

CONFLICTS OF INTEREST

A GUIDE TO APPLYING THE COI POLICY PRINCIPLES

The Department's conflict of interest policy is based on three core principles, that the Department and employees:

- always act in the public interest;
- are accountable; and
- take a risk-based approach.

Guidance on applying these principles is set out below.

1. Public interest

Public interest: all employees have a duty to place the public interest above their private interests when carrying out their official functions. One way they do this is by applying the public sector values to their actions and decision-making (set out at section 7 in the *Public Administration Act 2004*).

Public employees have an obligation to act in the public interest. They do this by serving the government of the day, through its Ministers, and by:

- acting apolitically and providing frank and fearless advice to government;
- complying with legislation and government and departmental policies;
- performing their roles fairly and reasonably and adhering to the principles of natural justice;
- applying the public sector values (**Respect, Accountability, Integrity, Impartiality, Responsiveness, Leadership and Human Rights**) set out at section 7 of the *Public Administration Act 2004*;
- adhering to the Code of conduct for Victorian public sector employees, available on the Victorian Public Sector Commission's website (www.vpsc.vic.gov.au); and
- asking themselves the questions at Table 1 when making difficult decisions.

Table 1. Questions to ask yourself

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| 1. What assessment would a fair-minded member of the public make of the circumstances? |
| 2. Could my involvement in this matter cast doubt on my or the Department's integrity? |
| 3. If I saw someone else doing this, would I suspect that they might have a conflict of interest? |
| 4. If I did participate in this action or decision, would I be happy if my colleagues and the public became aware of my involvement and any association or connection? |
| 5. How would I feel if my actions were covered by the media? Would they embarrass myself, the Department or the Minister? |
| 6. Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater scrutiny by others? |

2. Accountability

Accountability: all employees are accountable for avoiding wherever possible or identifying, declaring and managing any actual, potential or perceived conflicts of interest that apply to them. This applies to employees:

- **with direct reports** - Employees are accountable for overseeing management of their direct reports' conflicts of interest, modelling good practice and promoting awareness of conflict of interest policies and processes.
- **in consensual person relationships where a direct hierarchical relationship is in place** - Employees should declare consensual personal relationships where a direct hierarchical relationship is in place (i.e. in the same reporting line, or where one person has supervisory or decision making authority over the other) as this represents a potential conflict of interest.
- **in consensual person relationships where there is no direct hierarchical link** - Employees are required to manage the risk of a potential conflict of interest arising. Employees should only declare a consensual personal relationship where an actual, potential or perceived conflict of interest cannot be appropriately avoided.

Tables 2 and 3 that follow provide guidance on accountabilities of employees and employees with direct reports.

Table 2. Accountabilities of all employees

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|---|
| <ul style="list-style-type: none"> • Avoid conflict of interest wherever possible, and identify, declare and manage those conflicts that cannot be avoided in accordance with the Department's conflict of interest policy and declaration forms |
| <ul style="list-style-type: none"> • Assess regularly whether there may be an actual, potential or perceived conflict between their private interests and their official duties (for example, prior to major projects, procurement, recruitment or policy decisions) |
| <ul style="list-style-type: none"> • Take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise their impartiality when carrying out their official duties |
| <ul style="list-style-type: none"> • Abstain from involvement in official decisions and actions that could reasonably be seen to be compromised by their private interest and affiliations |
| <ul style="list-style-type: none"> • Avoid private action in which they could be seen to have an improper advantage from inside information they have access to because of their official duties |
| <ul style="list-style-type: none"> • Not use their official position, government resources or official information inappropriately (including for private gain or when seeking employment outside the public sector) |
| <ul style="list-style-type: none"> • Comply with the requirements of the conflict of interest policy, related policies and procedures and the Code of conduct for Victorian public sector employees |

Table 3. Accountabilities of employees with direct reports

- Be aware of the conflicts inherent in the work of your direct reports
- Ensure your direct reports are aware of relevant policies and procedures
- Provide advice about appropriate ways to manage conflicts
- Record the receipt of disclosures of conflicts reported to them by employees
- Assist in the preparation of management strategies for employees who disclose conflicts of interest
- Monitor employees and the risk to which they are exposed

Tables 4 and 5 provide guidance on accountabilities of employees engaged in consensual personal relationships; and employees managing consensual personal relationships

Table 4. Accountabilities of employees engaged in consensual personal relationships

- Employees are required to declare if they are in a consensual personal relationship where a direct hierarchical relationship exists to enable the conflict of interest to be appropriately managed. In making this declaration, employees should approach a disclosure officer (e.g. Human Resources officer) or a designated management representative that is available to manage declarations of consensual personal relationships. Refer to the Conflict of Interest Model Policy and Managing Consensual Personal Relationships – Practice Guide for further details.
- Employees who are in a consensual personal relationship that has no direct hierarchical link are not required to declare their relationship. However, employees are required to manage the risk of a potential conflict of interest arising. Employees should only declare a consensual personal relationship where an actual, potential or perceived conflict of interest cannot be appropriately avoided.

