

Identifying, Disclosing, and Managing Potential Conflicts of Interests: A Guide for Ministers

Background

The office of the Queensland Integrity Commissioner (QIC) has developed this Guide to assist Ministers identify, assess, and manage conflicts of interest, consistent with specific requirements and best practice standards.

Relevant standards

The requirements for managing potential conflicts of interest are dealt with in legislation, the Standing Rules and Orders of the Legislative Assembly, the Legislative Assembly of Queensland Code of Ethical Standards, the Cabinet Handbook, the Ministerial Handbook and the Ministerial Code of Conduct.

The Primacy of the Public Interest

The primary purpose of having processes to assess and manage interest issues is so that the public will not suffer simply because they are not part of a decision-making process that affects them.¹

Ministers must make, and be seen to make, decisions that promote the public interest and not their own. Ministers should also ensure that their suite of personal interests does not inhibit the performance of their public duties, or create undue burden on the public purse.

It is also well established that individuals are not best placed to assess and manage issues that arise because of their own interests. Ministers can therefore seek advice from the Integrity Commissioner to 'map-out' disclosure requirements and to develop a Management Plan for relevant interest issues.

Personal Interests and Conflicts of Interest

Section 10(1) of the *Integrity Act 2009* defines a conflict of interest issue as:

A conflict of interest issue, involving a person, is an issue about a conflict or possible conflict between a personal interest of the person and the person's official responsibilities.

'Personal interests' are wide-ranging. They include tangible and pecuniary interests. They also include intangible interests such as relationships, associations, roles and responsibilities, and even reputational concerns.

Not every personal interest associated with an official responsibility will give rise to a conflict of interest. However, pecuniary (or financial) interests usually give rise to greater public concern and attract special attention. In part, this is because they are likely to be more concrete in nature, and easier to identify. Further, the intent historically of conflict of interest provisions has been to prevent financial

¹ J. Griffiths, 'Apprehended Bias in Australian Administrative Law' (2010) *Federal Law Review* 38, 353-69, 356.

gain. Public perception is such that there may be greater concerns about pecuniary interests due to their more insidious nature.

Ministers, like all Members of the Legislative Assembly, must comply with the requirements of the Standing Rules and Orders in relation to the *Register of Members' Interests*, and the *Register of Members' Related Persons' Interests*, held by the Clerk of the Parliament (the Registers).

The Registers capture most, but not all, personal interests that may need to be managed. Examples of the personal interests not captured by the Registers, but which may constitute conflicts of interest, include; close friends or relatives having employment or commercial interests associated or connected with the Minister's portfolio responsibilities.

Identifying personal interests that might give rise to a conflict of interest

As said earlier, not every personal interest will give rise to a conflict of interest. Generally, for an interest to give rise to a conflict, there needs to be a logical connection between the interest and the potential for a decision-maker to deviate from deciding a relevant matter on its merits (i.e. deciding a matter of on the basis of the public interest). There also needs to be a relevant, official matter that can affect the value of the interest.

The frame of mind for considering any scenario is to view the situation through the eyes of a fair-minded member of the community, and whether, including having regard to their political role, responsibility and accountability, they would have a reasonable apprehension of bias in the mind of the decision-maker.²

How best to manage each interest depends on the circumstances, and a weighing up of the facts of the situation.

When weighing up whether an interest might give rise to a conflict of interest, the QIC finds the following non-exhaustive list of factors, useful:

- The interest needs to be material, rather than merely slight or of low value. It must be significant enough to have the capacity to influence or be perceived to influence. [see example 1]
- The interest must have a direct enough potential to bring about a benefit or detriment to your personal interest, or that of a related party, such as your spouse, sibling, child, close friend or associate. It cannot be too remote or unrealizable. [see example 2]

² *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; *Minister for Immigration and Multi-cultural Affairs v Jia Legeng* (2001) 205 CLR 507; [2001] HCA 17.

- When a situation involves a relationship, consideration should be given to its proximity, duration, nature, and its significance or intensity. The more significant and personal, the more likely a fair-minded member of the community might have an apprehension of bias. [see example 3]
- The personal interest must be personal and quite unique to you, for example, it affects you or your related parties. If the interest is more widely shared it might not be 'personal enough', for example, if it affects a wide class of persons, or and would affect you as a member of a wide group or class, and to the same degree, or in the same manner, that it affects the other members of the group or class. [see example 4]

When considering these factors, or applying a framework or standard, there is a need for flexibility due to the variety of functions and roles that Ministers have. Strong regard should also be had to standards and precedents already set.

