

Conflict of Interest Toolkit

Managing COI in Other Employment

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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 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

Fact Sheet on Other Employment

Other Employment Policy and the Conflict of Interest Policy

Employees must comply with the Department's Conflict of Interest Policy in addressing any actual, potential or perceived conflicts that arise in relation to other employment activities. Where a conflict is identified, employees must declare it to their manager and seek their approval for measures that will be taken to mitigate risk. The *Other Employment Application Form* on the Other Employment policy page may be used for this purpose.

Some employees are required to enter these conflicts into the *Declaration of Conflict of Interest form* on eduPay. For more information on this, consult the Conflict of Interest page on HRWeb.

Ad hoc commercial activities

Examples:

- Semi-professional sport
- Occasional artistic work, performance or publication
- Self-published blogs or other publications and other freelance writing related to a profession, interest or activity
- Occasional public-speaking or consulting
- Hobby activities
- Holding shares in a company

Where commercial activities are ad hoc and would not be considered a business, profession or trade, employees are not required to seek permission of their manager.

However, where these activities may conflict with the proper performance of the employee's duties (a conflict of interest) this must be declared to the manager and measures must be taken to mitigate risk.

Examples where there could be conflict:

- The subject matter of the activity contains information that is inconsistent with Department values or policy such that it carries reputational risk, or the employee's activities could be considered inconsistent with the Code of Conduct for Employees in the Victorian Public Sector
- The subject matter of the activity is connected with the employee's Department role and could lead to a perception that they are using their position (or information available to them through their position) for commercial benefit.

Holding shares in a company is not considered other employment. However, in certain circumstances, significant shareholdings could create a conflict with an employee's duties and warrant the application of the COI policy.

Volunteering

The Other Employment policy applies to commercial activities. However, active involvement in an organisation on a voluntary basis may also create a conflict of interest with an employee's role or duties. In these circumstances, the employee must declare it to their manager and take steps to mitigate the risks. See the Department's Conflict of Interest Policy for further information.

Some examples could include:

- Voluntary work that may need to be undertaken during ordinary work hours from time to time, or for which the employee may be expected to respond to phone calls or email
- Voluntary activities (such as a Board membership) with an organisation that has commercial or other interest with the Department
- Voluntary activities with organisations that promote practices or ideas which are inconsistent with Department policy or values or with the obligations under the Code of Conduct for Employees in the Victorian Public Sector.

Checklist: Other Employment

Use this checklist to help you evaluate the extent of any conflict between your **other employment** and your employment with the Department.

Some questions overlap, addressing the same topic in a different way to help you think through the issues. It is useful to read each section first before going back to answer the questions in any detail.

Please note: this is not a form which needs to be filled out. This checklist is designed to assist you to evaluate COI in relation to other employment. It is up to you how you record your answers to the questions and whether your answers then form the basis of further action.

Employees can contact the Employee Conduct Branch on (03) 7022 0005 for assistance in evaluating risks of COI.

A note on perceived COI:

When evaluating the extent to which other employment might influence your public duty, consider how a reasonably informed third party looking objectively at your situation would answer the questions. Consider also what steps could be put in place to provide assurance to a third party that any COI is avoided.

Questions relating to identifying COIs – for full-time and part-time employees

1. What is the nature of the interaction, if any, between the other employment and the Department? Does this interaction create any real or perceived risks of COI?
2. Is there any commercial engagement between my other employment and the Department? For example, is my other employment with an organisation which has a current commercial arrangement with the Department or is likely to enter into one in future?
3. Does my other employment service the same people or groups of people as the Department? For example, are my private clients school children, their parents, or teachers?
4. How similar is my role in the other employment to my role as an employee of the Department? If my other employment involves a similar role, do I consider my primary employment to be with the Department? Would people in my professional networks share this view?
5. Is my activity in the other employment likely to reflect negatively on my role as an employee of the Department? What would be the effect on my standing in the Department if my other employment fails or attracts negative publicity? Does my other employment involve any obvious political or organisational affiliations which may affect my standing or capacity as an employee of the Department?
6. Is my role as a Department employee likely to provide a direct or indirect benefit to my other employment—for example, potential clients, professional networks, information and knowledge, reputation?
7. Do I intend to solicit employees from the Department to work for my other employment?
8. If my work colleagues knew about my other employment, would this cause me any concern or embarrassment? If it would, why?

If, after answering these questions, you think you may be subject to an actual, potential or perceived COI, you should report it to your manager. You should then evaluate any risks to the public interest and determine what actions will mitigate those risks. Any decisions made should be recorded.

Questions about your capacity – for full-time employees

Full-time employees are required to seek permission to undertake any other employment. When deciding whether or not to grant permission, managers and principals can take account of the practical implications of the proposed other employment on an employee's capacity to perform their role as a Department employee to the expected standards.

Time – *What you do in your non-work time is a matter for you. However, it is not unreasonable for your primary employer to consider whether or not your other employment may have an impact on your capacity to work your regular hours. For example, if you are seeking permission to work evening shifts during the week and your employment for the Department requires you to work regular daytime business hours, permission would generally not be granted.*

In your submission, address the following questions:

1. Does the other employment demand regular hours per week, or is the time commitment irregular. If it is irregular, how flexible is it?

