

# Factsheet: Conflict of Interest

Updated 2022

## What is a Conflict of Interest?

A conflict of interest is a situation in which an individual has competing interests or loyalties. Conflicts of interest are a significant contributor to fraud and corruption and should be handled appropriately by every organisation.

Fraud is 'wrongful or criminal deception intended to result in financial or personal gain', while corruption is 'abuse of entrusted power for private gain'. Conflicts of interest can be an indicator, a precursor or a result of corruption.

Competing interests can make it difficult to fulfil duties impartially. A conflict of interest can exist even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in people, processes, organisations and governments. A conflict of interest can impair an individual's ability to perform their duties and responsibilities objectively.

Conflicts of interest may arise in the course of business activities, especially during a procurement process. Types of conflicts are varied, but may include pecuniary interests, legal interests, external associations in common, and direct or non-direct personal or family interests. In carrying out their duties, individuals must not allow themselves to be improperly influenced by family, personal or business relationships and, unless they can be managed effectively, must not have an actual, perceived or potential conflict of interest in relation to their duties. Conflicts of interest can be:

- › Actual – A situation in which a reasonable person would think that professional judgment has been compromised.
- › Perceived – A situation in which a reasonable person would think that professional judgment is likely to be compromised.
- › Potential – A situation that may develop into an actual conflict of interest.

It is good practice to implement policies, processes and governance structures to help assure conflict of interest situations are dealt with ethically and within accepted transparency principles. For every situation, steps should be taken to identify, evaluate the significance, and manage any conflict of interest that may impinge upon people and their work.

Conflicts of interest can be hard to avoid, especially in small communities or specialist services. This does not preclude two organisations engaging in business transactions, but conflicts

of interest must always be made known.

## Question to be Asked

For any conflict of interest situation, the following question should be asked:

*Would a reasonable person perceive that an individual may be influenced to place their own interest ahead of the organisation's interest?*

This does not need to be actual or be proven to be a conflict of interest – it just needs to be perceived.

## Principles

**Clarify conflicts of interest so people can recognise these situations and know what they need to do.**

- › There should be a written and approved organisation code of conduct.
- › There should be a written and approved gift, benefit and entertainment policy.
- › There should be a written, transparent and approved conflict of interest policy containing:
  - A step-by-step guide describing the conflict of interest management process including what is permissible and what is not. This should align to the organisation's approved risk appetite.
  - Conflict of Interest examples and monetary limits.
  - Examples by way of illustrative case studies.
  - Assigned delegations for conflict of interest situations that are layered to (a) operational management (b) senior management (c) board of directors.
  - Requirement for mandatory awareness training including refresher training.
  - A clear process for managing unavoidable conflicts of interest.
  - A self-reporting process.
  - A third-party reporting process for reporting anomalies or improper conduct – this could allow for anonymous reporting.
  - Review and audit activities to assure the policy continues to operate effectively.

- › The conflict of interest policy should be approved by the governing body – in most cases this will be the board of directors.
- › A gift, benefit and entertainment register should be kept, maintained and continuously reviewed.
- › A conflict of interest register should be kept, maintained and continuously reviewed.
- › There should be clear responsibilities and delegations for reviewing conflicts of interest.

## Help people avoid conflicts of interest.

- › There should be awareness training so people know what is expected of them in relation to conflict of interest.
- › This should occur at induction into the organisation, then as annual refresher training.
- › Awareness training should extend to every employee, contractor and vendor, with records kept.

## Require individuals to declare formally and properly any conflicts of interest they may have.

- › There should be an effective self-reporting process when a conflict of interest situation arises.
- › There should be a process for third-party reporting for anomalies or improper conduct, which could include anonymous reporting.
- › There should be an annual code of conduct and conflict of interest declaration signed by every employee, contractor and vendor.

## Require transparent management of conflicts of interest.

- › Each business unit should include conflict of interest as a consideration in meeting agendas, risk assessments and risk registers. This will be more important where business unit management has procurement responsibilities.
- › Instances of conflict of interest should be immediately reported to an appropriate authority in line with the organisation policy for dealing with conflicts of interest.
- › There should be a clear process for managing unavoidable conflicts of interest.
- › The final arbiter of whether a conflict of interest exists should be the audit committee.
- › Periodic reporting on conflicts of interest should be made to the audit committee at least annually.