Table 5. Accountabilities of employees managing consensual personal relationships

A conflict of interest management form that includes a management plan must be completed. To support this, the following steps should be considered:

- Adhere to the following Victorian public sector employment principles and standards: fair and reasonable treatment; merit-based employment decisions; equal employment opportunity; and human rights.
- Have supporting conversations that respectfully seek to learn of the details of the consensual personal relationship and any concerns that an employee may have.
- Collaboratively identify risks and possible impacts and potential options to manage the conflict of interest.
- Work together to find a consensus approach to manage the conflict.
- Implement temporary or permanent alternative supervisory and reporting arrangements.
- Keep the details of declarations of consensual personal relationships confidential to protect personal privacy. Explain that relevant persons in an organisation will only be engaged on a 'needs to know' basis when a conflict of interest arises and particular services are required to manage it.

3. Risk-based approach

Risk-based approach: the Department will take a proactive approach to assessing and managing conflict of interest risks. Employees with direct reports will ensure they are aware of the conflicts inherent in their team's work and functions and monitor the risks to which their direct reports are exposed.

Conflicts of interest may occur in any part of the Department, however some functions and activities are higher risk than others and may require increased risk mitigation measures.

The Department and employees with direct reports will take a proportionate approach to managing conflict of interest risks. They will consider the conflict of interest risk matrix and mitigation measures at **Figure 1** and have regard to the high risk functions identified at **Table 6** in determining their response.

Figure 1. Conflict of interest risk matrix and risk mitigation measures

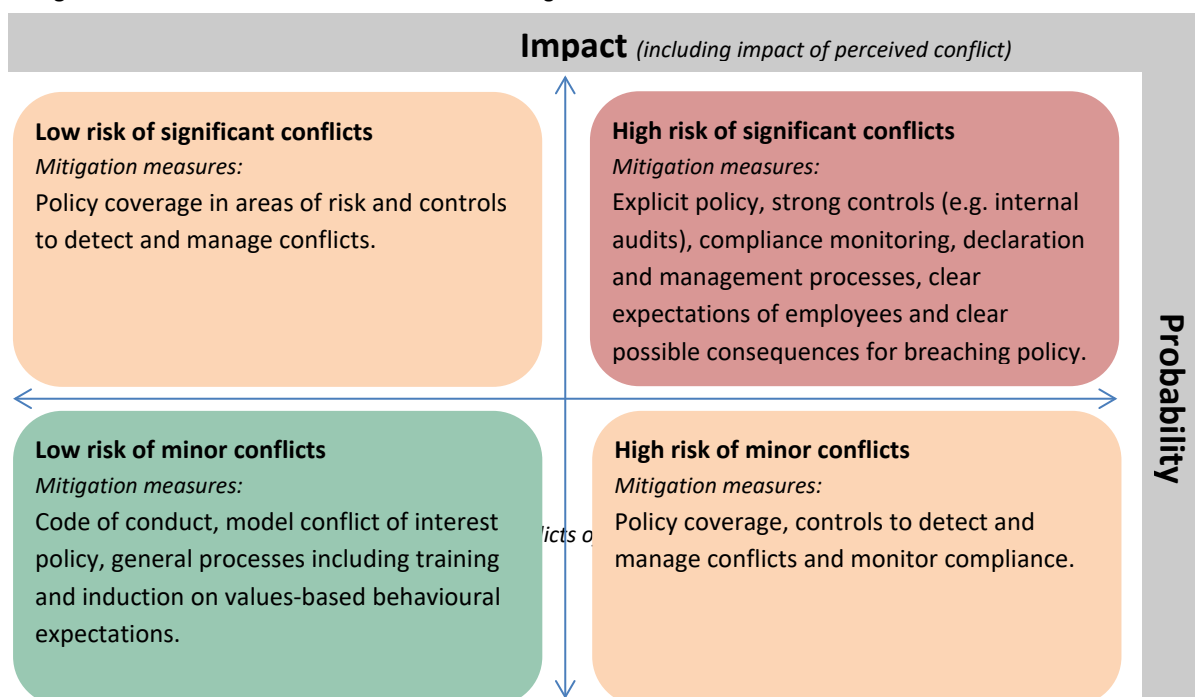


Table 6. High-risk public sector functions and activities

Recruitment, appointment and management of employees

Procurement, contract management and tendering

Internal committee governance

Allocation of public services or grants of public funds (e.g. sponsorships)

Regulatory roles, including:

- inspecting, testing, regulating or monitoring standards, business, equipment or premises;
- issuing, or reviewing the issue of, fines or other sanctions;
- issuing qualifications or licences.

Positions where concurrent or other employment occurs (e.g. board positions, part-time or casual employment etc.)

Functions and activities undertaken by contractors

Provision of goods or services, for example:

- where demand frequently exceeds supply;
- in a highly specialist area;
- case management of clients on an individual basis; or
- provision of subsidies, financial assistance, concessions or other relief to those in need.

Collect, retain, access, use or distribute confidential information

Exercise discretionary power in any form of decision-making, for example:

- make determinations or hand down judgement about individuals or disputes;
- have discretion concerning planning and development applications or zoning decisions.

Private/Public Partnerships

Regular contact with individuals in high-risk industries (e.g. gambling and liquor industries, embers of organised crime groups etc.)

Department to add any additional high risk functions/activities