resolve or properly manage a conflict of interest of which the employee is aware.

Depending upon the seriousness of the breach and the relevant legal and industrial relations frameworks, such sanctions may range from being at minimum a disciplinary matter, to sanctions for abuse of office or prosecution for corruption. All sanctions must be enforceable.

To complement sanctions for policy breaches, effective forms of redress can be provided through positive management. For example, such measures could include retrospective cancellation of affected decisions and tainted contracts, and exclusion of beneficiaries from future processes. These forms of redress can be very effective in discouraging those who may seek to benefit, directly or indirectly, from such breaches.

Breaches of policy can be detected through monitoring mechanisms established for this purpose. These mechanisms will include management and internal controls as well as external oversight functions, such as independent auditors or an ombudsman. Organisations should ensure that these mechanisms and functions work together to detect and discourage non-compliance with required standards.

Effective complaint mechanisms for dealing with allegations of non-compliance should also be developed, together with clear rules and procedures for reporting violations, and sanctions for those who abuse the complaints mechanism. To encourage reporting, the organisation should ensure that those wishing to make a disclosure in accordance with correct procedures can feel confident that they will be protected by the organisation against reprisal.

7 REVIEW THE POLICY

As with all organisational policies and procedures, it is essential that a formal process is established for regularly monitoring and evaluating the effectiveness of the conflicts of interest policy.

A review should be capable of revealing how effective the policy is in terms of compliance and outcome. This can only be effective if managers and staff are consulted about their experiences in using the policy and its procedures.

The policy and associated procedures will need to be updated, adjusted or rewritten as necessary, to keep pace with a continuously evolving environment and to ensure that they remain relevant and effective in dealing with current and anticipated conflicts of interest.

This periodic system assessment should include reviewing at-risk areas within the organisation, and its activities, for potential conflicts. At the same time the organisation needs to review current assumptions and preventive measures, and to identify new measures, which deal with emerging conflicts of interest. For example, the impact of new technology (such as internet trading) may require procedures to effectively record an individual's regularly changing pecuniary interests.

For this reason, involving staff and other interested parties in the review process can substantially contribute to the improvement of the policy and existing procedures. As users, their opinion and experience in dealing with the day-to-day implementation of the conflicts of interest policy can bring a practical aspect into the process, and help build a common understanding of the organisation's requirements.

Where appropriate, it is also useful to draw upon others' experiences of risk, such as those of clients and partner organisations. Apart from tapping into a broader set of experiences, this strategy also indicates the organisation's continuing commitment to the process of risk management and safeguarding its integrity.

An important final step in the review process is to ensure all staff receive up-to-date information about any changes to the policy or procedures, to help them understand any new principles and rules, and improve their practical decision-making skills. Support mechanisms should also be provided to help managers review and improve their skills in identifying, resolving and managing conflicts, and providing sound advice on this issue to their staff.

RESPONSIBILITIES

Organisations

The role of the organisation is to identify major areas of activity where conflicts of interest may occur, and take the action necessary to establish policies and procedures for managing conflicts when they arise. The CEO and Senior Executives and, in some instances, governing Boards are the appropriate people to take organisational action.

Essentially, an organisation's responsibilities in this area are to:

- provide a clear and realistic description of what circumstances and relationships are likely to lead to conflicts of interest for those in the organisation
- ensure staff and managers know what is required of them in relation to identifying and declaring conflicts of interest (when, in what situations, how etc.)
- develop formal procedures to allow staff and managers to disclose their interests in a transparent manner
- provide staff and managers with relevant and effective strategies to manage conflicts of interest appropriately
- develop appropriate procedures for managing conflicts of interest.

Managers and supervisors

Managers and supervisors have a role as organisational leaders in implementing and giving effect to the policies developed by the organisation on a day-to-day basis. They are also in a position to demonstrate how a conflicts of interest policy should operate by setting an example when their own conflicts arise.

Individual public officials

Individuals make up the organisation and, regardless of their level, each person has a responsibility to follow organisational policy and procedural requirements established to manage conflicts of interest. Employees and managers alike are also responsible for monitoring their own interests and the possibility that such interests may conflict with their public duty.

