

# Conflict of Interest Toolkit

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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 only a section of the Toolkit, the four chapters are available to download as separate documents 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](mailto:employee.conduct@edumail.vic.gov.au)**

# General Information about Conflict of Interest

## 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**

**MYTHS**

**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 issue in your annual

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

## MYTHS

## FACTS

Declaration of Private Interests  
no further steps need to be  
taken.

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.

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.

## MYTHS

## FACTS

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 (03) 7022 0005.

**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](mailto: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

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### 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?

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#### 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)

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#### 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.

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#### COI may be actual, potential or perceived

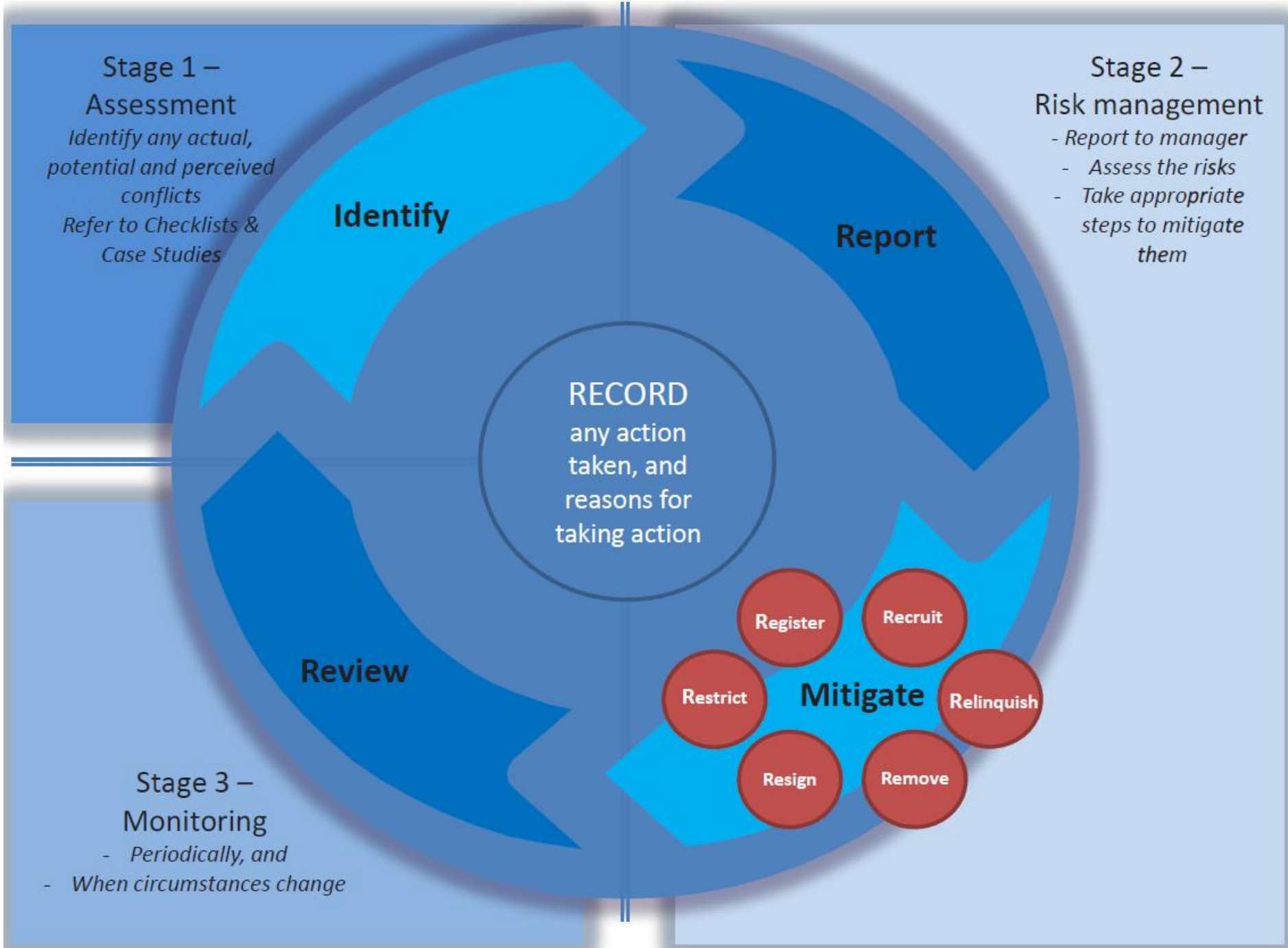
**Potential** COIs are conflicts that may arise in future. For example, if you can foresee that a family member's company could reasonably be expected to tender for a contract for which you are planning the terms of reference, you have a situation of potential COI which can, and in many cases must, be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

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#### Poor management of COI undermines

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



# Managing Conflicts of Interest in Recruitment

## FACT SHEET: MANAGING CONFLICTS OF INTEREST IN THE RECRUITMENT OF FAMILY MEMBERS IN SCHOOLS

This document outlines the measures principals must take to manage conflicts of interest and mitigate the perception of bias in the recruitment of family members. These measures are in the public interest and serve to protect the reputation of the successful applicant, the Principal and the school.

