



CONFLICT OF INTEREST Policy and Guidelines

(May 2009)

Policy statement

It is recognised that almost all functions performed at the Curriculum Council can potentially lead to a conflict of interest situation.

It is Council policy to be proactive in identifying potential conflicts of interest situations and managing them in an ethical, transparent manner, capable of review.

Definition

In the public sector context, a conflict of interest involves a conflict between duty as a public officer, and personal or private interests.

Conflicts of interest can also be perceived or potential.

The perception that a public officer's private interests could improperly influence their public duty can be as important to identify as an actual conflict of interest. This is because public confidence in the integrity of the organisation is vital.

A potential conflict of interest arises where a public officer has private interests that could conflict with their official duties in the future.

Another type of conflict of interest can exist where a public officer has competing interests through more than one official role, or public duty.

Conflicts of interest can occur quite frequently and are not necessarily unethical, or wrong. However, it is how they are identified and managed that is important. If conflict of interest situations are not properly identified and managed, they can endanger the integrity of organisations and can result in corruption in the public service.

It is not misconduct to have a conflict of interest but when public officials use their official positions/authority for personal gain or benefit (or for the benefit of friends or relatives) then they have acted improperly and possibly corruptly.

Types of conflict of interest

Financial or material conflicts of interest arise where a public officer could generate a financial benefit from their official duties either for themselves or for someone with whom they are closely associated. If a family member, spouse or close associate is the one that receives the benefit then the public officer is considered to have a conflict of interest. The benefit also does not need to be an immediate one but can involve a future financial gain.

Non-financial conflicts of interest arise where public officers have a tendency toward favour or prejudice arising from a personal involvement, relationship, obligation, value or attitude that could impact on how they carry out their job.

Another type of conflict situation arises where a public officer has more than one official role and these come into conflict. Keeping the roles separate in these situations can be difficult and can result in one role suffering at the expense of another or improper actions/decisions occurring.

Managing conflicts of interest

Management of conflicts of interest is an ongoing process in three broad stages:

1. **Identify** and assess the situation and surrounding circumstances, including the private interests of the person affected to determine whether a conflict between an officer's public and private interests exists and that it is significantly motivating to require further investigation.
2. **Manage** the formal reporting or disclosing of the potential conflict, recording that disclosure and adopting an appropriate procedure to address the real or perceived conflict of interest, if required.
3. **Monitor** the implementation, record progress/outcomes and review effectiveness/appropriateness of the management plan.

An assessment of a conflict of interest situation includes a determination of:

- the nature of the matter that has given rise to a possible conflict e.g. potential partiality or role conflict in a selection process
- compliance with the agency's statutory requirements, policies and codes of conduct
- the level of conflict between the public duty required and the private interests of those involved.

Individuals in disclosing their conflict can reflect on the following questions:

Private interest – is there a private interest in this specific situation? Could I be influenced by this interest, or could I appear to be influenced by this interest?

Potential benefits – could the matter result in a benefit to me, or someone important to me – both immediate and future? Could that benefit throw doubt on my objectivity?

Perception – would a neutral person think these private interests could conflict with my public duty? Are there perceived risks for me and/or my agency?

Proportionality – does my involvement appear fair and reasonable? Does it enable me to act and be seen to act in a fair, impartial and objective manner? Is it consistent with policy?

Public scrutiny test – could I defend/justify my involvement if questioned publicly? What might the consequences of my involvement be for me, others, colleagues, the agency and the public?

Promises and obligations – have I made any promises or commitments in relation to the matter? Do I have affiliations past or present that place me under an obligation?

There is no one set response or right way to manage conflicts of interest and the choice of management strategy will depend very much on the nature and severity/seriousness of the conflict and the circumstances of the situation, including policy or legislative requirements. The following six responses are hierarchical in that they reflect a response to an increasing level of complexity and seriousness in a conflict of interest situation:

Register – involves a formal process of recording disclosures of a conflict of interest in a register or in some other manner.

Restrict – is where limits are placed on the extent of the public officer's involvement. This strategy is useful for one-off situations where the conflict is not ongoing and in matters where it's possible to separate parts of the activity involved.

Recruit – refers to involving an objective third party who oversees part or all of the process. This strategy is useful where it is not possible to restrict the involvement because either the person is the only one available or the only one with skills and knowledge.

Remove – this strategy is used in more serious situations and involves the person withdrawing from all involvement in the matter.

Relinquish – it could be easier/preferable for the person to relinquish the personal interest that is impacting on their capacity to do their ongoing job. However, relinquishment will not always be appropriate or even feasible and the rights of the individual need to be respected.

Resign – resigning from or leaving one's job is clearly a very extreme intervention but may be the only option in serious situations that are likely to be ongoing and the person cannot or will not relinquish the private interest involved.

Conflict in organisational areas

Finance

Processes and procedures are in place to ensure that opportunities for unethical or illegal behaviour is minimised. See Council's accounting manual for processes, procurement manual for purchasing policies.

Examinations

Our policy is for anyone who is closely associated with a student to declare that association and the details of their study program at the start of the year. Arrangements are put in place to preclude that person being involved in any capacity that might constitute a conflict of interest. This could mean deploying the person to another section.

Other

Where staff are considering, or have an external interest, e.g. publishing where there is a possible conflict of interest, they must declare this to the chief executive officer at the earliest opportunity.

Implications of not managing conflicts of interest

Poorly managed conflicts of interest can undermine public/customer confidence. Loss of confidence in the honesty of workers can result in an increase in complaints, as people are more likely to think the worst and not trust the information they are given. Clients become more hostile, less co-operative, question more, and time is taken up dealing with this and not core business.

