

Office of Fair Trading

Conflict of interest policy

Version 1.2 – September
2016



1. Purpose

The purpose of this document is to guide and assist Office of Fair Trading (OFT) staff to identify and manage actual or potential risks of conflict of interest arising while acting in an official or private capacity with businesses operating in industries regulated by OFT.

This policy will be reviewed every two (2) years in order to ensure consistency and compliance with relevant national and state legislation and government policies and procedures.

2. Scope

This policy applies to all OFT staff.

3. Responsible Officers

- The **Chief Executive** (Director General) for the purpose of the administration of the Department of Justice and Attorney-General.
- The **Deputy Director General** and **Commissioner for Fair Trading** for the purpose of administering the business group comprising of Liquor, Gaming and OFT.
- The **Executive Director, OFT**, is responsible for the day to day operations of OFT and its staff. This position is also responsible for the dissemination of information relevant to the work unit.
- **Compliance Officers, Service Delivery Officers or any OFT staff member** who interacts with members of the business community, consumers and other stakeholders in the execution of their duties.

4. Legislation

Public Sector Ethics Act 1994 (the Act).

The Act sets out the ethics principles and related values fundamental to good public administration and provide the basis for codes of conduct for Queensland public sector agencies. The ethics principles are:

- integrity and impartiality;
- promoting the public good;
- commitment to the system of government; and
- accountability and transparency.

Under the ethical principle of ***integrity and impartiality*** the following value applies:

- public officials must seek to promote public confidence in the integrity of the public sector; and
- acknowledge the primacy of the public interest and undertake that any conflict of interest issue will be resolved appropriately in the public interest.

5. Code of conduct

The Act also provides for preparation of a code of conduct for public sector agencies and for agencies to prepare standards of practice specific to the agency to apply to all public officials of the agency.

Once approved, public officials must adhere to the provisions of the code of conduct and any standard of practice by virtue of section 12H – *Compliance with code and standard practice* and section 18 – *Compliance with codes*, of the *Public Sector Ethics Act 1994*.

As from 1 January 2011 agency specific codes of conduct have been rescinded and one whole of Government document titled the [Code of Conduct for the Queensland Public Service](#) (the Code) applies to all Queensland Public Service agencies and employees.

Section 18 of the *Public Sector Ethics Act 1994* specifically provides that officials MUST comply with the provisions of the Code, leaving no room for discretion.

6. What constitutes a conflict of interest

Section 1.2 of the Code deals specifically with managing conflicts of interest and describes a conflict of interest as the following (in part):

“A conflict of interest involves a conflict between our duty, as public service employees, to serve the public interest, and our personal interests”.

The Code further explains a conflict of interest may stem from a range of factors/circumstances including personal relationships, employment outside the public service, membership to special interest groups, ownership of shares in companies or properties, etc.

It is important to note that having a conflict of interest in itself is not a wrongdoing, however, failure to disclose the conflict of interest, or manage it appropriately once the conflict of interest becomes apparent, can be a wrongdoing.

It must be noted that the ‘interest’, with respect to a conflict of interest, or any perceived conflict of interest, can include direct interest or an indirect interest. This can translate to a benefit or perceived benefit, both pecuniary and non-pecuniary.

The Crime and Corruption Commission define a conflict of interest as:

“A conflict of interest occurs when the private interests of a public service employee interfere, or appear to interfere with their official duties”

Section 10 of the *Queensland Integrity Act 2009* provides:

“Meaning of conflict of interest issue and references to interest or conflict of interest:

(1) 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”.

Conflicts of interest may be:

- **actual** – a conflict exists between our official duties and personal interests.
- **perceived** – there is no actual conflict of interest but others may see a conflict of interest.
- **potential** – there is no current conflict but it could emerge in the future.

7. Action

The work carried out by OFT Compliance staff potentially presents situations unique to compliance work where staff may be challenged by conflict of interest as a direct result of undertaking their duties. This may include the risk of being offered gifts or inducements in order to favourably influence compliance decisions, the possibility of making compliance decisions concerning relatives or friends or the possibility of making use of information obtained in the course of duty to obtain a benefit otherwise not available.

Attached at **Annexure A** is a list of example situations OFT Compliance staff could find themselves in, or where they could be perceived to be in a conflict of interest between their official responsibilities and their personal interests.

8. Identification, declaration and management of conflict of interest

The **prompt identification** of an actual, perceived or potential **conflict of interest is crucial** in effectively managing conflict issues. A conflict of interest in itself is not necessarily a wrongdoing, however actual or perceived **conflicts of interest need to be disclosed and documented** by the affected officer immediately the conflict becomes apparent.

Upon recognition of a perceived or actual conflict of interest, the official is to document all information relevant to the situation for submission to their immediate supervisor or manager as a matter of priority.

The officer's supervisor or manager has an obligation to **ensure the integrity of the information presented is sound**. Each situation (whether perceived or actual) shall be treated on its merits and assessed as to complexity and potential for detriment to the officer, region or office and department based on the information and evidence available. Once the foundation of the alleged conflict is established, the information is to be forwarded to the Director of the affected officer's work unit so an effective management strategy may be discussed and deployed.

Should the situation be assessed as a matter manageable through local intervention, the matter should be returned to the originating office and managed by the affected officer and their manager.