Recruitment in the Victorian public education system is based on merit. A family member is not precluded working in a school; however, measures must be taken if a family member of a Principal is an applicant for a vacancy, and further measures are required if the family member is the successful applicant.

Even when appropriate measures are taken, Principals should be aware that a perception of bias can remain that can affect their reputation and that of the family member.

### Family definition

These measures must apply where the family member is a spouse, child, sibling or parent.

It may also be appropriate to apply these measures in relation to other family members to mitigate actual, potential and perceived conflicts.

### Selection measures:

- The Principal must notify the Regional Director or delegate of the family member's application once applications have been received and before the selection process is undertaken.
- The Principal is not permitted to sit on the selection panel.
- The panel is not to be comprised only of subordinates of the Principal.
- The panel must include a Principal or regional staff member nominated by the Regional Director or delegate. The Regional Director or delegate will advise the Principal of the panel nominee.
- If the family member is the preferred candidate, the panel must refer its recommendation to the Regional Director or delegate for the selection decision.

Employees are entitled to apply for the position of Principal in schools where their family members are on staff. All panel members should declare and manage any conflicts of interest.

### Measures once a family member is employed

Principals must ensure that decisions that affect the family member's rights or obligations as an employee are not made by the Principal or influenced by their family relationship.

Decisions that must not be made by the Principal include:

- decisions relating to progression or salary or those considered to provide a benefit or reward
- decisions about the management of complaints about the family member.

Measures must be taken in circumstances where a family member is the successful applicant for a position at the Principal's school and if the Principal is newly appointed to a school where their family member is on staff. The Principal must obtain approval from Regional Director or delegate for the measures the Principal will take.

The particular measures may vary depending on the circumstances and an assessment of the risk to the public interest.

### Declarations of Private Interest:

If a family member of the principal is appointed to a position at their school, the Principal must update their Declaration of Private Interest to indicate that they have reported the conflict of interest to the Regional Director and obtained their approval of the proposed measures for mitigating the risks.

### Further Information

Further advice on appropriate measures to manage conflicts of interest in recruitment—including advice about whether a particular family or personal relationship warrants taking any measures—may be sought from the Employee Conduct Branch (03) 7022 0005, [employee.conduct@edumail.vic.gov.au](mailto:employee.conduct@edumail.vic.gov.au) or the local Senior Education Improvement Leader.



## CASE STUDY: CONFLICT OF INTEREST IN RECRUITMENT

A primary school identifies the need for a part-time IT technician to manage the school's communications networks and to provide tech support. The principal's son is studying IT systems and he is looking for part-time work with which he can gain experience in the field.

The principal works with members of the school leadership to determine the nature of the role including its responsibilities, time-fraction, remuneration etc. She does not tell them that her son could be a potential applicant.

In their deliberations, there is a dispute over whether the role should be full-time or part-time. The principal is concerned that a full-time position would unreasonably stretch the financial capacity of the school given other spending priorities. The principal is aware that her son could not take on a full-time job at the school in addition to his studies. In the end, they settle on advertising for a 0.6 position.

When it is advertised and the principal's son applies, she **reports** the conflict of interest to her leadership team and **restricts** her involvement in the process by removing herself from the Selection Panel. She retains responsibility for confirming the Panel's recommendation.

### Are there any COI issues which have not been addressed?

Once her son applied, the principal took appropriate steps to address the COI by **reporting** it to her leadership team and **restricting** her involvement in the decision making. This meant she was not able to influence the Panel's deliberations over the candidates.

However, since all the members of the panel are her subordinates, the situation could still have created a **perception** of a COI. Even if the members of the Panel felt they could turn an impartial mind to assessing the quality of the applicants for the position, a reasonable person might suspect that they would all be influenced to recommend the principal's son for the position.

At the very outset, there was also a **potential** conflict of interest. The principal knew that her son was likely to apply for the position but she did not disclose this information until after she had finalised the role description. As a result, a reasonable person could later think that she was influenced in shaping the role description by her son's availabilities and qualifications rather than the needs of the school.