For organisations, undisclosed and poorly managed conflicts of interest are important because suspicions of self-interest and unfair practices, whether they are true or not, can also damage an organisation's reputation, resulting in a loss of public trust and confidence. This makes achieving organisational outcomes harder. Unmanaged conflicts can also result in inefficient, irresponsible and inappropriate use of public assets and the waste/loss of much needed and scarce public resources.

For communities, conflicts of interest are important because at a very basic level our system of democratic government relies on trust. Trust by the public that they can have confidence in the integrity of their public officials and institutions; that these officials and institutions will operate in the public interest and will carry out their jobs, honestly, with integrity and will not allow their private interests to influence what they do.

The Council has determined that in seeking to obtain the best possible balance of people for its committees and panels (see Attachments 1 and 2), it is essential to have the services and advice of practising teachers and other expert educators. With this determination comes the need to avoid or reduce the likelihood that conflict of interest might be seen to interfere with a person's work in these roles or might be used to prejudice the high public standing of their activities.

Breach of conflict of interest

Where a potential breach has been identified, the matter is investigated thoroughly ensuring confidentiality and natural justice are observed and decisions are impartial, transparent and capable of review.

If a breach has been proven, disciplinary action may be taken.

Additional sources of information:

Curriculum Council's Code of Conduct (<http://ccintranet/>)

Public Sector Standards (<http://www.opssc.wa.gov.au/hrm/standards/index.htm>)

Code of conduct for course advisory committees and examining groups

1. Before accepting a position on a formally constituted course advisory committee or examining group, nominees must declare formally, in writing, to the Chief Executive Officer (CEO) any potential conflicts of interest, (financial, material or partiality interests) directly relating to the course or examination.
2. Prior to accepting appointment to a course advisory committee or examining group, individuals must inform the CEO of their commercial interest in any text or resource; creation/supply of written/online teaching or assessment materials; or any other commercial interest associated with the course; or personal relationship (parent, tutor) to any students in their final year of the course (examining group only).
3. Preference is to appoint people to course advisory committees and examining groups who do not have a conflict of interest. However, in some courses particular people may have unique knowledge and experience. This may be the case in small candidature courses. Nominees who have a potential conflict of interest may be declared ineligible to participate.
4. Full time employees of the Council are not eligible to be members of these committees. If a part time staff member is not sure whether his or her circumstances constitute a conflict of interest, he or she should consult the CEO. Should a staff member's circumstances change, creating a potential conflict of interest, this must be declared in writing to the CEO.
5. Each conflict of interest declaration will be considered by the CEO, with reference to the Chairperson of the Council, and individuals will be advised that they can either continue to perform their stated public duties with certain conditions or that they will need to either remove themselves from the position or relinquish their duties.
6. If the CEO receives a declaration of conflict of interest which reveals an unacceptable circumstance, or if an undeclared circumstance is deemed to constitute an unacceptable conflict of interest, the CEO may ask the person concerned to withdraw from the duties and/or take appropriate and reasonable action to remove the conflict of interest.
7. The CEO may advise individuals that they can continue to participate on a committee provided they agree to a set of conditions which could include, for example, abstaining from discussing any matters that have a direct relationship to, or influence on, the area of conflict of interest.
8. Members of examining groups must not make public comments about examinations without prior approval of the CEO. In accordance with the Curriculum Council Act 1997, other committee members must not, directly or indirectly, record, disclose or make use of information obtained in the course of duty except in prescribed circumstances.
9. Members of examining groups must not: let their involvement in the examining process be widely known to students and others; discuss with teachers the structure and content of the exam paper or; involve themselves in the preparation, review or marking of school exam papers in that course.
10. Members of examining groups must not participate in the preparation of examination papers or questions related to their course for any organisation (commercial or non-profit) other than Council and the school in which they teach.
11. If committee members are in doubt about their roles on the various committees, they should discuss the matter with the CEO.

EXAMPLE ONE

Dear

Thank you for your letter dated < > about a potential conflict of interest.

Your contribution to the development of the < > course and in preparing teachers for implementation has been immeasurable and I know that you have served in the best interest of West Australian students and teachers.

Council guidelines based on the WA public sector guidelines require that all potential conflicts of interest be disclosed and assessed. Given the nature of the work of the < > over the next couple of years in advising and guiding the development of support materials, and the nature of your conflicts of interest, unfortunately it will not be possible for you to continue as a member of this < >.

On behalf of the Council I thank you sincerely for your voluntary commitment to improving education for senior secondary students. I invite you to continue on relevant working parties including the exam working party during the development phase.

The process of course development and implementation in senior secondary education in WA cannot afford to lose people of your calibre and I look forward to your continued participation and expert contribution in the future.

Please contact me if you wish to discuss the matter further.

Yours sincerely

EXAMPLE TWO

Dear

Thank you for your notification of your conflict of interest in relation to matters concerning the business of the < >.

The Chief Executive Officer, Mr David Wood, has considered your declaration and, providing you are willing to agree to the following conditions, welcomes your continued expert advice as a member of the < >.

1. You declare your specific conflict of interest to all members of the < > to which you are appointed.
2. You abstain from discussion on matters that have a direct relationship to, or influence on, your specified area of private interest.
3. You advise me if your personal interest circumstances change.
4. You agree to abide by the Curriculum Council code of conduct for members of < >.

If you accept these conditions, can you please complete the attached form and return it to the Chief Executive Officer.

Yours sincerely



CONFLICT OF INTEREST

I accept that, as a member of the < _____ >, a possible conflict of interest may arise due to

I agree

- to:declare my specific conflict of interest to all the committee members
- abstain from discussion on matters that have a direct relationship to, or influence on my area of conflict of interest.
- advise the CEO if my circumstances change.
- abide by Curriculum Council code of conduct for members of < _____ >.

Name: _____

Signature: _____

Date: _____