



Conflicts of interest – myths, misconceptions and management

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IBAC's report *Managing corruption risks associated with conflicts of interest in the Victorian public sector* highlights organisational functions and activities in the public sector at heightened risk of conflicts of interest.

This resource highlights common myths and misconceptions around conflicts of interest to improve public officers' understanding and management of conflicts, and to strengthen public agencies' controls around conflicts of interest.

Conflicts of interest can be actual, potential or perceived:

- An **actual** conflict of interest occurs when a public officer's duties actually *do* conflict with their private interests.
- A **potential** conflict arises when a public officer's duties *could* conflict with their private interests. A public officer can anticipate potential conflicts by thinking about how their private interests and associations might influence their public duties.
- **Perceived** conflicts stem from the reasonable view of the public or a third party that a public officer's private interests *could* improperly influence their decisions or actions, or the actions or decisions of their organisation. The perception is that a public officer may not be objective in their dealings as a result of the conflict.

Each of these forms of conflict must be properly addressed.

Corruption can be facilitated if public officers and public sector agencies fail to properly identify, declare and manage a conflict in the public interest. This can undermine the community's trust in public sector decisions and actions, increase the cost to the community of goods and services, and can expose agencies to significant corruption risk and reputational damage.

Sometimes public officers wilfully disregard their organisation's requirements around handling conflicts of interest to pursue personal benefits for themselves or associates. However, public officers do not always clearly understand what constitutes a conflict of interest or how to declare and manage conflicts.

Common myths and misconceptions about conflicts of interest include:

1. A public sector officer with a conflict of interest is corrupt.
2. It's more important that I get the job done quickly.
3. Conflicts of interest can always be avoided.
4. There is no conflict because I can act fairly and without bias.
5. I told my manager about the conflict of interest, that's all I need to do.
6. My interests are private and are not relevant to my role.

Myth 1: A public sector officer with a conflict of interest is corrupt

Conflicts of interest are not inherently corrupt. The risk of corruption stems from the failure of individuals and their organisations to properly and actively identify, declare and manage a conflict in the public interest. Conflicts of interest become problematic when they are concealed, only partially revealed or mismanaged. Appropriate identification, declaration and management of a conflict safeguards the reputation of the public officer and their agency.

Case study – Operation Charnley

IBAC investigated allegations a councillor was accepting bribes in the form of gifts in exchange for awarding community grants to a local businessman. Although the allegation was not substantiated, IBAC identified the councillor failed to declare the conflict of interest arising from his financial loan to the director of a company that supplied services to the council, and which had strong affiliations with an organisation that received council grants. The councillor also did not declare that he had received a motor vehicle in lieu of financial repayment of the loan.

The councillor's failure to declare the loan and repayment with the motor vehicle created a perceived conflict of interest in relation to the councillor's role in awarding community grants. The councillor should have declared this information via the requisite primary and ordinary returns in accordance with the provisions of the *Local Government Act 1989*.

Myth 2: It's more important that I get the job done quickly

Public sector agencies are often required to deliver goods and services to the community under considerable time and other pressures. However, getting the job done must not mean 'doing it at any cost'. The Victorian community expects that public officers will act with integrity and impartiality.

It is important that processes to identify and manage risk and prevent corruption are followed to ensure responsible, fair and objective decisions are made, including those involving expenditure of public money. Completing a conflict of interest declaration is essential to explore any risks arising from the public officer's interests that may impact or be seen to impact their ability to be impartial, and to develop an appropriate management plan. Failing to properly consider conflicts or treating declarations and management plans as a compliance exercise only exposes agencies to corruption vulnerabilities.

Public sector agencies should ensure their conflict of interest processes, including those for specific business functions and activities, are clear and easy to follow. The potential consequences of breaching the policies and processes should be clearly communicated. Consequences can include termination of employment, other disciplinary action and/or criminal prosecution.

Case study – Operation Lansdowne

In Operation Lansdowne, IBAC identified a number of senior V/Line officers who placed undue emphasis on networks and personal friendship, rather than merit-based recruitment and procurement processes. Operation Lansdowne identified a culture of expediency and an environment where conflicts of interest were not appropriately declared or managed.

For example, a former V/Line senior executive put forward a former colleague and friend, Person A, to the then CEO of V/Line for a priority role. Person A was subsequently recruited without a formal interview process, and appointed without providing evidence he held the required qualifications and without probity checks being conducted. The lack of process revealed in various recruitment and procurement processes was justified on the basis there was a scarcity of suitable candidates and decisions needed to be made and acted upon quickly.

