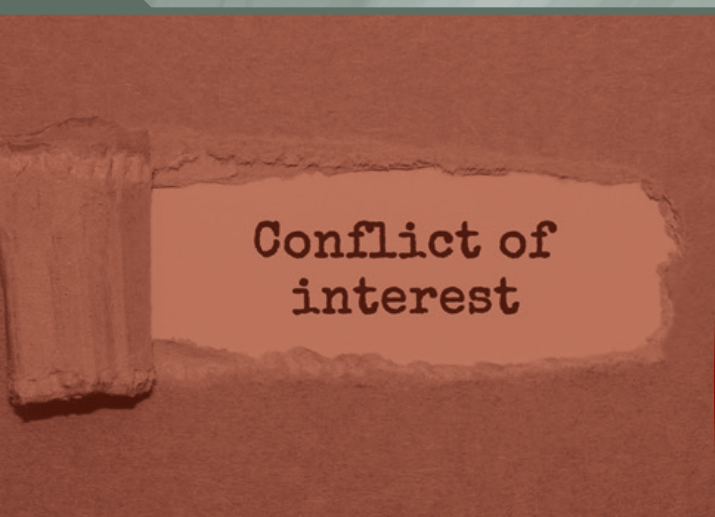


The logo for the Independent Commission Against Corruption (ICAC) New South Wales. It features the letters 'I·C·A·C' in a large, serif font, with dots separating the letters. Below the letters is a thin horizontal line.

I·C·A·C

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

A graphic element consisting of a textured, reddish-brown rectangular block. A portion of the top edge of this block is torn away, revealing a lighter, orange-brown surface underneath. The words 'Conflict of interest' are printed in a dark, serif font on the lighter surface.

Conflict of  
interest

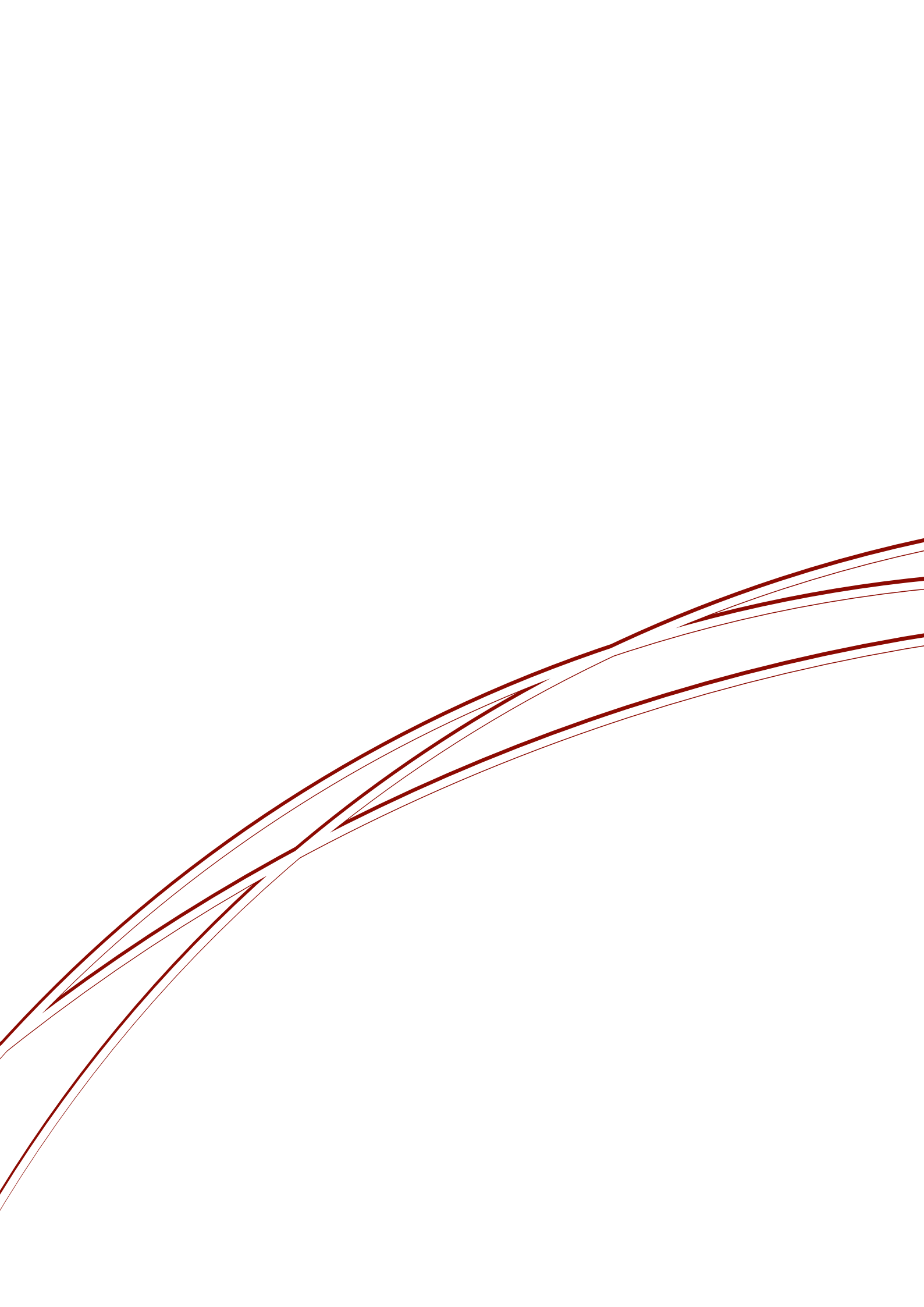
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# MANAGING CONFLICTS OF INTEREST IN THE NSW PUBLIC SECTOR