This perception creates a risk for the principal's reputation and for the reputation of the Department and could lead to discontent amongst staff. It also may have compromised the outcome for the school. As a result of the decision to create the role as a 0.6, the school may have missed out on better quality applicants—professionals who were looking for full-time work. Because of her focus on her son, the principal may not have given this issue due consideration when determining the time-fraction for the role.

### What should the principal have done?

All the circumstances need to be taken into account in determining what steps are reasonably necessary to avoid any damage to the public interest. In this case, the principal probably should have disclosed her son's interest with her leadership team when determining the role description. Consideration could then have been given to whether it was necessary to have her step aside from that part of the process.

To address the perceived conflict of interest in the selection process, she should have **reported** it to her superior and then **removed** herself from the process further by referring the approval of the Panel's decision to the Regional Director.

### Opportunities for further guidance

To ensure consistency in the application of these principles, Regions and business groups in the Department can establish explicit guidelines for their principals and managers on steps they should take in these circumstances. For example, where COI issues are identified, Regional Directors might require their principals to refer the approval of selection panel recommendations to other principals in the network or to their SARPP.

### Other COI issues after recruitment

If her son is appointed to the school, her personal relationship with him will create further actual and perceived COI risks whenever she makes a decision which could affect his role, status or rights—for example, when allocating him duties, granting him permission to work from home or to work overtime, etc.

The principal should act as early as possible to put in place processes to manage future COI issues in a way that avoids creating the impression that the principal is unreasonably favouring her son. For example, if staff members have concerns about her son's conduct or performance, there should be a process for these concerns to be reported and addressed in a way that doesn't involve the principal. To help prepare for these situations, the principal could consider using the **COI Checklist - Selection** in the COI Toolkit.



**Remember these tips**

When you are responsible for recruiting for a position where you have a personal relationship with a potential applicant, you should:

- Assess the process for current or future risks of COI.
- Disclose/report any actual, potential or perceived COI as early as possible and take any necessary steps to avoid undue influence. Also, make sure the COI is reported to a superior – it is rarely sufficient to report conflicts to subordinates or peers.
- Think about *perception* of conflicts of interest as well as *actual* conflicts and take sufficient steps to address the risks of both.
- Record all decisions made—even decisions *not* to take any action.

# Managing COI in Other (External) Employment

## CHECKLIST: OTHER (EXTERNAL) EMPLOYMENT

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

Some questions overlap each other, addressing the same topic, but expressed differently 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 9637 2595 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, try to think about the situation objectively; consider how a reasonably informed third party looking objectively at your situation would answer them. Consider also what processes can 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 spare 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 9-5 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 including a declaration and approval form.

### 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 work \(outside employment\) declaration and approval 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. Use the "Other work (outside employment) declaration and approval 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 fill out the "Other work (outside employment) declaration and approval 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 intentions to tutor to the principal before commencing tutoring. Use the [Other work \(outside employment\) declaration and approval form](#) on the [Other Employment](#) policy site on HRWeb.
- Undertaking to the principal not to tutor any students from the school 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 (EXTERNAL) 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.



# Managing COI when Procuring Goods and Services

## QUICK TIPS: CONTRACTOR ENGAGED FOR PRIVATE WORKS

A real or apparent conflict of interest may exist when a contractor used by the school or Department is engaged for private work.

### Consider the risks

- The contractor may be tempted to do private work at a discounted rate to ensure they remain in good favour for future public contracts. This way, the public official would improperly receive a private benefit (see also [Gifts, Benefits and Hospitality](#) policy).
- Even without the provision of any discount, if the contractor does regular private work for the public official, their mutually beneficial relationship might be seen to influence the public official in providing future public contracts.

### Take action

Ensure that the contractor's work performed in a private capacity is charged at the standard and published rates. (Remember, though, that this is not likely to address a perception in the community that the contractor provided a discount).

Ensure that the private work done is declared appropriately prior to any future public contract being awarded.

**Remember:** the greater the benefit—either to the public official or to the private contractor— the greater the risk to the Department and the more serious the steps warranted to avoid any perception of COI. Where there are reasonable alternatives, or where the COI risks are particularly high, you should avoid using a contractor for private works who is involved in any work for the Department.

## CASE STUDY: PROCUREMENT (TENDERING)

Hiroshi is a senior technical specialist in the Department. His business area has identified a need to contract an organisation to develop a special product for the Department. It is anticipated to cost \$250,000 and it will therefore be subject to a public tender. Hiroshi is nominated to chair a panel of three to develop the Request for Tender and then evaluate the tenders received.