## Deal with breaches so infringements are properly investigated and remedial action taken.

- › Have a process in place to identify infringements. This should include assurance activities. Continuous control monitoring using data analytics of systems to identify conflicts of interest should be considered.
- › It should be clearly defined who can accept a conflict of interest situation, or authorise further action.
- › Sanctions should be defined, disseminated and applied.

- › Serious proven allegations should ultimately result in termination of employment and also legal action through the courts. A big problem is that many organisations let people go, who then move to other organisations where they may display similar behaviour.

## Keep good records

- › Good record-keeping and documentation for conflicts of interest should be maintained, containing accurate and concise information.

## Build-in conflict of interest assurance activities

- › While policy and self-reporting is important, a strong combined assurance process across the organisation's '3 Lines of assurance' should be in place to provide multi-layered assurance that conflicts of interest are identified and actioned in a timely way.

Conflict of Interest Integrated Assurance		
Line 1	Line 2	Line 3
<b>Own and manage risk</b> <ul style="list-style-type: none"> <li>- Delegations</li> <li>- Segregation of duties</li> <li>- Code of conduct</li> <li>- Conflict of interest policy</li> <li>- Gift, benefit and entertainment policy</li> <li>- Self-reporting conflicts of interest</li> </ul>	<b>Review Line 1 risk management effectiveness</b> <ul style="list-style-type: none"> <li>- Review of policy compliance and self-reporting by compliance function</li> <li>- Continuous control monitoring of systems using data analytics to identify conflicts of interest</li> <li>- Investigations</li> </ul>	<b>Audit activities by internal audit function</b> <ul style="list-style-type: none"> <li>- Audit activities by internal audit function</li> </ul>
Operational management approval within policy thresholds	Senior management approval within policy thresholds	Board of directors or audit committee approval within policy thresholds

- › To effectively provide an assurance role over conflicts of interest, both the compliance function (Line 2 assurance) and the internal audit function (Line 3 assurance) should have continuous access to relevant documentation such as the gift, benefit and entertainment register, conflict of interest register, board minutes, committee minutes, etc.

## Situations to be Cautious About

- › Single source procurement may be warranted in certain circumstances, but can raise red flags and perception of favouritism or inappropriate conduct. These situations need to be supported by a strong business case validated independent of the manager who is procuring.
- › Contracting to buy goods or services from vendors should be periodically market tested through a transparent procurement process. A red flag is raised where one vendor has a contract for a long time without market testing.
- › Gifts, benefits and entertainment from vendors will almost always be provided to influence future procurement. Vendors do not generally do this for altruistic reasons.
- › It is difficult to find a good reason for vendors such as project managers to be assigned organisation delegations.

- › Use of vendor contracts is a dangerous practice as it will almost certainly be weighted in favour of the vendor.
- › Senior managers should not sit on boards or committees of organisations which are vendors supplying goods or services, or are bidding to supply goods or services to their organisation.
- › Where a senior manager sits on the board or committee of another organisation, any fees should be paid to their organisation directly by the other organisation, and not to them.
- › Where a senior manager may have a relationship with a vendor or someone connected to a vendor, either current or historic, they should not be involved with procurement activities with that vendor.
- › With situations mentioned above, the senior manager delegation for a procurement should never be assigned to a subordinate, but to another senior manager of equal or higher classification outside their business unit.
- › Reliance on only a self-reporting process to manage conflicts of interest, as described above, is a weak control and can not be seen as transparent. It would not pass the test posed by the question:

*Would a reasonable person perceive that an individual may be influenced to place their own interest ahead of the organisation's interest?*

## Helpful References

Australian Standard 8000:2003 'Good Governance Principles', Standards Australia

Factsheet 'Procurement Integrity (Probity)', IIA-Australia

Factsheet 'Tender Transparency', IIA-Australia

'Governance Lighthouse', Audit Office of New South Wales

Standards Australia – Handbook (HB) 325–2008 'Assuring probity in decision-making'

Standards Australia – Handbook (HB) 405-2004 "Disclosure and Transparency Frameworks"

White Paper 'Conflicts of Interest: A Framework', IIA-Australia

White Paper 'Conflicts of Interest in the Award of Contracts', IIA-Australia

White Paper 'Corruption-Related Risk in Decision-Making', IIA-Australia

White Paper 'Fraud Risk Indicators', IIA-Australia

White Paper 'Whistleblower Programs', IIA-Australia