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APRIL 2019

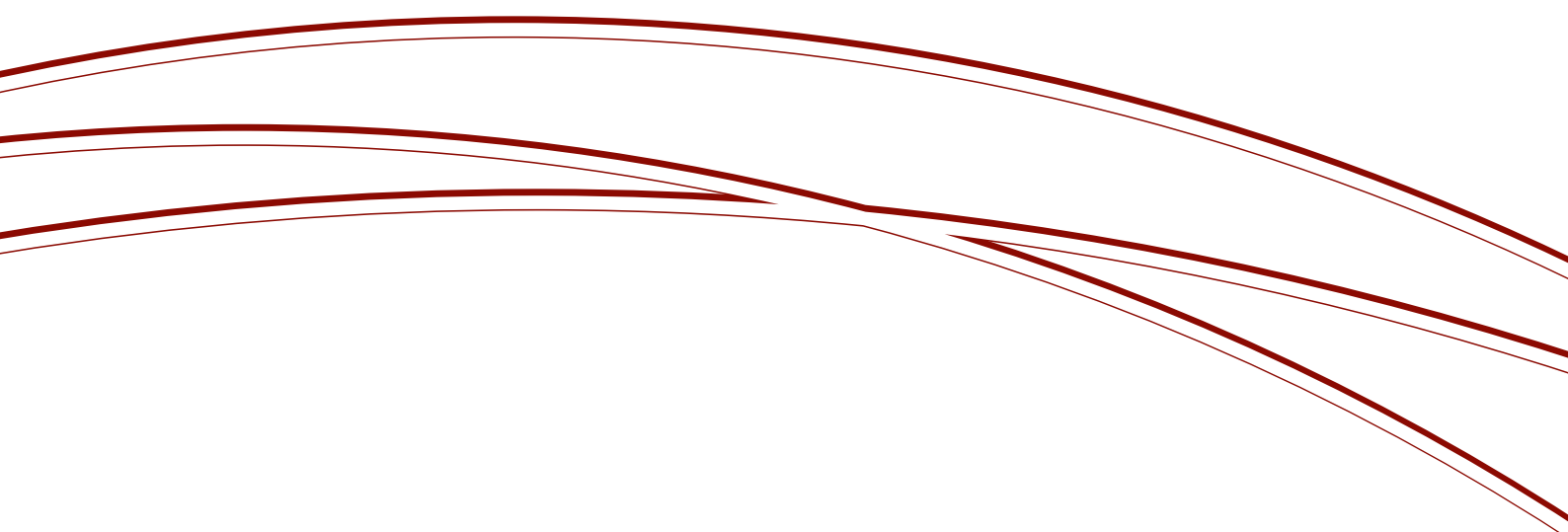
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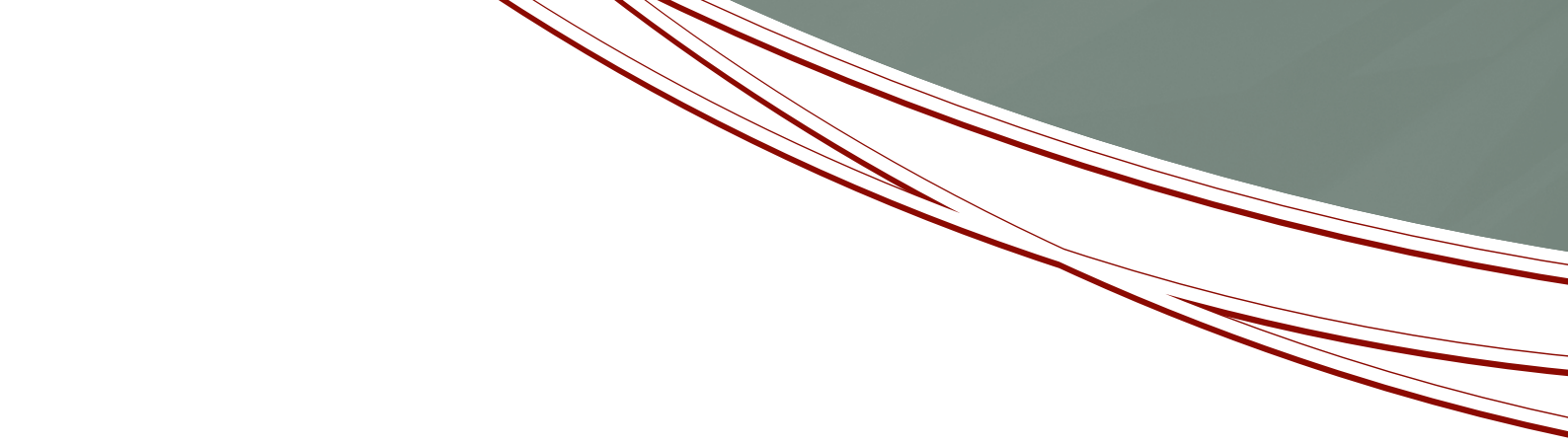
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## MANAGING CONFLICTS OF INTEREST IN THE NSW PUBLIC SECTOR

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**APRIL 2019**

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Public sector organisations are welcome to refer to this publication in their own publications. References to and all quotations from this publication must be fully referenced.



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INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

Level 7, 255 Elizabeth Street  
Sydney NSW 2000 Australia

Postal Address: GPO Box 500  
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

F: 02 9264 5364

TTY: 02 8281 5773 (for hearing-impaired callers only)

E: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

Business Hours: 9 am - 5 pm Monday to Friday

# Contents

<b>Introduction</b>	<b>4</b>	<b>Manage and monitor conflicts of interest</b>	<b>19</b>
About this publication	4	1. Assess the risk of the conflict of interest	19
What is a conflict of interest?	4	2. Consider the conflict of interest management options	20
Conflicts of interest and corrupt conduct	7	3. Document a management response	22
A conflict of interest control framework	7	4. Implement and monitor	23
<b>Establish a conflicts of interest policy</b>	<b>9</b>	General responsibilities of all managers	23
<b>Identify and manage vulnerable units and branches</b>	<b>10</b>	<b>Be proactive in looking for conflicts of interest</b>	<b>25</b>
A good control environment	10	<b>Evaluate and audit the control framework</b>	<b>26</b>
<b>Avoid unnecessary conflicts of interest</b>	<b>12</b>	<b>Deal with breaches</b>	<b>27</b>
<b>Disclose personal interests and conflicts of interest</b>	<b>13</b>	<b>Further information</b>	<b>28</b>
Declaring in a register of personal interests	14		
Disclosing conflicts of interest to a manager	14		
Declarations for specific processes	17		
Conflicts of interest register	18		



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# Introduction

## About this publication

In simple terms, managing conflicts of interest is important because citizens rightly expect that public officials, or their close connections and associates, should never be in a position to obtain an undue personal benefit as a result of the public official doing their job. This reflects the view that public office is held for the public good, not the purposes or benefits of the officeholder.

More broadly, a failure by agencies to properly manage conflicts of interest is likely to contribute to a loss of confidence in the public sector.

This publication sets out the NSW Independent Commission Against Corruption's ("the Commission") guidance in relation to conflicts of interest. It explains how to identify, disclose and manage a conflict of interest and sets out a broad control framework for public sector agencies to consider.

In this publication, the term "official" or "public official" is used to describe any person having public official functions or acting in a public official capacity. This includes all public sector employees but can also include others, such as suppliers, volunteers or contractors, exercising public functions.

The advice in this publication is general in nature and does not provide guidance about every conflict of interest scenario. Some agencies (such as local councils) have specific legal requirements that determine how conflicts of interest must be managed. This publication does not replace those legal requirements but may be of some assistance to agencies wishing to comply with them.

## What is a conflict of interest?

A conflict of interest is a conventional expression that usually refers to circumstances in which someone's personal interests may conflict with their public duty.

A conflict of interest exists when a reasonable person might perceive that a public official's personal interest(s) could be favoured over their public duties.

## Elements of the conflict of interest test

There are four elements to consider when determining whether a conflict of interest exists.

1. Does the official have a personal interest?
2. Does the official have a public duty?
3. Is there a connection between the personal interest and the public duty?
4. Could a reasonable person perceive that the personal interest might be favoured?

## Personal interest

Personal interest refers to the interests that arise from an individual's private or non-work life that can bring financial or other material benefits or result in disadvantages to the public interest or to other people. Importantly, a public official's personal interests can include the interests of their close connections, including family connections, and/or the interests of associates.



## Public duty

Public duty is a broad concept that extends beyond simply performing the tasks assigned to a public official and complying with policy and procedure. It means a power, authority, duty or function that is conferred on a person as the holder of public office. It includes a duty to serve the public interest, the agency and the public in an ethical manner.

## Connection between personal interests and public duty

For a conflict of interest to arise, there must be a logical overlap or connection between an official's public duty and their personal interest(s).

To establish a connection, it must be at least feasible for the official to favour their personal interests in some way or for their personal interests to have an adverse effect on the way they perform their public duties.

An official may undertake activities and have influence beyond their formal or documented role. It is important that these informal activities and influences are taken into consideration.