2. Could the hours worked in the other employment affect your ability to perform your public duties safely and with due care?
3. Consider: what is the chance that you will require time off work because of the other employment and is this predictable?
4. How can you ensure that your work for the Department is always prioritised over the other employment?

Contact for other employment during regular work hours

1. Does your other employment require you to be contactable (by phone or email) during your regular hours of employment for the Department? If so, what is the likelihood of such contact?
2. Is your other employment such that you can perform some of the tasks while you are working for the Department? If this is possible so, is it likely that you would do so? What assurance can you provide that you will not use your regular work time to work in your other employment? (Note that whatever steps you take to address this risk need to address the reasonable perception of other people).

Mitigating action

If you propose to take mitigating steps to prevent a COI in relation to your *other employment*, you should describe those steps in detail, including how you believe they will have a measurable effect on any COI. For example, if your *other employment* services school children, you may take steps to ensure that it does not service children of schools in which you currently work or are likely to work. Consider whether any undertakings you make should be communicated to stakeholders, and whether steps you propose can be measured to determine their effectiveness.

Quick Tips: External Consulting

Where a Department employee engages in consulting or contracting work for an external organisation, there is a risk that an actual, potential or perceived conflict of interest exists.

Because of the risk of conflict of interest, where an employee seeks to engage in external consulting, they have an obligation to seek their manager's approval to do so. The [Other Employment](#) policy on HRWeb provides additional guidance and includes a downloadable *Other Employment Application Form*. Employees can declare these conflicts of interest in the COI Declaration Form in eduPay (and some classes of employee are required to do so).

Assessing the risks

In assessing the potential risks, consider the following questions:

- Could you be seen to be using information gained in the course of your public duty to gain a private benefit?
- Could comments you make as a consultant be perceived as the official position or policy of the Department?
- Is your consultancy likely to seek to work for the Department? If so, there may be a perception that your involvement will provide it an unfair advantage in any tendering process.

To mitigate risks of COI, consider:

- Reporting your intentions to undertake consulting to your principal/manager prior to commencement of the work and seeking their permission/approval. Identify the scope of the intended work and its potential impact on your public duties. Use the *Other Employment Application Form* on the [Other Employment](#) policy site on HRWeb.
- Undertaking not to use official information for the consulting work unless it is already in the public domain.
- Undertaking to incorporate in any document you produce for the consultancy a statement that the opinions expressed are your private views and are not attributable to the Department.
- Undertaking to relinquish your consulting work if the organisation seeks to enter into a business relationship with the Department.

Note: these are only suggestions—not policy. The particular circumstances of each case should be taken into account when considering whether the proposed mitigating actions appropriately protect the public interest.

Quick Tips: Out of Hours Sporting Activities

Many employees coach, umpire, or play sport out-of-hours. For some, the sporting activities are a serious, semi-professional commitment and they sometimes involve the payment of money.

Private activities that involve some form of payment—whatever the amount—and voluntary activities that involve a significant commitment can be considered ‘other employment’ for the purposes of the [Department’s policy](#). This document deals with the obligations of employees who undertake sporting activities that would be considered ‘other employment.’

Full-time employees require permission from their principal/manager to engage in other employment and part-time employees must avoid engaging in any other employment that may involve a conflict of interest (COI). In most cases, there would be no COI involved in out-of-hours sports activities and any practical impact on an employee’s public duty could be easily mitigated. In these circumstances, there would be no reasonable basis for principals or managers to refuse to grant permission.

However, employees would still be required to report to and/or seek written permission from their principal/manager to undertake sporting activities where they receive a payment or which involve a significant out-of-hours commitment, in accordance with the Department’s policy. The details of the activity and a record of the principal/manager’s permission should be retained on the employee’s personnel file. This process promotes transparency and accountability across the Department in relation to all other employment activities.

Assess the risks. Ask yourself—

1. Does the activity provide a private benefit at the expense of your public duty? Are you able to use your public position in order to gain a direct or indirect benefit?
2. Does the private activity create a situation where your actions conflict with your public duty? Department employees are expected to behave in a manner that would not affect their standing in the community or the reputation of the public sector. In many areas, sporting activities are highly visible to the community at large and as a result any on-field behaviour can directly affect your duty as a public sector employee.
3. Does the private activity have a practical impact on your public duty? Could you be tempted to use public resources (time, equipment) to support the private activity?

Take action

Report the out-of-hours activity to your principal/manager and seek permission if required. You can use the COI Declaration form in eduPay for this purpose. In addition, complete the *Other Employment Application Form* on the [Other Employment](#) policy site on HRWeb. In the document, demonstrate your awareness of your obligation to behave in a manner that would not undermine your public duty. Report the amount of any private benefit you receive.

Quick Tips: Private Tutoring

Where a teacher engages in private tutoring, there is a risk that an actual, potential or perceived conflict of interest exists.

Because of the potential for conflict of interest, where a teacher seeks to engage in tutoring, they have an obligation to seek their principal's approval to do so.

