

Conflict of Interest Toolkit

General Information

CONTENTS – General Information

The Conflict of Interest (COI) Toolkit comprises Fact Sheets, Checklists, Case Studies and Quick Tips Sheets which are designed to provide practical assistance to Department employees in addressing day to day conflict of interest scenarios.

If you would like to print the [COI Toolkit](#) in full (which includes information on conflict of interest in recruitment, other (external) employment and procuring goods and services) you can download the single document on the [Conflict of Interest page on HRWeb](#).

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COIs are an inevitable fact of organisational life and require a systematic risk management approach to ensure that the public interest is always protected. The steps required to mitigate perceived, potential and actual COI risk will vary in different circumstances. The COI Toolkit is intended to assist in the application of the Department’s COI Policy to typical risk situations. It is the employee’s responsibility to ensure that the steps they take in any given circumstance are reasonably sufficient to avoid risks to the public interest. A failure to do so may lead to disciplinary action.

New documents will be added to the COI Toolkit as needs are identified. Please send any suggestions and feedback to the Employee Conduct Branch.

For further information and advice, contact the Employee Conduct Branch on (03) 7022 0005 or employee.conduct@edumail.vic.gov.au

Typical Conflict of Interest Scenarios

The following are typical situations where conflicts of interest may arise. In each of these circumstances the minimum obligation on the employee will be to report the conflict to their manager. Other steps may need to be taken to mitigate any risk to the public interest. See the [COI Policy](#) for further information and guidance on managing these situations.

For principals

- A family member has applied for a job at the school.
- A family member already works at the school.
- Your child attends the school.
- You are in a relationship with another staff member.
- You are in a relationship with a parent.
- The school wishes to purchase something or use the service of a company owned by a family member or close associate.
- You are affiliated with a club or interest group that regularly makes public comment about education.
- You wish to write a textbook.
- You have been offered part-time work for an education consultancy.
- You have been invited to give a lecture at university related to your role as principal.
- You wish to engage a contractor who regularly does work for the school to do some work for you in a private capacity.
- You own shares in a company that has a significant contract with the Department.

For school-based staff

- Your child attends the school.
- You are in a relationship with another staff member.
- You are in a relationship with a parent.
- You wish to write a textbook.
- You work part-time as a tutor.
- You study and wish to use the school as a topic of your research.
- You are affiliated with a club or interest group that regularly makes public comment about education.
- You coach sport after school several nights a week.
- Your sports team regularly competes interstate.
- You have a personal website or blog.
- You have a part-time business where students or parents at the school are potential clients (e.g. photographic studio, speech therapy etc.).

For VPS employees

- You are involved in the procurement of a service where a family member's company has submitted a tender for the business.
- You are on the employment panel for a position that a family member has applied for.
- You have confidential information about a department decision to purchase a piece of land and are considering purchasing the adjacent property.

- You are affiliated with a club or interest group that regularly makes public comment about education.
- You use the services of a recruitment company to find staff and are considering passing your own resume to the consultant.
- You are dealing with an organisation that provides incentives or 'kickbacks' to clients who use their services.
- You are invited to coffee by an external contractor who does business with the Department. They always insist on paying.
- You are invited to a restaurant for lunch by an external contractor who does business with the Department. They always insist on paying.
- You are offered tickets by an external contractor for a sporting or cultural event.
- You travel regularly for the Department. Should you use frequent flyer points acquired for cooperate travel for your personal travel?
- A company during the tendering process has indicated to you that if they get a particular contract that they will need to employ someone who has your skills.

Myths and Facts about Conflict of Interest

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FACTS

COIs only arise where private financial interests are involved

No. A COI may exist in any situation where an employee's public duty could be influenced by their personal values, interests, affiliations, loyalties or prior involvement or associations. COI can arise where both pecuniary (financial) and non-pecuniary interests are involved.

While risks of a COI arising may be more obvious where financial benefits are involved COI can arise out of personal relationships, or involvement in sporting, cultural or social activities. Personal enmity as much as from favouritism has the potential to lead to a COI.

Where COI arises, steps need to be taken to mitigate risks in those situations.

A COI is when you exercise your public office in order to get a private benefit.

No. This constitutes fraud or corruption.

COIs usually arise innocently, often by a coincidence of circumstances and without anyone being at fault. However, where a COI exists there is an obligation on the employee to take reasonable steps to mitigate it in order to protect the public interest.