### Informal duties as a conflict of interest

Mal is a public official who used to be a maintenance manager but has now been promoted to a more senior position at a local council. Mal's replacement is new to the position and regularly asks him which suppliers to use. Even though awarding contracts is no longer part of Mal's official role, he still has influence over the process and, consequently, there may be a connection between this informal public duty and any personal interest he might have, such as a friendship with one of the contractors.

## The reasonable-person test

An objective, rather than subjective, test is used in determining whether there is a conflict of interest. The perspective used is that of a hypothetical, fair-minded and informed observer – the reasonable person. Therefore, a conflict of interest does not necessarily exist because of one person's opinion – especially if that person is the one with the conflict. The situation must be assessed objectively.

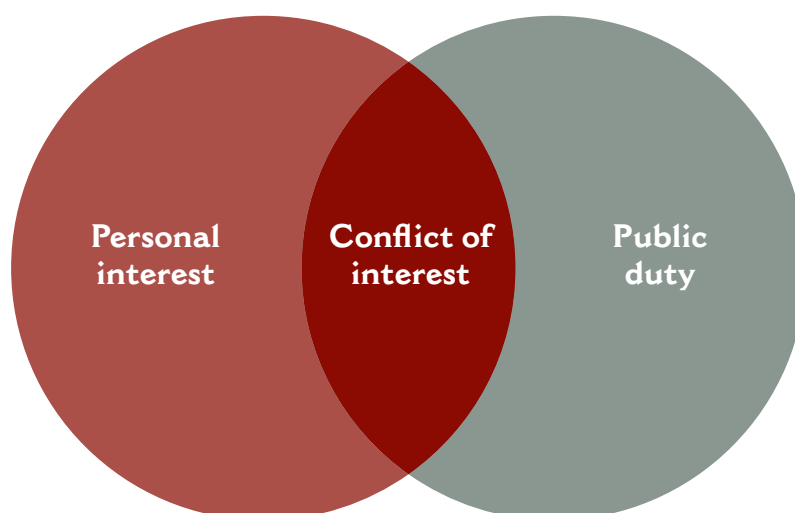
Importantly, a conflict of interest does not depend on the character of the individual concerned, but on the specific situation.

### Misapplying the reasonable-person test

Deborah is an experienced public official and has been appointed to sit on a recruitment panel for her agency's graduate intake program. Deborah's daughter has just graduated from university and, after discussing the program with her mother, decides to apply. Deborah regards herself as an ethical person with an unblemished employment record and firmly believes that there is no chance that she would ever favour her daughter. She therefore decides that she does not have a conflict of interest and makes no disclosure.

In this situation, although Deborah may not intend to favour her daughter, she has misapplied the reasonable-person test. Her subjective self-image as an ethical person is not how the reasonable-person test is used. Instead, Deborah must think about how a hypothetical, fair-minded and informed observer would assess her situation. As such, she does have a conflict of interest that must be disclosed.

**Figure 1: A conflict of interest arises where there is a connection between personal interests and public duty**



Performing the reasonable-person test is not always straightforward and it is also possible for two well-informed people to disagree about whether a conflict of interest exists. This is because conflicts of interest arise in many different circumstances and are subject to many shades of grey. Moreover, it is difficult for conflicted officials to imagine themselves doing the wrong thing. As the example above shows, conflicted officials can easily misjudge how others would perceive their situation.

For this reason, the Commission recommends that officials and agencies err on the side of caution when considering whether or not a conflict of interest exists. If there is any doubt, a disclosure should be made.

## Guidance on identifying a conflict of interest

### Favour or disfavour

A personal interest can involve the infliction of harm or disadvantage on another as well as conduct that improperly favours the public official or another. That is, a public official might have an incentive to confer either benefits or disadvantages on another party. Therefore, a relationship with an enemy or a person that a public official dislikes could be a personal interest. Similarly, an official might benefit a personal business interest by making it difficult or impossible for competitors to operate effectively.

### “Could” adversely influence

For a conflict of interest to exist, a public official does not have to engage in actual favouritism or partial/biased

conduct. A conflict of interest arises if the relevant personal interest(s) could be improperly favoured over public duties. This “could test” is often misunderstood. Many officials incorrectly believe that a conflict of interest only arises once a personal interest has been favoured or a public duty has not been properly performed.

### Convergence of interests

A conflict of interest exists even where the interests of the official and the agency are aligned (or appear to be aligned). Various terms have been used to describe this, including a “convergence of interests”, a “commonality of interests” or a “confluence of interests”.

This situation is risky because it can allow an official to rationalise their failure to disclose a conflict by claiming that “everyone benefits” or “nobody is harmed”. These situations do represent conflicts of interest because there is a reasonable perception that the official could be influenced by their personal interest. It is irrelevant that the agency may also benefit.

### Remote or insignificant

Generally, the reasonable-person test is not met when an official’s personal interest in a matter is so remote or insignificant that it could not reasonably be regarded as having the potential to influence their duties.

For example, an official making a decision to resurface a road in their own suburb will be insignificant if they rarely use that road, it is not near their property and the resurfacing will not affect the value of their property or the interests of their close connections.



## Conflicts of duties

A conflict of duties occurs when an official has two or more public duties that are not compatible. While it is important to manage conflicting duties, they are fundamentally different from conflicts of interest because there is no personal interest involved.

## Apprehended bias and conflicts of interest

Conflicts of interest arise where a reasonable person might perceive that a public official's personal interest could be favoured over their public duties. Alternatively, the governing principle for apprehended bias is whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made.<sup>1</sup> While apprehension of bias can arise from situations where a public official has a conflict of interest, it can also arise from other circumstances, including where there is evidence of prejudgment by a decision-maker. Such circumstances involve different considerations to the issue of conflicts of interest.

# Conflicts of interest and corrupt conduct

Conflicts of interest in public officials do not, in themselves, absent other circumstances, usually constitute corrupt conduct. Corrupt conduct can, however, arise when a conflict of interest is concealed, understated, mismanaged or abused.

Experience also shows that many if not most forms of corrupt conduct involve a conflict of interest. It is also possible to engage in corrupt conduct in relation to another person's conflict of interest.

Examples of conduct that could be corrupt include:

- concealing or failing to disclose a conflict of interest
- making false or understated declarations about a conflict of interest
- favouring a personal interest over public duty
- improperly influencing others to favour a personal interest
- misusing resources in order to favour a personal interest.