Determining what information is necessary to assess the likelihood that a conflict of interest might arise

At a minimum, if there is a personal interest that may be associated with an official duty, the Minister should inform the Cabinet Secretary, the Premier, and the Integrity Commissioner ³(subject to their discretion) about the 'nature of the interest'.

In so doing, enough information should be provided to enable others to make an informed decision about whether a conflict of interest exists and, if so, how it should be managed.

If the nature of the conflict is ongoing, or it may arise again in future, this may impact on the appropriate management strategy. Accordingly, relevant details surrounding these circumstances should also be disclosed.

Further, the following circumstances may also give rise to requirements beyond the basic disclosure of the nature of the personal interest:

- where the public may suffer a loss as a result of the decision
- where the Minister puts, or jointly puts, the proposal to Cabinet or a Cabinet committee
- where Cabinet or a Cabinet committee engages in something new or with which it is unfamiliar
- where the Minister has a higher degree of knowledge and/or experience in relation to the decision than other Ministers, or
- where the Minister stands to gain personally.

Managing a conflict of interest

Information about the process to follow is included in the Ministerial Code of Conduct.

³ *Integrity Act 2009*, sections 15(3), 22(2).

Further, as interest issues can be complex, if you have any concerns, please contact the Integrity Commissioner for advice. It is also open to you to seek advice from the Cabinet Secretary or other advisor.

Example 1: Value and significance of the interest

A Minister is a member of a very large industry run superannuation scheme with many thousands of members and widely diversified investments.

A decision is before Cabinet in relation to a company of which the superannuation scheme is a shareholder.

Whilst the Cabinet decision may affect the prospects of the company, any realistic impact on the superannuation scheme is likely to be very limited due to the diverse holdings of the superannuation scheme.

It follows then that, by association, any decision affecting the company is unlikely too have a significant enough flow-on and personal impact on the Minister's superannuation funds and therefore the interest is not one that is significant and personal enough that it might give rise to a apprehension of bias in a reasonable person. Therefore, it is better conceived as being an interest widely shared and not a conflict of interest.

Example 2: Remoteness and realisability

A Minister receives the agenda for the next Cabinet meeting, and realises that one of the items involves a colleague who she worked with at a Tourism company over 10 years ago.

The relationship was one that was short-lived and professional only. In the past 10 years there has been limited contact only due to their continued involvement in the Tourism industry, and this has also been of a professional nature.

In line with the guide, the Minister discloses the personal interest to the Integrity Commissioner for the purposes of seeking advice.

The Commissioner asks the Minister about the nature, duration, proximity and intensity of the relationship, and taking these facts into account opines that it is not an association that is sufficient to give rise to a concern in a reasonable member of the community. Therefore, it is better conceived as not being a conflict of interest.

Example 3: Family Interests

A matter for approval involves a decision in relation to closure of an aged care centre. The Minister's mother resides at the centre and alternative accommodation will be substantially further from the family home and the relatives who visit her most often. This will affect all family members and lessen the mother's quality and enjoyment of life.

While there are other residents similarly or potentially affected, the personal interests of the Minister's family are substantially and directly affected by the decision.

The Minister has a strong personal interest in the aged care centre, such that it might reasonably be perceived that it could influence their decision making in the public interest. The Minister should declare the personal interest and leave the meeting.

Example 4: Wide class of persons

The matter involves a proposed significant upgrade to a river crossing in the Minister's electorate, which is prone to the effects of flooding. The Minister uses the crossing to access the nearest town from the family home. When the bridge is out of use, the journey takes 30 minutes longer. The crossing is used by approximately 200 vehicles per day.

The Minister has a personal interest in the crossing, but it is held in common with a wide class of persons. Any impact on property values is uncertain and marginal at most.

In the interests of transparency and public confidence, the Minister declares their personal interest in the crossing upgrade. They may then fully participate in the meeting.

Notice

This resource is intended only as general guidance and is not intended as, and should not be taken as, advice on any person's particular circumstances. A Minister will need to consider seeking their own advice about any specific circumstances or concerns that may arise.

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