

DECLARATIONS OF CONFLICTS OF INTEREST POLICY AND PROCEDURE



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Purpose

The purpose of this policy and procedure is to detail the minimum requirements for the identification, declaration, management and monitoring of conflicts of interest that may arise for employees of the Office of the Land Access Ombudsman (LAO).

Background

Principle 1.2 of the Code of Conduct for the Queensland Public Service states that public service employees are committed to demonstrating impartiality and integrity in fulfilling responsibilities. A conflict of interest occurs when an employee's private interests interfere, or appear to interfere, with their duty to put the public interest first. A conflict can manifest itself in many ways and in various aspects of areas related to professional duties and obligations. The types of conflicts of interest that most commonly occur involve;

- Family and close associates.
- Secondary employment.
- Previous employment.
- Asset ownership.
- Memberships.

The public 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.

Conflicts of interest are a major risk in all areas of the public service. It is, therefore, crucial that all conflicts of interest are managed and resolved in the public interest.

Policy Statement

The LAO is committed to ensuring that conflicts of interest are identified, disclosed and managed in a transparent and accountable manner. A transparent system that is observed by all employees will also demonstrate to the public and others who deal with the LAO that the LAO's role is performed in a way that is fair and unaffected by improper considerations.

Conflicts of interest fall within three types;

- Actual conflicts of interests occur where a reasonable person, in possession of the relevant facts would conclude that there is a direct conflict between an employee's current duties and responsibilities and existing personal interests.
- Perceived conflicts of interests occur where it could be perceived, or appear, that an employee's personal interests could improperly influence the performance of their duties, whether or not this is in fact the case.
- Potential conflicts of interests occur where an employee has personal interests that could conflict with their official duties in the future.

Conflicts of interest can be either;

- Pecuniary, where an actual, perceived or potential financial gain or loss exists, which is significant. Money does not need to be exchanged for an interest to be pecuniary.
- Non-pecuniary, where an interest does not have a financial component. This interest may arise from personal relationships or involvement in certain social activities or other employment and includes a tendency to favour or prejudice resulting from friendship and/or social interactions.

Conflicts of interest are not wrong in themselves, but they must be identified, disclosed, assessed and managed in a transparent and accountable manner to resolve them in the public interest.

A conflict of interest which is not declared or handled appropriately would be a breach of the Code of Conduct. The LAO takes significant breaches of the Code seriously, and may take disciplinary action under the *Public Service Act 2008*, or other legislation. If the conflict of interest raises a suspicion of corruption, the matter may also be referred to the Crime and Corruption Commission and/or the Queensland Police Service for investigation.

Examples of conflicts of interest

| | |
|-------------------|--|
| Human resources | <ul style="list-style-type: none"> • Appointing relatives or friends to vacancies • Not appointing someone you don't like |
| Purchasing | <ul style="list-style-type: none"> • Awarding a contract to a company in which you have a personal interest. • Purchasing products from a company aligned to family members or friends. |
| Regulatory | <ul style="list-style-type: none"> • Failing to penalise a friend who has breached a law. • Unfairly penalising a person you don't like. • Accepting a gift from a person regulated by your work unit. |
| Gifts | <ul style="list-style-type: none"> • Accepting a gift or a benefit from private companies for work activities. • Accepting an invitation from a supplier to use a corporate box at a sporting event. |
| Outside interests | <ul style="list-style-type: none"> • Having an interest in a private company that is involved in activities aligned to your work. • Having a role in an outside organisation that benefits from your knowledge gained as an employee. • Having a regulatory role as an employee and being a member of an outside organisation that is subject to that regulation. |
| Employees | <ul style="list-style-type: none"> • Allocating jobs to family members, • Unfairly excluding people you don't like from jobs. • Supervising relatives. • Being employed part time by a mining related business while employed by the LAO. |

Some of these examples are quite serious and could indicate corruption.

Procedure

Proper record keeping is vital to any decision-making process as it promotes fairness, transparency and accountability. All public authorities are required to keep full and accurate records of their activities in accordance with the *Public Records Act 2002*.