A tip for principals:

Alert your staff to the [Other Employment](#) policy on HRWeb and ask them to complete the downloadable *Other Employment Application Form* if they are engaged in any external employment. Contact the [Employee Conduct Branch](#) for advice and support.

Assessing the risks

In assessing risks of COI, consider whether the public interest can be affected as a result of any conflict of interest. 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 integrity and accountability.

There are many potential risks to the public interest in this situation, including that a reasonable third party could draw the following conclusions:

- Where a teacher privately tutors their own students for money, they might exercise their teaching duties in such a way as to make those students reliant on private tuition. Even if it is genuinely in the interests of advancing those students, this situation would compromise their integrity as a public sector employee.
- Advertising tutoring services to students and parents in the school community may compromise their integrity or standing with the students.
- Managing ~~their interests~~ their private tutoring activities during school hours might divert a teacher's focus from their teaching duties.

To mitigate risks of COI the teacher should consider:

- Reporting their intention to tutor to the principal before commencing tutoring. Use the [Other Employment Application Form](#) on the [Other Employment](#) policy site on HRWeb. You can also use the COI Declaration form in eduPay.
- Undertaking to the principal not to tutor any students from the school and/or from the school catchment area.
- Undertaking not to advertise their private tuition in such a way as to undermine their primary duty as a teacher.

Note: these are only suggestions—not policy. The circumstances of any given school, the particular employee and the nature of the private tutoring should be taken into account when considering whether proposed mitigating protect the public interest.

Case Study: Other Employment

Katie is a speech pathologist who is employed by the Department three days a week, working in a number of schools. Katie wants to take private clients on her other days by setting up a personal website and advertising online. Katie understands that part time employees do not have to seek permission to undertake other work, but they must not engage in other work which creates a conflict of interest (COI) with their work for the Department.

From the outset, Katie thinks that she will avoid any conflict of interest if she doesn't take clients from her current schools. As a result, she doesn't tell her manager or principals about her private business.

Jacob, one of the students she is seeing at a school, has responded particularly well to her intervention and his parents are very happy with her work. They ask Katie if she can allocate extra sessions for Jacob and they offer to pay the school out of their own pockets. However, the school tells them this is not possible. The parents google Katie's name and find that she has a private practice. They call her and ask her to take him.

Because Jacob is not entitled to more sessions at school, Katie thinks that it would not be a COI to let him have sessions with her outside of school.

The parents of other children learn that she is seeing Jacob privately and they approach Katie to do the same for their children. Katie feels a bit uncomfortable about taking on more students from the school privately, but she can't think of a good reason to refuse, so she takes them.

She thinks about speaking with her manager or the principal about the situation, but she is worried about what they will think since she didn't consult with them earlier. Katie is also satisfied in her own mind that there is no real COI, so she decides not to tell them.

Eventually, the news gets to the principal, who contacts Katie's manager and informs her that he has learnt that Katie is privately seeing students from the school in breach of COI principles. Katie is called to a meeting with her manager to discuss the situation.

What are the COI risks in these situations?

Katie might end up using her position directly or indirectly to create further opportunities for personal profit. This may be unintentional—Katie's work with the students might simply cause them to become reliant on her out-of-hours sessions. However, this situation would threaten her reputation, and it might create a sense of disparity and unfairness amongst other school-based staff, many of whom would use lots of their non-class time assisting students for no private payment.

Even if Katie does not see local students privately, but works in the school's catchment area, there can be a **perception** of COI—she might be seen to be using her position in the Department to gain an unfair advantage over other practitioners. This situation would also create **potential** COI since she could not predict which private clients might become students at her schools.

What should Katie have done?

Katie could have discussed her private practice with her manager at the outset. While Katie had prepared herself to avoid **actual** COI by determining not to take students as clients, she did not identify the risk that her private practice may create a **perception** of COI. She also did not prepare herself to deal with the **potential** COI, such as the situation which arose with Jacob and the other children. Her manager may have been able to help her better understand the risks and assist Katie to prepare an appropriate plan to address them. Having raised it with her manager early, it would also have been easier for Katie to seek further advice once the situation with Jacob arose.

When Jacob's parents contacted her, Katie should have reported it to her manager before accepting their request. This would have permitted her to take appropriate steps to address the risks involved, or else refused the request. COI risks can often be addressed without requiring the employee to **relinquish** their private interest. See the [COI Policy](#) for suggestions for alternative management strategies. Managers may also contact the [COI Officer](#) for advice.

Does Katie's manager have the right to direct her to refuse to take Jacob privately?

Katie's manager might form a view that seeing Jacob privately creates a COI which poses an unacceptable risk for the Department. In these circumstances, the manager could direct Katie not to see Jacob and this could be considered a lawful and reasonable direction under the Department's COI policy.

If Katie doesn't believe that her manager's direction is reasonable, she could lodge a personal grievance with the Merit Protection Boards to review the decision.

Tips to remember:

Managers must be consulted when COI is identified. However even before then, questions about potential COI situations are best resolved in consultation with managers. An early meeting with your manager permits a more comprehensive assessment of possible risks, which makes it easier to take appropriate action to address any unexpected situations that may arise.