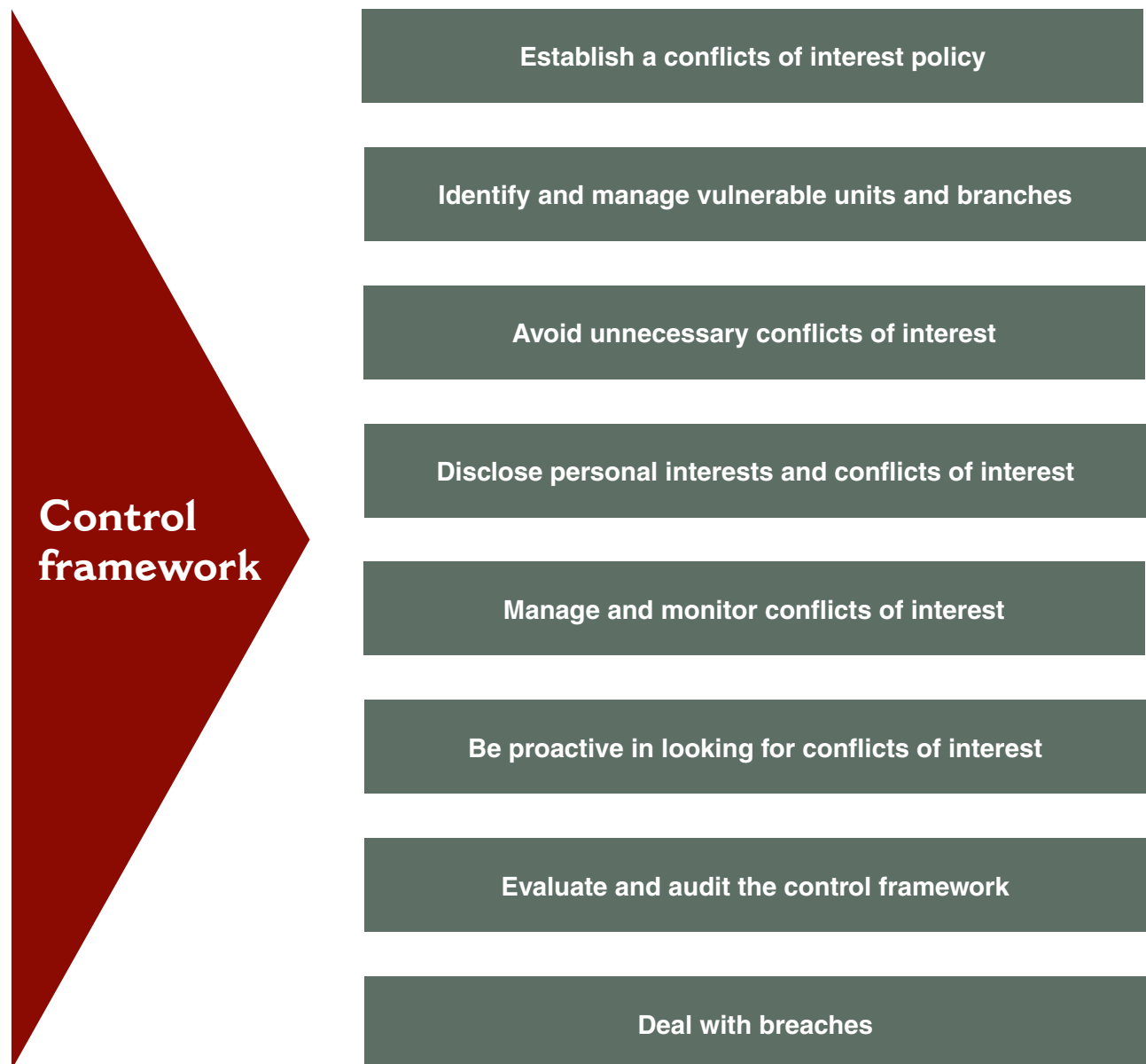
- improperly accessing, using or disclosing information in connection with a conflict of interest
- acting improperly to favour another person's personal interests
- improperly allowing others to conceal a conflict of interest
- improperly failing to manage a conflict of interest.

## A conflict of interest control framework

A framework for controlling the risks posed by conflicts of interest includes the complementary elements in figure 2. Each aspect of the framework is expanded on in the sections that follow.

<sup>1</sup> *Isbester v Knox City Council* [2015] HCA 20.

**Figure 2: Conflict of interest control framework**





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## Establish a conflicts of interest policy

It is essential that officials understand what constitutes a conflict of interest and what they need to do if they may have one.

Agencies should have a conflicts of interest policy that clearly explains the principles and procedures for identifying, disclosing, managing and monitoring a conflict of interest.

It is important that there are clear requirements for all relevant groups of people and other entities. These might include staff, contractors, consultants, people and entities providing services on behalf of an agency or otherwise acting for, or on behalf of, a public sector agency.

Training should be provided that not only explains the key issues, but also covers the importance of properly dealing with conflicts of interest. The training should be tailored to and targeted at the areas of greatest risk.

It is recommended that an agency's intranet should have an easy-to-find link to the policy. Staff in higher risk roles, such as tender evaluation committees and other panels, should be given a copy of the policy. Agencies should also consider publishing their policy on their public website or otherwise making it available to key parties, such as suppliers.

One way of ensuring that such policies have operational or practical effect is to incorporate them into employment contracts or contractual terms of engagement.

# Identify and manage vulnerable units and branches

Among the most important determinants of risk is the relevant unit or branch and the type of workplace activity undertaken. The Commission's experience is that the areas of highest risk include:

- procurement and disposal
- contract management
- inspections
- regulation
- issuing fines or penalties
- awarding grants or subsidies
- granting access to natural resources
- recruitment
- conferring qualifications or licences.

More broadly, agencies should consider the need for additional controls in areas and actions involving:

- the exercise of specific or certain classes of discretionary powers
- significant advantages or disadvantages for external parties
- a history of public interest or controversy
- large sums of public money
- a history of alleged or actual corruption or misconduct
- a high degree of subjectivity
- highly sensitive or valuable information
- departures from existing policy, procedure or precedent

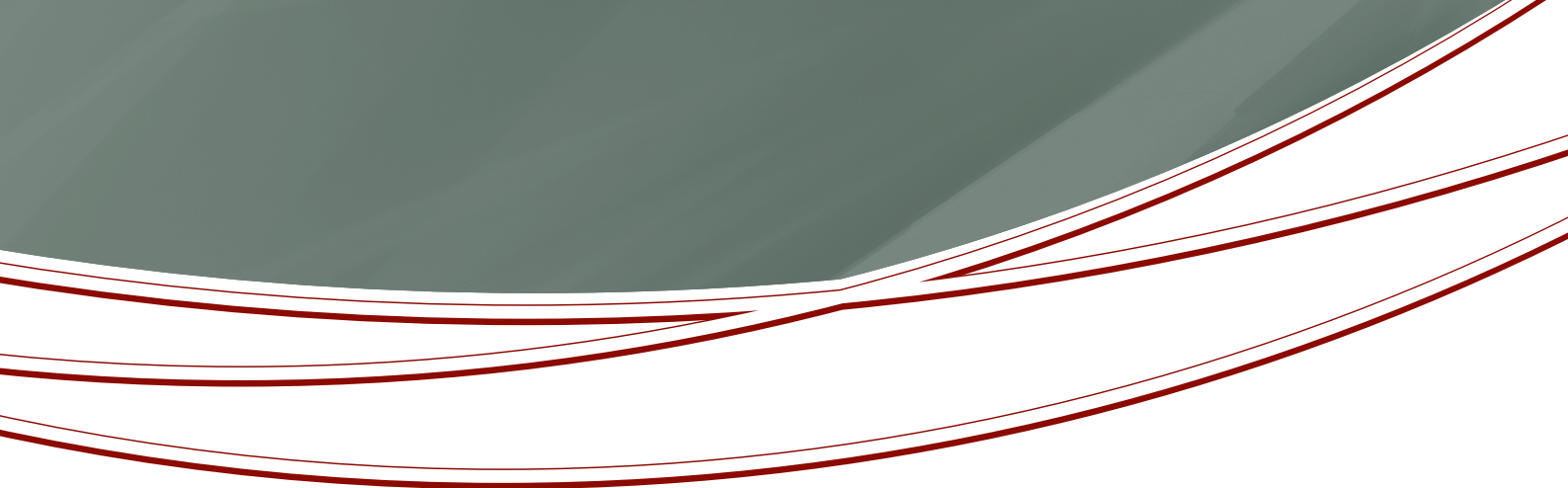
- a public expectation of high levels of accountability and transparency
- remote or regional areas
- the likelihood of lasting or irreversible consequences.