The process for managing conflicts of interest consists of three stages:

- Stage 1 – Identify

- Stage 2 – Manage
- Stage 3 – Monitor

Managing conflicts of interest will involve the input of the LAO, managers/supervisors and individuals.

Stage 1 – Identify

As soon as it is recognised that a potential or perceived conflict of interest may exist, it must be declared in writing to a manager/supervisor. The disclosure is to be made using the Public Service Commission's [Declaration of Interests Form](#) which is to be provided to the manager/supervisor within 14 days of engaging in the interest.

The situation and circumstances should be assessed to determine if a conflict of interest exists. The Crime and Corruption Commission's [Identifying Conflicts of Interest in the Public Sector checklist](#) may provide guidance in the identification of conflicts of interest.

To maintain openness and transparency in disclosing conflicts of interest, employees should observe the following steps;

- Complete the appropriate Declaration of Interests Form.
- Declare the conflict to their manager/supervisor and provide them with a copy of the completed Declaration of Interests Form.
- Keep a record that the disclosure was made to the manager/supervisor.
- Keep a record of any assessment of the disclosure and any subsequent decisions made and actions taken.

Employees must declare as much information as is necessary to allow the matter to be adequately assessed and/or investigated to determine whether a conflict exists.

If an employee fails to disclose a conflict of interest, they may be in breach of the Code of Conduct for the Queensland Public Service and be liable to disciplinary action. However, there may be times when a written declaration of a conflict of interest is not immediately practicable. For example, an employee may attend a meeting where, without prior warning, a matter is introduced in which they recognise that they may have a conflict of interest. In these circumstances, employees may observe the following steps;

- Verbally disclose the interest and ensure that this disclosure is recorded in the meeting minutes. The employee should also note this disclosure in their own meeting notes, and then remove themselves from the meeting while this item is being discussed, or have the meeting stopped or postponed.
- Complete the appropriate Declarations of Interests form and declare the interest to their manager/supervisor as soon as possible. The completed Declaration of Interests form should then be provided to the manager/supervisor.

In all cases, the manager/supervisor must review the Declaration of Interests form within seven days of receiving it from the employee. The employee should be provided with the opportunity to respond to any queries the manager/supervisor may have regarding any information contained on the form. Once all necessary information is received the manager/supervisor will refer the matter to the Land Access Ombudsman (LAO).

The LAO will, within seven days of the conflict of interest being referred:

- Identify whether or not a conflict of interest exists;
- Assess the situation and any surrounding circumstances which may affect the related decision or actions;

- Determine the type and category of the conflict of interest; and
- Determine how the conflict of interest will be best managed.

The LAO will then provide written notice to the employee within seven days of the determination regarding the outcome of the determination. If there is no conflict of interest, the LAO will finalise the matter. If there is a conflict of interest, the LAO will provide the employee with the reason for the decision and advise the employee of the next steps to be taken.

Formal records should be kept of all assessments, decisions made and actions taken in relation to all conflicts of interest. The completed Declaration of Interests form is to be stored in the employee's personnel file.

Stage 2 – Manage

While conflicts of interest may be resolved or managed in a variety of ways, the choice of how to manage each conflict of interest will depend on an assessment of the individual circumstances of each case. There are six main options for managing conflicts of interest:

- Register – recording the disclosure of conflicts of interest in a formal register is an appropriate management strategy for dealing with very low-risk and potential conflicts of interest. It is also an adequate management tool, where the act of transparency through recording conflicts of interests, is sufficient.
- Restrict – where restrictions are placed on the employees involvement in the matter.
- Remove – where an employee is removed from their involvement in the matter creating the conflict.
- Recruit – a disinterested third party is used to oversee part or all of the process that deals with the matter.
- Relinquish – where the employee relinquishes the private interest that is creating the conflict.
- Resign – where the employee resigns from their position in the LAO.

Further information regarding each of these management options can be found in the Crime and Corruption Commission's [Managing Conflicts of Interest in the Public Sector Toolkit](#).

In all cases, the final decision maker in relation to conflict of interest matters is the LAO.