Real COIs are rare and they usually only apply to upper management.

No. COIs are common and they can affect anyone. Risks are particularly high in some areas like recruitment and procurement which can involve people at all levels of the organisation.

If you and your team are focussed on providing the Department with the best outcomes, any incidental private benefit is not a problem.

No. In achieving outcomes for the Department, it is part employee's public duty to maintain public confidence in government by acting in accordance with the public sector values of integrity and accountability.

Any reasonable perception that you or your friends or family are benefiting from the exercise of your public duty creates the potential for the community's loss of confidence in the public service as a whole. Employees are obliged to identify these risks and take action to mitigate them.

The existence of a COI is damaging to your integrity.

COIs are an inevitable fact of organisational life and are not in themselves signs of wrongdoing. What is important is how an employee responds once a COI is identified.

Taking action to mitigate risk

You only need to tell your manager/Principal about a COI if you think there is a risk.

No. Employees are required to tell their manager/Principal about any COI affecting their public duty, even if they believe that the risks are minimal and they do not need to take any mitigating action. It is not sufficient to disclose a COI to peers or subordinates.

The Department's policy acknowledges that public confidence in government and the public sector values of accountability and integrity are best maintained when conflicts of interest are not wholly managed by those whose private interests are involved.

A Principal should disclose any COI to the school's leadership team.

Not quite. Disclosures of COI should be made to the Regional Director, Deputy Regional Directors or SEILs. This is because all members of the school's staff are responsible to the Principal and therefore might be seen as insufficiently independent of their Principal's influence.

Note, however, in some cases it may be appropriate to disclose the COI only to the School Council, such as those relating to the recruitment or management of School Council employees.

For Principals, Executive Officers and senior managers: If you have disclosed a COI

No. Like reporting a COI to your manager, making DPIs does not in itself necessarily mitigate the risks. Further steps may need to be taken so that the

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issue in your annual Declaration of Private Interests no further steps need to be taken.

public interest is protected. Any COI declared on the DPI should also independently be disclosed to your manager.

Once you have reported a conflict to your manager, it is up to them to do something about it.

No. Managing COI is a shared responsibility. Managers are responsible for facilitating compliance with the COI policy by their staff. You are responsible for taking steps to mitigate any conflict of interest and complying with the lawful and reasonable directions of your manager.

Any failure to comply with COI policy or the directions of your manager in respect of any COI may be grounds for disciplinary action.

If you have identified a COI, you have to step aside.

No. You should assess the potential risks to the public interest arising from the COI and take steps which will reasonably address those risks. In some cases, after disclosing the matter to your manager, nothing further will need to be done. In more serious instances, you may have to relinquish the private interest which is causing any conflict, or to step down from any position you hold on a temporary or permanent basis.

See strategies for mitigation: Register, Recruit, Relinquish, Restrict, Remove, Resign.

Your Principal/manager can't force you to relinquish a private interest.

Public sector employees are required to avoid any COI. Where a private interest conflicts with your public duty, it may be considered a lawful direction for your manager to tell you to relinquish that interest. If you fail to do so, you could be subject to disciplinary action which may result in the termination of your employment.

However, any direction by your Principal/manager must be *reasonable*. They should first consider whether any alternative measures could be taken which sufficiently address the risk arising from the COI.

If you believe your manager's direction is unlawful or unreasonable, you can make an application for personal grievance to the [Merit Protection Boards](#) to have the direction reviewed.

Private interests often cannot be reported because of confidentiality requirements.

No. If a private interest conflicts with your public duty or might be seen to do so, you have an obligation to report it to your Principal/manager and then take any further steps required to mitigate any risks. However, it is not usually necessary for your private interests to be disclosed to anyone other than your Principal/manager unless this is required in order to manage the risks.

Where a member of a Principal's family is employed in a school and the COI is managed appropriately throughout the employment process they should then be treated like any other staff member.

No. If a Principal's family member is employed at a school, there is always a potential COI that requires ongoing management. For example, there will need to be appropriate processes to mitigate COI risks for any circumstances when Principal's decisions may affect their family member's rights or status in the school. For example, school staff should be advised how any future complaints about the family member will be managed free from the Principal's influence.

Selection issues

A Principal's family member should not apply for a position at the Principal's school.