Myth 3: Conflicts of interest can always be avoided

There are some circumstances which are more likely to give rise to conflicts of interest. For example, in rural and regional areas, closer relationships between public officers and the community may heighten the chances of a conflict of interest. Similarly, when skills are scarce, there may be a limited applicant pool for specific positions. In these types of situations conflicts may be unavoidable. Proper identification, declaration and management of the conflict is therefore essential to mitigate risks arising from the conflict.

The Victorian Public Sector Commission (VPSC) provides guidance and tools for effective conflict of interest management. The VPSC highlights a number of ways to manage a conflict of interest in the public interest: **restrict, recruit, remove, relinquish** and **resign**.¹ Importantly, conflicts must also be **recorded** once they are declared, to transparently document the issue and its management. Records of declarations should be maintained in a central and oversighted **register**.

Myth 4: There is no conflict because I can act fairly and without bias

Most public officers act with integrity and impartiality, and prioritise the interests of their agency and the broader community. However, despite the best of intentions, if an actual conflict of interest exists, it is extremely difficult for a public officer to separate the knowledge or loyalty associated with their private interest from their public responsibilities. Even unconsciously, a public officer's actions may be affected by their interest.

Further, the *perception* of bias is often sufficient to call into question the public officer's decisions and actions. Such a perception can exist even if the public officer does not receive a personal or financial benefit.

Declaring and managing the conflict should not undermine a public officer's integrity or that of their organisation; however not doing so will.

Myth 5: I told my manager about the conflict of interest, that's all I need to do

It is the responsibility of both an employee and their manager to ensure conflicts of interest are identified, declared and managed. This includes properly recording the conflict and the management plan, and making a record of this on a central register to enable monitoring and oversight.

Organisations should support employees to disclose and discuss possible conflicts, and support supervisors and managers to understand, assess, record and manage the risks. Open and active communication is essential for corruption-resistant workplaces.

In some matters investigated by IBAC, employees with significant conflicts of interest have partially disclosed the conflict in discussions with their manager. If the manager had more fully explored the issue, the full extent of the conflict may have been identified and action taken to avoid or manage it. It's not enough to advise a manager about a conflict of interest. The conflict must be identified, declared on a register and managed.

Good practice examples

Conversations about conflicts of interest, including regular reviews of declarations, can be normalised by making them a standard part of activities which are at heightened risk of conflicts (such as at the start of a recruitment or procurement process), or by including them as part of business-as-usual activities, such as performance review discussions.

The Department of Education and Training and City of Ballarat Council have developed electronic forms and processes for staff to declare a conflict of interest, which is then electronically transmitted to their manager for approval. Finalised declarations are stored in central registers. These approaches provide managers and their staff with an easy-to-follow process to support discussions about interests.

¹ Victorian Public Sector Commission 2018, *Model Conflict of Interest Policy*, pp.4.

Myth 6: My interests are private and are not relevant to my role

Public officers are entitled to their own private life, like other members of the community. However, the Government and the community rely on public officers to perform their roles in an accountable and unbiased manner, acting in the public interest rather than their own. Protecting the public interest must always be prioritised above a public officer's own interests or associations. As such, private information needs to be disclosed to safeguard the impartiality of the public officer's performance of their duties and the overall integrity of their organisation. This information includes secondary employment and associations that may compromise a public officer's duties (declarable associations).

Case study – Operation Carson

IBAC investigated allegations a public sector employee was improperly using their position to provide business opportunities for their partner. It was also alleged they had an undeclared financial interest in their partner's private business. The employee resigned while under investigation.

IBAC substantiated the allegation the employee provided preferential treatment to their partner. IBAC also established the employee and their partner were engaged in a private business that had not been declared to the agency. The employee sought to exploit the knowledge and networks they had developed through their public sector employment, to further their business interests. The employee failed to declare their conflicts of interest and did not act in the public interest.

How to manage conflicts of interest

Effective conflict of interest identification, declaration and management benefits from open communication between public officers and their managers to discuss different situations which could involve conflicts of interest, and determine how any conflicts should be handled in accordance with clear expectations and standards.

Employees are responsible for actively considering their interests and how these could impact their public duties and functions. It is the responsibility of managers to regularly discuss these issues with their staff, and the responsibility of organisations to support managers and employees to be aware of and understand their obligations. This requires clear policies and guidance, mature risk management practices, and training and regular communication about the organisation's expectations for identifying, declaring and managing conflicts of interest.

IBAC's *Managing corruption risks associated with conflicts of interest in the Victorian public sector* provides further information about good conflict of interest practices and useful resources.

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- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

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