Hiroshi's brother-in-law runs a small company which does work in this area but Hiroshi doesn't mention the opportunity to him. He does not disclose to his panel colleagues the fact that his brother-in-law might tender.

When his brother-in-law's company submits an application, Hiroshi tells his colleagues on the panel about the COI and reports it to his Executive Director. When he meets with his Executive Director to discuss the situation they both agree that there is no-one else with expertise in this area who can take Hiroshi's place on the tender evaluation panel. The Executive Director decides to oversight the panel's evaluation process herself.

The panel awards the contract to Hiroshi's brother-in-law's company. One of the unsuccessful tenderers writes to the Minister saying the process was corrupt.

### Are there any COI issues which have not been addressed?

After his brother-in-law's company applied for the contract, Hiroshi acted appropriately by **reporting** the **actual** COI to the Executive Director and then **recruiting** her to oversight the tender evaluation. (With particularly high-risk projects, it is sometimes appropriate to recruit external probity advisers to fulfil this function).

However, Hiroshi did not report the **potential** COI when the tender proposal was being developed. This means that a reasonable person might later argue that Hiroshi was able to influence the design of the tender brief to benefit his brother-in-law. The later involvement of the Executive Director in oversighting the evaluation process could not remedy this **perception** of COI.

### Possible outcomes

In the circumstances, it is not clear whether Hiroshi's failure to report the potential COI taints the process to the extent that it needs to be retendered. However, it has resulted in uncertainty and delay which could easily have been avoided if Hiroshi had disclosed knowledge of his brother-in-law's potential interest at an earlier point.

### Tips to remember:

Carefully consider whether potential or perceived conflicts of interest might apply to your work. Reporting the matter early may avoid future uncertainty and expense.

## CASE STUDY: PROCUREMENT (PURCHASING IN SCHOOLS)

Rob is responsible for ICT management in a secondary school. The students' and teachers' iPads are due for an upgrade and, after seeking quotes from a number of suppliers, Rob settles on X-Mart because of their competitive prices. X-Mart also offers him a \$30 iTunes voucher for every 10 iPads purchased. Rob thinks he might use the vouchers as awards to students for various purposes.

### Issues to consider

This situation is an example of an employee receiving a gift or benefit and Rob would have been expected to declare the benefit to his manager/principal in accordance with the Department's [Gifts, Benefits and Hospitality](#) policy.

Receiving gifts, benefits or hospitality creates a conflict of interest for the employee. Even though Rob intends to use the gifts for school purposes, if the gifts are not declared and properly accounted for, there is a risk that Rob might keep a card for himself, or give them to someone in a way that benefits his friends or his reputation.

Improperly receiving gifts can create reputational risk for the employee and the school. It can also create improper opportunities for commercial interests to leverage their own interests in their relationship with the school.

### Rob should have—

- Reported the offer of the iTunes cards to his principal,
- Taken other steps to address the risks associated with the dispersal of the cards, eg: undertaking to add the iTunes cards to the school inventory and record how they are distributed.

### Preventative measures: training, communication, clear expectations

Companies frequently offer sweeteners to build client relationships and there is therefore a real risk that employees who have purchasing responsibilities could rationalise improper conduct by thinking of the benefits as insignificant, merely the way business is done. With foresight, schools and business units can ensure that proper training, communication of expectations and accountability checks provide relevant staff with confidence to deal with such offers appropriately when they do come up.

## CASE STUDY: PROCUREMENT (CONTRACTORS AND CONSULTANTS)

A School Council engages a friend of the principal to do regular landscaping and maintenance work around the grounds. Aside from being a friend, the contractor also does regular work on the principal's private property.

### Assess the COI risks

- The mutually beneficial nature of the relationship between the principal and the contractor may lead to overcharging, or an overuse of the contractor's services, or a reluctance to address issues with the quality of the contractor's work.
- There may be reputational risk to the school. A useful test is to consider how it would seem if the principal's relationship with the contractor and nature of the contract become known to the community or broader public.

### Take mitigating steps

- The principal should declare his or her private interest (the nature of the friendship) as early as possible to the School Council and it should be recorded in the Council's minutes. It is not necessary in this case for the principal to declare his or her interest to the Regional Director, since the School Council is the decision-making body and the Councillors are not subordinates of the principal.
- The principal should not participate in Council deliberations over the contract.
- The Council should consider whether further steps are necessary to mitigate risks such as seeking several quotes to ensure value for money even where this is not a requirement under the relevant purchasing policy. To ensure objectivity, the principal's friend should not be informed of the value of other quotes.
- The decision of the Council, including information about the principal's interests and relevant considerations taken into account, should be recorded for transparency and accountability.
- Ensure periodic review of the contract(s).