

OFFICE OF THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION (NT)

Conflicts of Interest

14 February 2024

The phrase 'conflicts of interest' is often used, but not always well understood.

In an effort to better inform individuals about conflicts of interest, in early 2023 I published a video about the topic. That video was co-presented by the Ombudsman, the Auditor-General, the Electoral Commissioner and me. The 30 minute video is available on the ICAC website and on Youtube. I encourage persons who wish to better understand conflicts of interest, and the importance of managing conflicts of interest, to watch the video.

In May 2023 I gave a presentation about conflicts of interest to the then members of Cabinet and I gave the same presentation to members of the opposition in August 2023. I have, and continue to be, available to meet with any Member of the Legislative Assembly to discuss conflicts of interest and their appropriate management. I have spoken about conflicts of interest on numerous occasions in presentations around the Northern Territory, and will continue to do so.

In December 2023, I issued a media release about conflicts of interest.

For the sake of clarity, I repeat the essential matters.

What is a conflict of interest?

A conflict of interest arises when there is a clash between a person's personal interests and the performance of that person's public duty. Personal interests can include financial, social and familial interests. All of us have personal interests and there is nothing wrong with having personal interests. I cannot conceive of a circumstance where an individual would not have personal interests.

The issue is when those personal interests come into conflict with that person's professional duties. The question becomes – Can I perform, or can I be seen by a reasonable person to be able to perform, my public duties without being influenced or otherwise affected by my personal interests?

There are two parts to that question. The first is what is commonly referred to as an actual conflict of interest. That is, whether there exists an actual and obvious conflict between the person's personal interests and their professional duties. Examples include awarding a contract to a spouse or close friend, sitting on a recruitment panel where an applicant is a family member or close friend, or making a decision or taking some action that the person knows will, or will likely, affect that person's financial interests. In such circumstances, a clear conflict of interest exists and must be dealt with.

The second part is whether there exists a perceived conflict of interest. A perceived conflict of interest is a little more complex. That is because a perceived conflict of interest is concerned with how an outsider would answer the question. In other words, would an outsider think that the person could bring an impartial and unbiased mind to their duties, or would the outsider think that the person's personal interests would influence how the person would perform their duties? To answer that question, there are two conditions that apply. First, the outsider forming the view must be blind to political or personal opinions or views. Second, the outsider must have access to sufficient information to be able to form a reasonable view in answering the question. To put it

succinctly, a perceived conflict of interest arises where it is considered that a reasonable and objective outsider, vested with sufficient information, would come to the conclusion that a person's personal interests will, or will likely, influence the performance of their official duties. A perceived conflict of interest must be addressed in the same manner as an actual conflict of interest.

In an effort to proactively address actual and perceived conflicts of interest, governments worldwide have established protocols for the disclosure of personal interests. For example, in the Northern Territory Members of the Legislative Assembly are obliged to disclose certain personal interests on a register. The purpose of such proactive disclosure requirements is two-fold. First, it allows for others to be appraised of a person's personal interests and to be in a position to point out and address circumstances where a conflict has arisen or may arise. Second, it forces the person to consider their own personal interests, which is an important step in being able to identify a conflict of interest.

Where a person has personal interests that might, at some time in the future, conflict with their professional duties that is referred to as a potential conflict of interest. For example, if I have a staff member whose spouse or close family member works elsewhere in the Northern Territory Government, should that spouse or close family member become the subject of my inquiry, then there is the obvious potential for my staff member to face a conflict of interest. For that reason, I require my staff to disclose to me such connections in order that I can address any potential conflict of interest before it actually arises.

There is nothing wrong with having a conflict of interest

Conflicts of interest are inevitable. There is nothing wrong with having a conflict of interest. Given the small population in the Northern Territory, conflicts of interest will arise more frequently. A conflict of interest is not a sign of impropriety. But failing to do anything about it can be.

The problem occurs when a conflict of interest is not appropriately identified and managed.

Identifying a conflict

Before a conflict of interest can be identified, it is essential that each public officer understand his or her personal interests. Public officers may be surprised by the breadth of personal interests held.

Having identified personal interests, it is then necessary to reflect upon the public duties performed. We all perform different public duties so our personal interests will interact with our duties in different ways.

Most importantly, we must remain vigilant and immediately address conflicts of interest when they arise.

Seek advice

There is an old saying that a lawyer who acts for himself or herself has a fool for a client. The same applies to conflicts of interest. Individuals will often dismiss or discount the existence of a conflict of interest because they believe they can remain impartial and unbiased. That view can be at odds with the reality of a situation. For that reason, it is always important to seek the views of another and to listen carefully to those views. Put another way, individuals should avoid relying solely upon their own views.

When a conflict of interest has been identified, or where there is any doubt as to the existence of a conflict of interest, then it must be disclosed and dealt with appropriately.

Disclosure and management

All public officers should be aware of their internal processes for the disclosure and management of conflicts of interest.

Identifying and disclosing a conflict of interest is not enough. Where a conflict of interest has arisen, it must be managed.

The obvious and, in most cases, appropriate management strategy is for the conflicted individual to take no part in the performance of duties to which there is a conflict. For example, removing oneself from a tender or recruitment panel, delegating decision making responsibility to another person, or absenting oneself from deliberations about a matter, are sound approaches to the management of a conflict of interest. Taking steps that give the impression of remaining at arms-length, but in truth allow for continued influence and direction, is not only unsuitable, but may itself amount to serious impropriety.

My role

A public officer can engage in corrupt conduct where that person has failed to manage adequately an actual or perceived conflict of interest. For that reason all public officers should understand their responsibilities and comply with the mandatory reporting obligations I have issued.

There should be no question that public officers have been given ample information to support them to understand their responsibilities. To the extent that a public officer, or group of public officers, feel that they could benefit from further training on conflicts of interest, my office is available to provide training.

I have been asked to comment on particular assertions. I decline to do so. Reports of improper conduct made to my office will be properly considered and action will be taken as appropriate.

I hope that this is useful in informing debate about conflicts of interest.

Michael Riches

Independent Commissioner Against Corruption (NT)