## A good control environment

For high-risk units and branches, the best practice is to consider additional controls that go beyond the agency's standard policy requirements. Among other things, these controls should focus on limiting the consequences of an undisclosed or mismanaged conflict of interest.

Examples of some additional controls include:

- providing additional, regular training and awareness-raising sessions (for example, probity training in the lead up to a major tender)
- providing additional written instructions, standard operating procedures, checklists and sign-offs
- modifying existing financial delegations
- providing additional information to parties affected by a matter, such as published reasons for the decision or making the decision in a public setting
- randomly allocating matters to staff, or preventing staff from self-selecting the tasks they work on
- enhancing recordkeeping requirements
- ensuring that electronic audit logs are used and monitored

- 
- taking steps to restrict access to confidential information
  - implementing additional segregation of duties and supervision
  - adopting stricter gift and hospitality procedures for high-risk situations
  - using data analytics and review to identify red flags.

# Avoid unnecessary conflicts of interest

For the reasons set out above, mismanaged conflicts of interest are detrimental to the public interest and are often associated with corrupt conduct. Therefore, unnecessary conflicts of interest should be avoided. Good practice examples include:

- not pursuing secondary employment opportunities
- an official deciding not to buy shares in a company operating in an industry that they regulate
- when appointing a tender panel, excluding the involvement of any official who is known to have a relationship with a potential tenderer
- a local councillor deciding not to make property investments in their local government area.

Similarly, the opportunity may exist to avoid social situations that might lead to a conflict of interest. Examples include:

- a procurement manager declining invitations to socialise with suppliers
- an inspector declining social media interactions or invitations from companies they inspect
- rotating staff to reduce the likelihood that a professional relationship will develop into a friendship.

Officials should also be careful that they are not placed in conflict of interest situations by being “groomed” by people who may potentially be affected by decisions they make.

## Outside employment is a high risk

The Commission’s experience is that undisclosed outside employment or business interests are frequently associated with corrupt conduct. Additional procedures and controls are recommended for secondary or outside employment.

In particular, agencies should require secondary employment disclosure and refuse to allow secondary employment where it is likely to conflict with the duties of an official who has financial delegations or influence over expenditure.

Where secondary employment is approved, any change in the scope of the approved employment should be subject to ongoing disclosure requirements.



# Disclose personal interests and conflicts of interest

All conflicts of interest should be disclosed promptly in writing to a manager or other relevant authority.

In addition, many officials in higher risk or senior roles are also required to disclose certain relevant personal interests, whether or not they presently conflict with a public duty. The two concepts of personal interests and conflicts of interest are connected in that conflicts of interest may arise from ongoing personal interests. In this context, personal interests may also be potential conflicts of interest. Such officials may be required to routinely disclose their financial interests or friends and family members who are known to have dealings with the public sector.

The typical methods for making and recording disclosures are:

- maintaining a register of relevant private interests
- declaring conflicts of interest to a manager

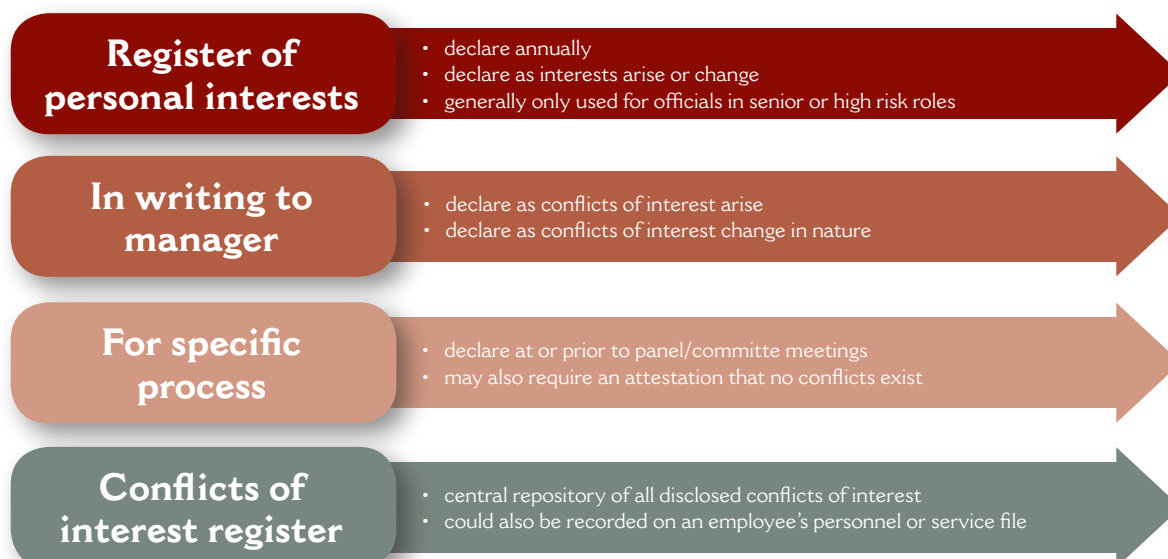
- declaring conflicts of interest for a specific process (for example, recruitment panels, tender panels and market-testing processes)
- maintaining a conflicts of interest register.

These methods are not mutually exclusive and often work independently of each other. Therefore, in some cases, it is appropriate for a matter to be disclosed in multiple ways.

## More is more

Forms used to disclose conflicts of interest or personal interests should leave sufficient space for officials to fully disclose all required details. Some disclosures are complicated and require a substantial amount of information to be conveyed to allow a proper assessment.

Figure 3: Declaring interests and conflicts of interest



## Declaring in a register of personal interests

A register of personal interests is often maintained for officials in senior or high-risk roles.

For example, councillors and designated persons in local government are required to disclose certain categories of personal interest, including:

- real property
- sources of income
- gifts
- contributions to travel
- interests and positions in corporations (such as shareholdings and directorships)
- positions in trade unions and professions or business associations
- debts
- dispositions of property.

Similar provisions apply to parliamentarians and members of Parliament and the public sector senior executive service.

The point of a register of personal interests is to provide a higher level of transparency, and therefore control, over officials in high-risk roles. Disclosing an interest before it becomes a conflict of interest also reduces the likelihood that an official will be tempted to conceal or favour the interest.

## Disclosing conflicts of interest to a manager

Conflicts of interest should always be declared promptly and in writing. This avoids disputed accounts of conversations and whether the full extent of the interest or conflict of interest was properly disclosed.

Most agencies require officials to disclose conflicts of interest to their manager. It is also common to convey these disclosures to a governance or corruption prevention officer and/or to record them in a central register (discussed below).

Importantly, a conflict of interest must still be disclosed even if the relevant private interest has already been registered. For example, if a senior executive has already disclosed that their spouse works for a particular supplier that does business with government (that is, disclosure of a personal interest), a further disclosure should be made

if that business tenders for a contract over which the executive has involvement (that is, disclosure of a conflict of interest).

The following categories can be used to identify personal interests that may trigger a conflict of interest:

- pecuniary interests
- people who are more than acquaintances
- connections to people who have provided income or may provide income
- organisations and clubs, and people connected to them
- connections to people and entities who have given benefits or favours
- other people or matters that are closely connected to the public official.

The categories (expanded on below) should be used as prompts to help identify the personal interests that may come into conflict with public duties. It does not matter if a personal interest falls in more than one category or which category best describes the interest.