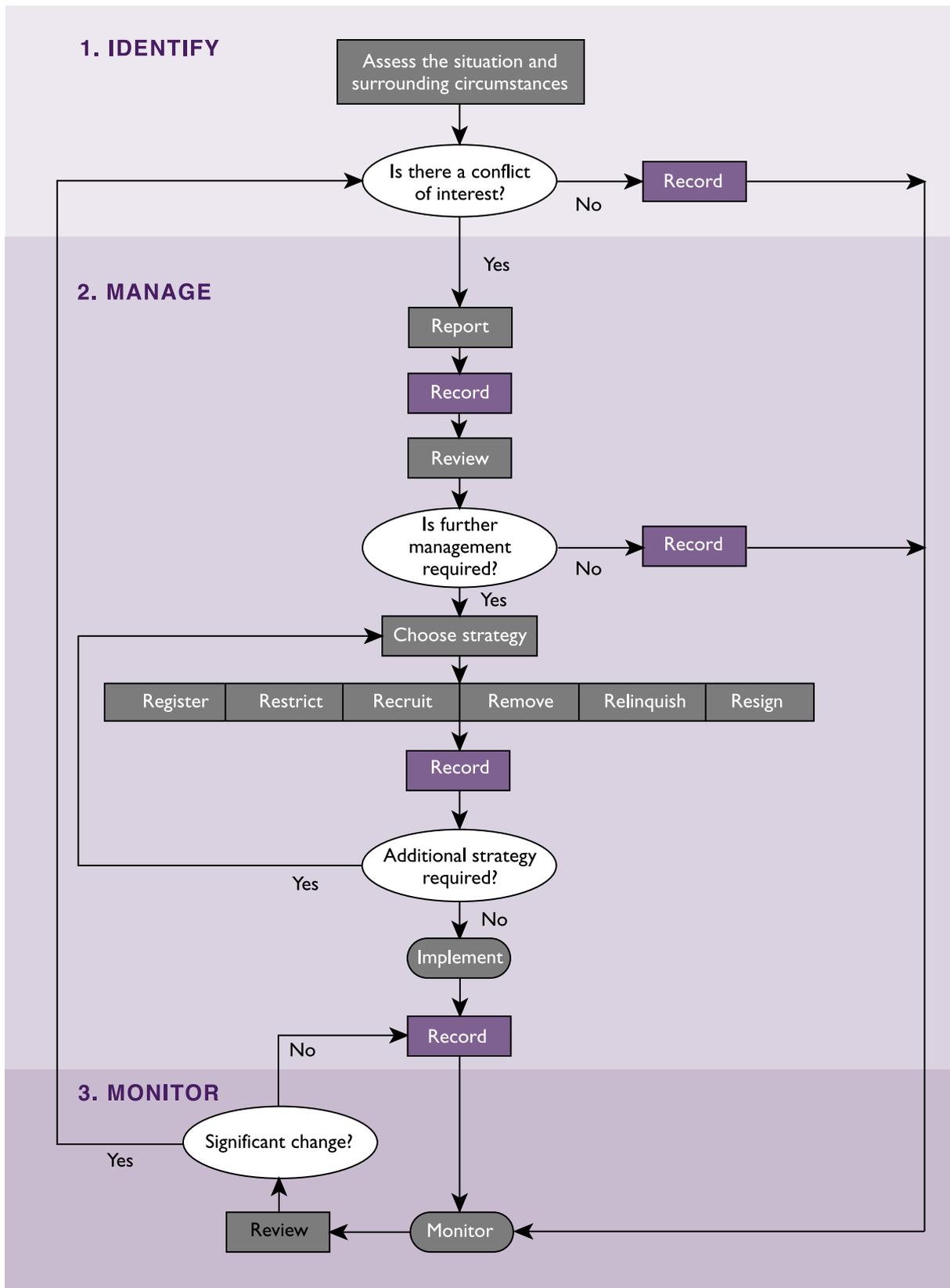
Individual public officials must:

- be aware of potential conflicts of interest that might affect them
- avoid where possible any obvious conflicts that they encounter
- promptly identify and disclose any actual or potential conflicts of interest that might affect (or might be perceived to affect) the proper performance of their work.

MODEL DECISION-MAKING FLOWCHART

The following flowchart illustrates the steps that should be taken in deciding how to deal with conflicts of interest. There are three major stages in the process – identify, manage and monitor. In application each stage should flow seamlessly to the next. The flowchart can be incorporated into policy documents and used as a model management framework to guide individual decision making.

The model is expanded on in the Toolkit that accompanies this guide.



THE TOOLKIT

This guide provides the overarching principles, guidelines and a management model that should underpin the development and implementation of an effective approach for the management of conflicts of interest.

The Toolkit moves to the next level by providing tools to practically develop and implement an effective conflicts of interest policy. The tools have generic application – they can assist any organisation on a step-by-step basis to develop and implement a policy that is specific and customised to that organisation, and can assist any public official in identifying, managing and monitoring any conflict of interest that may arise.