A person should not be precluded from working in any school because they are related to the Principal or to anyone else who works there.

If a friend or family member applies, steps need to be taken throughout the recruitment process to avoid real and perceived COI.

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If they are successfully appointed, further steps need to be put in place in relation to their ongoing employment at the school to avoid potential COIs.

See Case Studies for more information about managing COI during recruitment.

If a selection panel member knows an applicant, they only need to disclose this if the applicant is shortlisted for interview.

No. They have identified a potential COI. They should report their knowledge of the applicant at the earliest possible opportunity so that no part of the process can be tainted by any real or perceived COI.

Procurement

It's ok to own shares in a company that trades with the Department.

Yes. However, if you are involved in procuring or advocating that company's services for the Department, there would be a COI and you would be required to take appropriate mitigating steps. This may involve relinquishing the shares.

If a company provides "sweeteners" on a contract, you can accept them if you are sure they will not influence your judgment.

No. The acceptance of any gift, benefit or hospitality from such a company creates a real or apparent COI issue which must be avoided. The Department's [Gifts, Benefits and Hospitality](#) policy provides strict guidelines on when gifts may be accepted.

Consequences

A failure to declare COI will not have a significant effect on my employment.

No. Public sector employees are employed subject to the Public Administration Act 2004 (the Act). Section 7(b)(iv) of the Act requires all public sector employees and other public officials avoid any real or apparent conflicts of interest.

An employee's failure to identify, report, address or monitor COI in accordance with the Department's policy could constitute misconduct and lead to disciplinary action which may lead to their dismissal.

Checklist: For Managers Addressing Staff Conflicts of Interest

Principals/Managers have a responsibility to ensure that the public interest is protected in situations where they or their employees are subject to conflicts of interest (COI). Information about COI issues may come to a principal/manager's attention via a number of ways. Staff members *must* disclose any COI affecting them to their principal/manager and they may also choose to raise potential COI issues with them even before they identify actual risk.

Principals/Managers may become aware of COI issues from other sources. They also have a positive obligation to act on the basis of their own knowledge or reasonable apprehension of COI risk.

Whatever the source of the information about risks of COI, managing the situation in accordance with COI Policy is a responsibility shared by the employee and their principal/manager.

The following steps should be considered by principals/managers in addressing COI issues affecting their staff members:

1. *Discuss with employee*

Discuss the COI issue with the employee to obtain as much information as possible regarding the circumstances of the COI risk. Refer the employee to the [COI Policy](#) and advise them of their responsibility to resolve the conflict in favour of the public interest.

2. *Seek written submission from employee*

Where it is clear that an employee is subject to a COI or potential COI, consider asking them to provide you with a written submission which outlines the nature of any COI, its potential risks, and any mitigating steps they consider would resolve it. Where the employee does not believe there is a COI, ask them to justify this view in writing, with reference to the COI policy.

3. *Form your own view*

Make your own assessment of the situation and surrounding circumstances based on the information you have. Take reasonable steps to get more information if necessary. Determine the level of COI risk and minimum steps to address the risk.

4. *Is your employee's suggestion adequate?*

Assess whether your employee's preferred management strategy is reasonable, given the risks of real or apparent COI. Assist the employee in developing an appropriate strategy. If it is reasonably necessary, direct the employee to adopt a particular mitigation strategy.

5. *Record decisions taken*

Make a record of your discussions and actions, and maintain appropriate confidentiality over the information. Submissions and decisions relating to COI may be retained on the employee's personnel file for reference (where appropriate, these documents should be retained in a sealed envelope marked "Confidential").

6. *Monitor the situation*

Remember to monitor the management of the COI periodically and in response to changing circumstances. Make a record of any reassessment, decisions made and actions taken throughout this process.

If you have a COI yourself

If you have a private interest which is affected or can reasonably be perceived to be affected by your management of your employee's COI, you should report this to your manager and consider whether other steps are required to mitigate the risk. For example, you could refer the management of your employee's COI to your own manager. Remember to record your decisions, even when you decide that no positive action is necessary.

Disciplinary action

If you believe your employee has not acted in accordance with the COI Policy, you should:

- Address the COI as soon as possible and take steps to mitigate any possible risks, as above.
- Raise the allegation with the employee. You may want to consult the Department's Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance for support in addressing an employee's potential breach of their obligations.