### Verifying accuracy of a disclosure

The Commission's experience is that some conflict of interest disclosures may be understated (perhaps deliberately) or lack the detail required to make a proper assessment. Managers might therefore consider taking steps to verify the accuracy of the disclosure. In some cases, this will involve asking further questions or requiring the discloser to provide supporting documentation.

For serious matters, it may be necessary to conduct further enquiries, such as checks through the Australian Business Register or the Australian Securities and Investments Commission, as well as land title checks or internet/social media checks.

Figure 4: Personal interests that could conflict with public duties



## Pecuniary interests

Pecuniary interests (or financial interests) can be direct or indirect, short- or long-term and can stem from both gains and losses. The pecuniary interests<sup>2</sup> of an official's immediate family members, or any other member of their family economic unit, are normally deemed to be the interests of the official. Examples of pecuniary interests include:

- sources of income, including secondary employment
- ownership or lease of land, buildings and property
- shares or investments in companies, partnerships or other entities
- beneficial interest in a trust or deceased estate
- loans or debts
- an option to buy or sell an asset or any other anticipated future financial benefit.

Pecuniary interests may also arise where a benefit accrues to an official via another party.

## People who are more than acquaintances

Any relationship with a person, who is more than an acquaintance, could amount to a personal interest. This typically includes spouses, relatives (including relatives by marriage and people who are close to family members), friends, current romantic partners, close colleagues, mentors and social connections.

It can also include people with whom an official formerly had a close relationship; for example, a previous spouse, ex-colleague or an old friend. As noted elsewhere in this publication, feelings of enmity or hatred towards a person can also constitute a personal interest.

The Commission's experience is that officials find it difficult to be objective about the status of their own personal relationships. It is therefore important to carefully consider how a reasonable person might view the situation. The importance of disclosing what might be considered personal relationships should be emphasised and, at least in some cases, re-enforced as a contractual obligation to disclose conflicts of interest.

## Connections to people who have provided or may provide income

External sources of income are pecuniary interests; however, the people and entities associated with that income are also likely to be personal interests. Examples can include:

- any current provider of secondary or other employment
- current or former business partners
- customers, significant suppliers or contractors of a private business
- customers, significant suppliers or contractors of a secondary employer
- future employment or business opportunity (to the official or an immediate family member)
- relationships with former employers and colleagues, especially if there is ongoing social contact.

### Future income

Jane works in compliance at a local council. It is her job to certify that new buildings have been built in accordance with the approved development application. She is also responsible for following up complaints by local residents.

One day, she is conducting an inspection of a half-completed block of units. While onsite, she is approached by a representative from the building company. He tells Jane that the business is looking to expand its operations and asks if she would like to discuss a job offer over coffee. He also mentions that he anticipates offering Jane a "substantial remuneration package". Jane is genuinely interested and says she will think about it without giving a definite answer.

In this situation, Jane now has a personal interest; that is, the job offer in which she is genuinely interested. A reasonable person might think that Jane could favour this interest over her public duty. As such, she has a conflict of interest.

## Organisations and clubs, and people connected to them

A personal interest may arise from a connection with organisations or clubs. These typically include professional, sporting, recreational, community, arts or social organisations. Hobbies about which an official is passionate could also be classed as a personal interest.

<sup>2</sup> In some cases, such as the *Model Code of Conduct for Local Councils in NSW*, the term "pecuniary interest" has a specific meaning.

The depth of an association with an organisation, such as a football club, can vary greatly. An ordinary club membership is obviously not as significant as having a directorship or office holding, but may nonetheless amount to a conflict of interest because club affiliations can be the source of strong attachments and commitments.

### **Weekend tennis serves up a conflict**

John is in charge of facilities management for his agency. Charlie runs his own company that provides electrical maintenance and repairs and John's agency is one of his customers.

John and Charlie are members of the same tennis club and often end up playing each other on weekends and occasionally pair up for a doubles match. Other than their regular interaction through tennis, John and Charlie do not socialise.

John's public duties include selecting maintenance suppliers from the agency's preferred supplier panel, inspecting the work performed by suppliers and approving the payment of invoices.

Although John and Charlie's personal interactions are confined to their tennis activities, John's manager correctly concludes that their relationship is more than an acquaintance. A conflict of interest is therefore registered and a management response prepared.

## **Connections to people and entities who have given benefits or favours**

Officials may have a personal interest if they could feel indebted or obligated to anyone who has provided gifts, benefits, hospitality or favours (or could be perceived as being indebted or obligated)<sup>3</sup>. It is not necessarily the gift or benefit itself that causes the conflict of interest, but the potential relationship and sense of obligation or expectation that could arise.

A potential sense of obligation can arise from:

- gifts, benefits or hospitality that are more than token in nature
- favours or valuable advice
- discounts on the provision of goods and services
- borrowing equipment or other items
- sponsorships or donations to causes associated with a public official.

<sup>3</sup> All agencies should have a gifts and benefits policy that prohibits or limits gifts that could create a sense of obligation.

## **Other people or matters that are closely connected to the public official**

This category includes anything else that might give rise to a personal interest. This could include social media associations. The Commission's view is that a routine online or social media connection, in the absence of any hallmark of a friendship, may not necessarily amount to a personal interest.

Nonetheless, officials should always be prudent about the way they use social media. In particular, officials should generally avoid endorsing products, services or companies connected to their work.

## **Declarations for specific processes**

Public officials often participate in discrete processes that confer direct benefits or disadvantages on external parties. These include recruitment panels, tender panels or other procurement/disposal activities, awarding grants, as well as decisions to terminate any contract or take legal action.

Any conflict of interest arising in such a process is usually disclosed to the relevant chair, steering committee or project manager. This may not be the regular manager of the official making the disclosure.

In many situations, the conflict can be recorded in the minutes or other written record of the relevant meeting. If appropriate, the response to the conflict should also be minuted (for example, a notation indicating that the official was absent and did not vote on the matter).

For specific processes, it is also better practice for relevant officials to disclose, in writing, when they have no conflicts of interest (that is, a "nil" disclosure). Some agencies require this to be in the form of a legal undertaking. This requirement is part of the particular process and is in addition to, and separate from, any general policy requirement to declare conflicts of interest.

The probity of specific, discrete processes may be enhanced when:

- officials are asked to think about and disclose their personal interests, rather than any conflicts of interest (as it encourages fuller disclosure and prompts managers to give greater consideration to the disclosure)
- officials are provided with relevant training at the start of the process (especially if they are external or independent participants)

- officials with known personal interests are not included in the process in the first place
- officials are asked to re-disclose as new information becomes known (for example, once the identity of tenderers is known) or at key gateway points in the process.

It is noted that the requirement for disclosure as part of a specific process may be in addition to any general policy requirement to disclose personal interests or conflicts of interest.

## Conflicts of interest register

Many agencies maintain a central register of all conflicts of interest that have been disclosed by officials.

In practice, this is usually achieved by using a computerised system for disclosing and managing conflicts. Alternatively, individual managers are required to forward disclosures made by their staff to a central point, such as a governance or corruption prevention officer.

A central register provides a single source of information that can be easily analysed and used to assist an audit or investigation. It also allows agencies to ensure that conflicts of interests are being managed in a consistent, acceptable manner.

### Declarations by suppliers and prospective suppliers

Consideration should be given to requiring suppliers (or any other counterparty) to disclose conflicts of interest relevant to the agency. In many cases, this is a contractual requirement. The *NSW Code of Practice for Procurement*<sup>4</sup> states: "A party with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party."