If the matter is complex in nature or has the potential to escalate in public awareness (i.e. through media involvement), it should be referred to the Executive Director OFT, for arbitration and/or direction regarding an appropriate management strategy. The decision to refer matters to the Executive Director OFT, will be made at the sole discretion of the affected officer's Director.

Strategies to manage conflicts of interest may include restriction of an officer from performance of certain duties or dealing with particular entities/individuals, or movement of an officer to another position to avoid association with particular entities/individuals/decisions.

In any situation, the overriding factor is that where a conflict of interest arises it must be managed in favour of the public interest.

Information passed to respective Directors, is to be stored in an appropriately secure file location (both hard copy and electronic), in accordance with the *Public Records Act 2002* and the *Information Privacy Act 2009*.

9. Disciplinary action

Part 5 section 24 of the Act provides for disciplinary actions for contravention of the Code. Subsection (a) provides that if the official who is subject to a breach of the Code is a public service officer, then a range of disciplinary measures may be taken.

Section 188 of the *Public Service Act 2008* states in part:

*(1) In disciplining a public service employee, the employee's Chief Executive may take the action, or order the action be taken, (**disciplinary action**) that the Chief Executive considers reasonable in the circumstances.*

10. References

[Public Service Act 2008](#)

[Public Sector Ethics Act 1994](#)

[Code of Conduct for the Queensland Public Service](#)

[Public Records Act 2002](#)

[Information Privacy Act 2009](#)

Version	Action	Date	Author	Approved by	Date
0.1	Draft	24/01/2011	Sean Linnane		
0.2	Amendments	02/02/2011	Brad Walker		
1	Managerial amendments and release	28/02/2011	Tony Johnson	Tony Johnson	28/02/2011
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1.2	Proofed, minor amendments and re formatted doc	28/9/2016	Rose Calio	Naomi Lennox A/Manager PSD	02/11/2016
1.2	Consideration of final Draft	09/11/2016		Chris McKenzie A/Director CPC	09/11/2016

Conflict of interest scenarios for OFT compliance staff

The following scenarios highlight situations that may present a conflict of interest. These situations are examples only and are not intended to capture all possible scenarios or situations where a conflict of interest might arise.

1. An OFT officer is rostered on a Friday night to perform compliance duty on security providers in a well-known night club district. After checking a number of security providers' credentials, the officer's shift finishes and they return to a particular night club as a private individual. Security providers on the door recognise the OFT officer who had inspected the premises earlier and the duty manager allows the officer to enter the club ahead of the line up at the door and at no cover charge.

The officer should not seek such favoured treatment, or accept it if offered, and the incident should be reported to their manager not later than the following business day.

2. An OFT officer is visiting a real estate agency in the course of their normal duties. On talking to the agent about the price of units in a block of units, the officer is informed the agent is negotiating a deal with a developer over a new residential complex. The agent informs the officer "off the record" that there is an advance offering on some of the units in the complex and if they were to buy one now, they would be getting a unit very cheap and will be able to sell it for a large profit when the complex is formally released for sale. The agent advises the officer it is all 'hush-hush' and not to tell anybody.

If the officer re-enters the real estate agency the following day as a private person and pays a deposit and signs a purchase contract for a unit in the new residential complex, they have committed a serious breach of the conflict of interest provisions.

3. An OFT officer visits a holiday letting complex in their official capacity as an inspector and speaks to the resident letting agent. During a conversation with the resident letting agent, the officer learns there are to be some 'special' prices becoming available on holiday units in the near future. The following day, the officer revisits the resident letting agent while off duty and takes advantage of what the RLA is able to offer on a holiday for the officer and their family.

The officer is entitled to avail themselves of an offer that is available to **the general public** irrespective of how it came to their attention.

4. An OFT officer visits a motor dealership during the execution of their daily duties. During the visit, the officer inspects some documents that reveal the dealer is taking delivery of a shipment of motor vehicles that he is going to need to sell quickly to cover his expenses. Sensing a good deal is to be had, the officer returns to the dealership on the day the shipment of vehicles arrives as a private person and takes advantage of information obtained to negotiate a very cheap deal on one of the newly delivered vehicles.

The officer has used confidential commercial information obtained in the course of their duties to obtain a benefit, and in doing so has breached the conflict of interest principles.

5. An OFT officer is performing a compliance audit on a health and fitness centre not far from the office location. During the audit, the gym owner advises that he would like to offer the officer a 'special' rate membership **not offered to the average person**. The following day the officer revisits the health club after work to take advantage of the special offer made

by the fitness centre owner. If the officer accepts this 'special' offer they have committed a serious breach of the conflict of interest principles.

6. An officer makes a habit, when making retail purchases, of letting traders know that they work for OFT. The officer is **deliberately trying use the influence of their position** to gain advantage in their current or future dealings with the trader and this is a breach of conflict of interest principles.
7. An offer is trying to negotiate repairs under warranty but the trader is not cooperating. The officer tells the trader they are from OFT and that if the trader knows what's good for him, he'll cooperate.

The officer is deliberately trying use the influence of their position to gain advantage in their dealings with the trader, and is committing a serious breach of conflict of interest principles.

These examples are provided as a guide to officers of the kind of situations that may lead to an actual or perceived conflict of interest. If there is any question with respect to what may or may not constitute a conflict of interest, consult your manager or supervisor to discuss an appropriate course of action. Generally, when it comes to receiving gifts and benefits, staff in regulatory compliance roles would have little justification in ever accepting anything offered by a trader or complainant.