Remember:

- COIs usually arise without anyone being at fault – the existence of a COI does not in itself undermine an employee's integrity.
- However, where a COI exists, employees have a positive obligation to report COIs and to take reasonable steps to address the risk.

The **Employee Conduct Branch** can be contacted for advice on managing allegations against employees: phone 9637 2595.

Further advice

Employees can seek assistance from the Employee Conduct Branch in making their submission—phone (03) 7022 0005.

Principals/managers can seek advice from the COI Officer at any stage about managing the process. The COI Officer is the Manager, Employee Conduct Branch: (03) 7022 1018, or employee.conduct@edumail.vic.gov.au.

Checklist: Evaluating Pecuniary (Financial) Interests

Use this checklist to help you evaluate the extent of any Conflict of Interest (COI) created between your pecuniary (financial) interests and your employment with the Department.

Please note: this is not a form which needs to be filled out. It contains information and checklist questions which are designed to assist you to evaluate COI in relation to your *pecuniary interests*. It is up to you how you record your answers to the questions and then determine what steps you need to take to mitigate risks to the public interest.

Employees can contact the Employee Conduct Branch on 9637 2595 for assistance in evaluating risks of COI.

A note on perceived COI

When evaluating the extent to which a private pecuniary interest might influence your public duty, try to think about the situation objectively; consider how a reasonably informed third party looking objectively at your situation would view it. Consider also what processes can be put in place to provide assurance to a third party that any COI is avoided.

1. *What is a pecuniary interest?*

Pecuniary interests involve an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. For example, you would have a pecuniary interest if you (or your relative or close associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits such as concessions, discounts, gifts or hospitality from a particular source.

As soon as a pecuniary interest of a relative or associate is recognised you must treat it as if it were your own pecuniary interest even if you would not receive any material benefit yourself through your relationship with them.

2. *How is a relative or associate defined for the purpose of any declaration?*

A relative generally includes anyone who is part of your immediate family or someone who is wholly or substantially dependent on you and whose affairs are closely linked (e.g. a parent).

An associate is anyone whose affairs are closely linked to yours, and through whom you might receive some type of direct or indirect (but not necessarily pecuniary) benefit.

3. *When identifying pecuniary COIs, ask yourself these questions:*

In relation to a matter in which I exercise some decision-making authority, or which my public position gives me the capacity to influence:

- Is there a realistic expectation that I will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
- Will the matter affect my earning capacity or financial situation?
- Will it have an impact on the value of any shares or property that I own?
- Do I have a second job or private business that may be affected by the matter?
- Do I have any debts owing to a person who will be affected by the matter?
- Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by a decision under my authority?
- Is there a realistic expectation that someone in a personal or business relationship with me will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
- By nature of my relationship with this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?

4. *Additional considerations concerning shares*

It is the Department's position that any ownership of shares should be declared where there is a potential COI. It may be determined that your ownership of these shares has no significant actual or reasonably perceived influence on the exercise of your public duties, and no conflict is likely to arise. However, when there is any doubt, it is best to register the potential COI and discuss this with your manager or the Employee Conduct Branch.

Generally shares held in a superannuation, mutual, pension or other institutional investment fund in which a staff member has an interest but does not exercise control, do not need to be declared. This exception does not apply to self-managed superannuation schemes.

It is important also when purchasing shares to consider whether your duties as a public servant have informed your decision to purchase those shares. Any private use of government information that is not in the public domain represents a failure of honesty, impartiality and the duty of the public employee to put the public interest first.

Further information

Gifts, Benefits and Hospitality:

- [Information for Schools](#)
- [Information for Corporate](#)

[Other employment](#)

Quick Tips: For Managing Personal Relationships

A risk of real or apparent COI exists where an employee (such as a Principal or manager) exercises authority which can affect the rights or responsibilities of another employee with whom they have a significant personal relationship.

Assessing the risks

Where a Principal/manager has a personal relationship with a staff member, COI risks typically arise in these areas:

- Receiving and managing complaints against the staff member
- Management of the Performance and Development Process and awarding progression
- Allocation of duties and responsibilities

At all times consider whether it could be said that you are exercising your authority in a way that provides you a benefit. Even if your primary aim is to benefit the Department, there is a risk to the public interest if you can also be seen to be gaining an indirect or direct benefit.