Many agencies also stipulate the need for suppliers to disclose conflicts of interest in a statement of business ethics or similar policy document. Importantly, agencies need to manage a supplier's conflicts of interest in much the same way as the management of an employee's conflict of interest.

<sup>4</sup> Published at [www.procurepoint.nsw.gov.au](http://www.procurepoint.nsw.gov.au) at the time of publication. Other whole-of-government legal frameworks may impose similar obligations.



# Manage and monitor conflicts of interest

The relevant manager should review the written declaration of a conflict of interest and prepare a plan for managing and monitoring it.

There are four stages in managing and monitoring a conflict of interest:

1. Assess the risk of the conflict of interest
2. Consider the management options
3. Document a management response
4. Implement and monitor

## 1. Assess the risk of the conflict of interest

In terms of likelihood and consequences, the risk of a conflict of interest should be assessed in order to decide which management actions are appropriate. The table on page 20 describes the key factors that contribute to the risk.

**Figure 5: Conflict of interest risk factors**



Source of risk	Comment
The activities of the branch, unit or area	Some workplace functions (such as procurement) entail higher risk.
The particular project, transaction or individual activity	<p>This could relate to factors such as:</p> <ul style="list-style-type: none"> <li>• amount of public funds involved</li> <li>• individuals or parties that could gain or lose</li> <li>• whether the delivery of core government services could be affected</li> <li>• impact on public health and safety</li> <li>• susceptibility to corruption, fraud or compliance failures</li> <li>• relevant history of failures in project delivery</li> <li>• degree of reliance on suppliers or third parties</li> <li>• perceptions of key stakeholders and the public, including expectations of high levels of probity.</li> </ul>
The extent of the official's involvement and ability to influence the outcome	The official might have complete ownership and control of the relevant matter or just be a minor player in a large team; alternatively, the official's discretion may be wide or narrow. The ability to influence others is also an important consideration.
The nature of the official's personal interest	If the interest is closely held or the potential personal benefit is large, the conflict carries more risk. A key consideration is how much, and how easily, the personal interest could be favoured.
Other deviations from process or probity issues	If the project or matter in question already deviates from the agency's normal procedure (for example, it is a non-compliant direct negotiation) or there is an existing probity issue (such as a late tender), the conflict of interest may be contributing to a cumulative risk to the agency's integrity and reputation. Small deviations from the established process, written procedures or rules that might otherwise be viewed benignly, may lead to substantial suspicions of impropriety connected to the conflict of interest. It is therefore important to consider the overall context of the situation.
The potential consequences if the official were to favour their interest	The agency should consider the consequences if the personal interest were favoured. This could include damage to brand and reputation, the potential for legal action, loss of public trust, delays to projects, interruptions to service delivery and mitigation costs. The total effect to the agency could be many multiples of the benefits that flow to the conflicted official.

## 2. Consider the conflict of interest management options

Having established the level of risk associated with the conflict, the potential responses should be considered.

Where the conflict of interest entails high risk, the agency should always consider removing the official from the relevant public activities. As this is not always practical, other alternatives should be considered.

The options to consider when managing a conflict of interest are:

- take no further action
- change the official's relevant activities
- change the official's personal interest
- change the system or process.

The options should not be considered in isolation and a mix of responses may be appropriate.

## Take no further action

For many low-risk, less serious conflicts of interest, no management action is required beyond properly documenting the disclosure and the manager's decision to take no further action. In particular, agencies that have a healthy culture of self-reporting and erring on the side of caution may find that many disclosures do not require active management.

However, in cases where the conflict of interest is not minor in nature, agencies should take great care when deciding to take no further action. Normally some proportionate measures can be taken to reduce risk to an acceptable level.

## Change the official's relevant activities

Generally, changing the conflicted official's relevant public activities will be a key component of managing the conflict of interest. This can be done by reducing or amending the official's involvement and/or influence, as follows.

### Reduce or amend involvement

Often, the most effective way to manage a conflict of interest is to remove the relevant official so that they have no involvement in the matter. The logic is that their ability to misuse their position (or the perception that they might) is minimised if they have no involvement. Often, this can simply entail reallocating the official to different duties.

Where entirely removing an official from a matter is not practical, agencies should consider ways to reduce involvement. This can include:

- limiting the official's involvement to certain aspects of the process, including segregating or reducing their duties
- giving the official a less senior role
- supervising the official more closely or adding members to the team
- excluding the official from certain discussions or meetings
- placing the official in an advisory role with no decision-making authority or financial delegations
- excluding the official from critical recordkeeping roles
- preventing the official from having dealings with external parties (such as tenderers)
- changing the official's reporting lines
- limiting access to certain systems and information
- ensuring that an official of equal or greater seniority (to the conflicted official) is involved in the matter
- engaging an independent expert to work on aspects of the matter
- engaging a peer or subject-matter expert to review the work of the conflicted official.

### Reduce or amend influence

Even if they have little or no formal involvement, an official may still have substantial influence over a matter. This could be the case if the conflicted official is in a position to persuade colleagues, or if they have access to relevant information. Some techniques for reducing the influence of a conflicted official include:

- transferring the matter to another unit or team that is unconnected with the official (this could include taking steps to ensure that the official's subordinates and close colleagues are not in key decision-making roles or changing reporting lines to ensure the official has less influence)
- transferring the person to another project, branch or unit (temporarily or permanently)
- creating a physical separation between the conflicted official and decision-makers
- removing access to electronic and physical records
- informing other people dealing with the matter that there is a conflict of interest and instructing them on how to meet probity requirements.

## Change the official's personal interest

It may be appropriate for the conflicted official to modify the nature of their personal interest in some way. Most often, this involves disposing of a pecuniary interest. That is, relinquishing ownership by, for example, selling shares or land that is creating a conflict of interest. An agency may not be able to direct an employee to dispose of a privately-owned asset but it may be possible to negotiate an agreement with the conflicted official.

While it is difficult to dispose of a non-pecuniary interest, such as a friendship, it may be possible for the official to give an undertaking to refrain from communicating with a particular person during a process such as a recruitment exercise or a tender.

## Change the system or process

Without changing either the official's public activities or their private interest, it is usually feasible to strengthen the overall probity of the process. This tends to involve either stronger recordkeeping or additional monitoring and assurance. While controls of this nature may not directly prevent an official from favouring a personal interest, they increase the likelihood that any improper conduct will leave a trail and be detected. Some examples include:

- requiring more detailed documentation about all aspects of the matter
- designing the decision-making process to reduce the level of subjectivity and discretion
- documenting and publishing reasons for the decisions taken
- providing reminders to relevant staff about reporting alleged misconduct
- creating audio or video recordings of key decisions or meetings
- conducting a post-completion audit or review
- ensuring relevant audit and access logs in key IT systems are turned on and reviewed
- enhancing measures to protect information from unauthorised access, use or disclosure
- establishing internal controls to identify deviations from the established process
- appointing probity checkers, probity advisors or probity auditors
- providing additional training and awareness raising sessions.

## 3. Document a management response

Just as a conflict of interest disclosure must be in writing, so must the management response.

In many low-risk cases, this will be a simple document that records the decision taken. Where it is decided that no further action is required or the conflicted official is to be removed, a detailed plan of action is usually unnecessary.

However, where the conflicted official is to remain involved in the matter in some way, a more detailed plan of action is usually required.

The documented management response should typically detail the measures that will be undertaken to manage the

conflict, who is responsible for implementing each measure and any monitoring arrangements.