Stage 3 – Monitor

Ongoing management and regular reviews of identified conflicts of interest allows changes to be made to the management strategy, if needed. It is important to regularly review and assess the:

- Original situation that lead to the declaration of the conflict of interest.
- Initial determination and management decisions.
- Strategy put in place to manage the conflict of interest.
- Actions taken in implementing the management strategy.
- Perceptions held by others that the conflict of interest is having an improper influence on the matter.
- Reassessments and management decisions made about the continued management of the conflict of interest.
- Changes made to the management strategy and its implementation.

Formal records should be kept of all reassessments, and stored on the employee's personnel file.

Roles and responsibilities

This policy and procedure applies to all employees of the LAO who are employed on a permanent, temporary or casual basis.

The LAO is responsible for:

- Providing a clear and realistic description of what circumstances and relationships are likely to lead to conflicts of interest for those employed by the LAO;
- Ensuring employees and managers know what is required of them in relation to identifying and declaring conflicts of interest (when, in what situations, how etc);
- Developing formal procedures to allow employees and managers to disclose their interests in a transparent way;
- Provide employees and managers with relevant and effective strategies to manage conflicts of interest appropriately; and
- Develop appropriate procedures for managing conflicts of interest.

The LAO is responsible for:

- Fully disclosing their interests that may have a bearing, or be perceived to have a bearing on their ability to properly and impartially discharge the duties of their office;
- Disclosing the interests of their partner and/or dependents. Those interests that may have a bearing, or be perceived to have a bearing, on their ability to properly and impartially discharge the duties of their office; and
- The recognition of a real or perceived conflict of interest.

Managers/supervisors are responsible for:

- Implementing and giving effect to the LAO's policies on a day-to-day basis, demonstrating how the policy should work by setting an example when their own conflicts arise;
- Complying with this procedure with respect to their own conflicts of interest, and carefully considering whether any positions under their supervision are vulnerable to potential conflicts of interest and discussing the matter with their employees;
- Ensuring that any discussions regarding declaration of interests by employees are held in the strictest confidence; and
- Determining whether a conflict of interest exists by assessing the available information, obtaining further information if required, and seeking advice if necessary to determine the appropriate action.

All employees regardless of their level, have a responsibility to follow policy and procedural requirements for managing conflicts of interest. Further, all employees should:

- Be aware of potential conflicts of interest that might affect them;
- Where possible, avoid any obvious conflicts of interest that they encounter; and
- Promptly identify and disclose any conflict of interest that might affect, or be perceived to affect, the proper performance of their work.

Relevant forms

- Public Service Commission's [Declaration of Interests Form](#)

Glossary

For the purpose of this policy and procedure, the following definitions shall apply:

| TERM | DEFINITION |
|-------------------------------|--|
| Conflict of interest | <p>Involves a conflict between a public official's duty to serve the public interest and the public official's private interests. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage, financial or otherwise. A conflict occurs when the private interests of a public sector officer interfere, or appear to interfere, with the performance of their official duties.</p> <p>A conflict of interest can occur when an employee has, or is seen to have, a private interest either pecuniary or non-pecuniary, which conflicts or may conflict with the discharge of the employee's duties.</p> |
| Interest | Anything that can have an impact on an individual or group. Anything that can bring benefit or disadvantage to individuals, or to others. |
| Private or personal interests | Those private professional or business interests that can benefit or disadvantage individuals. Private interests include a wide range of external activities including financial and economic interests, family or private businesses and interest groups and involvement in other employment. |
| Public interest | The collective interest of the entire community. |

Related documents

This policy and procedure should be read in conjunction with:

- Employees Engaging in Other Employment.

References

- [Code of Conduct for the Queensland Public Service](#)
- [Public Service Act 2008](#)
- [Criminal Code Act 1899 \(Qld\)](#)
- [Right to Information Act 2009](#)
- [Information Privacy Act 2009](#)
- [Public Sector Ethics Act 1994](#)
- [Directive Declarations of Interests – Public Service Employees \(other than departmental Chief Executives\)](#)

Further information

For further information regarding this policy and procedure, refer to:

- Your manager or human resources representatives
- LAO

Review

This policy and procedure will be reviewed within two years of the approval date.

Approval



Jane Pires
Land Access Ombudsman

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