Consider how you would feel if other staff/colleagues knew about the situation, or it was reported in the newspaper. Think about the reputation of your school and the Department and your obligations under the Code of Conduct for the Victorian Public Sector to promote and maintain the integrity and accountability of the public sector.

Mitigating the risks – taking action

- Establish clear processes for managing relevant situations so that the risk of actual or perceived bias is mitigated
- Communicate these processes to all relevant staff and stakeholders
- Monitor the effectiveness of any such processes

Where reasonably practicable, decisions affecting the rights/responsibilities of the relevant staff member should be referred to your superior.

For school principals this can pose significant practical difficulties. It is expected that high risk decisions are directly referred to the Regional Director. In some cases, it may be sufficient for a Principal's decision to be subject to probity oversight by the Principal of another school. In all cases, advice should be sought from the Regional Director on an appropriate strategy to manage particular COI risks.

***Remember:** the greater the potential benefit to you, the greater the risk to the Department and the more important it is to take whatever steps are necessary to avoid the perception of bias in the exercise of the relevant authority.*

For recruitment of family or friends, see **COI Case Studies on Recruitment**.

Conflicts of Interest Wheel

1. Identify a conflict

- Could your private interests (financial and non-financial) unduly influence your public duty?
- Could a conflict be reasonably perceived, even where none exists?

High risks of COI

COI issues can arise in relation to almost any area of work and can affect most, if not all, employees. The following areas are prone to risk and therefore warrant particular attention:

- recruitment and selection
- tendering and procurement
- regulation and grant approval
- other employment (eg. tutoring, conducting a private business)
- gifts, benefits, hospitality
- complaints management and disciplinary investigations

What is COI?

COI arises when the exercise of a public duty is influenced, or can be seen to be influenced, by a private interest. COI usually arises without fault or fraudulent intent. However, even without improper intentions, COI can have a detrimental effect on organisational performance and reputation. They create a risk for the organisation which should be managed, like all other risks.

2. Address the risks

Report any conflict to your manager. Then take reasonable steps to mitigate any risks to the public interest which might arise from the conflict of interest. Further management strategies include:

- **Registering** the private interest with the relevant Committee, Board, or in another open forum for accountability and transparency.
- **Restricting** your involvement in the public duty
- **Recruiting** a disinterested third party to oversee part of the public duty (such as accepting a selection panel's decision in your place)
- **Removing** yourself from *all* responsibilities in relation to the public duty
- **Relinquishing** your private interest (such as selling financial interest)
- **Resigning** your public office (temporarily or permanently)

Employees must

- Be aware of their obligations under the Department's COI policy.
- Continuously assess their private interests and public duties to identify actual, potential or perceived COI
- Report identified COI to their manager/principal. (Disclosing to peers is rarely sufficient).
- Assess the risks of an identified COI and take reasonable steps to protect the public interest

Employees should seek advice from their managers/principals at any stage.

Reasonable steps

The steps which are reasonably necessary to mitigate any identified COI may vary in different circumstances over time.

Role of manager/principal

Managers/principals should be proactive in facilitating their staff members' compliance with policy by:

- assessing the COI risks inherent to the work of their staff,
- advising staff of their obligations,
- recording COI reported to them,
- assisting their staff in responsible management of any COI, and
- taking appropriate disciplinary action in relation to their staff members' failures to comply with COI Policy.

Managers can seek advice on COI policy and processes by contacting the COI Officer, People Division.

3. Monitor

Review the situation periodically and when circumstances change: identify new conflicts and consider whether existing management strategies are still sufficient.

COI may be actual, potential or perceived

Potential COIs are conflicts that may arise in future. For example, if you can foresee that a family member's company could reasonably be expected to tender for a contract for which you are planning the terms of reference, you have a situation of potential COI which can, and in many cases must, be addressed. Reporting potential COIs as early as possible also often avoids future complications.

Perceived COI are situations where a third party might consider that an employee is subject to an actual COI. For example, when a principal removes herself from a selection panel which selects her spouse for a role in the school, a perception of a conflict might still exist if she does not also remove herself from accepting the panel's preferred candidate, since all the panel members are her subordinates.

Poor management of COI undermines

- organisational performance (by undermining merit-based decision-making), stakeholder support for decisions, public confidence in government