A management response should be prepared through consultation with the conflicted official and should be signed by both the official and the manager.

In formal or high-risk processes (such as a large tender) there should be periodic reporting of compliance with the documented plan for managing the conflict of interest. This should be a regular or standing agenda item with outcomes minuted.

### Written management response is essential

Meredith, an experienced human resources manager working at a public sector agency, is a member of a recruitment panel that is hiring a new senior executive. Once the job applications are received, Meredith notices that a close family friend has lodged an application. She discloses a conflict of interest to her manager and it is agreed that Meredith should take no further part in the recruitment process. However, because Meredith is aware of the proposed interview questions and was closely involved in rewriting the position description, some additional precautions were taken:

- the interview questions were rewritten and stored in a file that Meredith could not access
- other members of the panel, including Meredith's replacement, were advised of her conflict of interest and directed to refrain from discussing the matter with her
- Meredith agreed, in writing, to refrain from speaking with her family friend during the recruitment process and to report any contact to the convenor of the panel.

These additional steps were all documented and placed on both the recruitment file and the agency's conflict of interest register.

It is not unusual for the official making a disclosure to suggest how their conflict could be managed. For instance, they might volunteer to be removed from the matter or recommend how their duties could be restricted. In addition, some management options, such as disposing of a personal asset holding, require the cooperation of the conflicted official.

So, while it is useful to liaise with the official that has the conflict of interest, the appointed manager or subject-matter expert should make the final determination about how a conflict will be managed. In the case above, Meredith agreed to the course of action. While it is preferable, it is not essential that the official with the conflict of interest agree with the proposed course of action.

## 4. Implement and monitor

Managers are ultimately responsible for ensuring that all agreed changes and control measures are implemented. For various reasons, including demanding workloads, agreed management actions are sometimes left unimplemented. It may therefore be helpful to obtain assistance from colleagues in specialist governance or corruption prevention roles. In high-risk or complex matters, a probity expert sometimes is appointed to ensure that conflicts of interest (and other probity issues) have been properly managed.

Close monitoring may be required, for example, where the management response relies on the conflicted official undertaking to refrain from certain activities or interactions. In particular, in cases where an official has been removed from working on a matter, managers should be vigilant about ensuring there is no informal influence over the outcome.

Management also needs to monitor any changes in a conflict of interest because it is quite common for the nature of public activities and private interests to change over time.

Staff should also be periodically reminded to disclose any new or changed personal interests or conflicts of interest.

### Responding to a change in circumstances

Andy is preparing the specifications for an agency's request for tender (RFT) documents. He knows that his cousin, Michelle, works for a large company that is likely to tender for the work. Although Andy does not see Michelle very often and she works in a back-office role, he has disclosed a conflict of interest and his manager has directed Andy to refrain from discussing the matter with Michelle.

Months later, the RFT has been released and Andy gets a call from Michelle. She tells him that she has been promoted to a new account management role and would like to catch up with him for a coffee to chat about the tendering opportunity at his agency.

In this situation, the nature of Andy's conflict has changed because the connection between his public activities and his personal interest is now much stronger. He should update his disclosure and his manager should adopt new measures for dealing with the conflict.

In any case, Andy should not discuss the tender with Michelle at all.

## General responsibilities of all managers

Apart from their responsibility to manage individual conflicts of interest, managers have a range of general responsibilities as leaders within their agency. These include:

- promoting a culture of probity and ethical conduct (for example, ensuring that their own conduct complies with the spirit and letter of agency policy)
- addressing any workplace conduct that appears to be improperly benefiting a particular party
- ensuring that relationships with suppliers and other contractors remain on a professional footing
- ensuring there is access to information about conflicts of interest, including the policy, relevant written procedures and other guidance
- ensuring that employees and contractors receive relevant training in conflicts of interest
- providing advice or directing staff to reliable sources of advice in connection with conflicts of interest
- being alert to, and following up on, suspicions or indications that a conflict of interest has been concealed or mismanaged
- reporting suspected breaches of policy and cooperating with any investigative enquiries
- completing attestations regarding the control framework.

Managers who suspect that a staff member has concealed a conflict of interest may find themselves in the potentially uncomfortable position where they have to ask questions about a person's relationships, finances or social activities. While managers should be respectful of privacy, where there is a possibility that an employee or contractor may not be acting in the public interest, they have a responsibility to make reasonable enquiries.



### **Know the red flags**

While conflicts of interest can arise in many ways, some of the red flags include:

- receiving gifts and hospitality
- revealing evidence of secondary employment (or other undeclared sources of income or wealth)
- having a spouse or family members with employment that is related to the agency's functions
- attempting to engage in unwarranted direct negotiations or other breaches of procurement or recruitment policy
- socialising or maintaining friendships with contractors or having common interests with suppliers and other parties
- showing a preference for dealing with former colleagues or business contacts.





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## Be proactive in looking for conflicts of interest

Officials may fail to disclose their conflicts of interest, whether intentionally or unintentionally. Because of this, the Commission recommends that agencies implement measures to identify undisclosed conflicts of interest. These can include:

- an internal reporting or complaint-handling function that allows staff and external parties to report concealed conflicts or other forms of misconduct
- a data analytics program that can identify suspicious transactions, events or relationships that may be associated with a conflict of interest
- an internal audit function that has regard for suspicious transactions
- examining audit logs
- appointing a probity expert on high-risk transactions
- conducting background and due diligence checks on potential staff, suppliers, contractors and business partners.



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## Evaluate and audit the control framework

As with any other important control framework, an agency's conflict of interest framework should be evaluated or audited from time-to-time.

In order to reduce the risk of corruption, it is important that evaluations and audits address the completeness and accuracy of disclosures and registers. They should also test whether documented management responses have been properly implemented. This should include maintaining cultures and systems that are vigilant in detecting and addressing non-disclosure.

Evaluations and audits should cover not only employees but also other relevant people and entities interacting with the agency.



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## Deal with breaches

Alleged breaches of a conflicts of interest policy or code of conduct should be properly investigated and, where appropriate, action taken. This may include:

- imposing disciplinary action, such as a demotion or dismissal
- terminating contracts or other contractual remedies
- undertaking administrative or civil action against an official or related entities
- reconsidering decisions that have been adversely affected by a conflict of interest
- reporting the breach to the Commission or the police.

Complaints about concealed or mismanaged conflicts of interest should be captured by an agency's internal reporting policy and procedures. Where relevant, reports of wrongdoing should also attract the protections of the *Public Interest Disclosures Act 1994*.

Employees, consultants, contractors and other relevant entities should be informed of their obligations in connection with conflicts of interest and the potential consequences of breaches.



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## Further information

Many of the Commission's corruption prevention publications and investigation reports contain useful information about conflicts of interest. These can be accessed at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au).

The Commission's corruption prevention staff are also able to provide information for agencies dealing with policy issues or specific conflict of interest situations. Staff can be contacted by telephone on:

02 8281 5999  
1800 463 909

or by email at:

[icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au).





INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

Level 7, 255 Elizabeth Street  
Sydney NSW 2000 Australia

Postal Address: GPO Box 500  
Sydney NSW 2001 Australia

T: 02 8281 5999

1800 463 909 (toll free for callers outside metropolitan Sydney)

F: 02 9264 5364

TTY: 02 8281 5773 (for hearing-impaired callers only)

E: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

Business Hours: 9 am - 5 pm Monday to Friday