Education and Training

Human Resources

Conflict of Interest Policy

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Overview

Conflicts of interest (COIs) can arise for employees at all levels of seniority and in every area of work in the Department. They are an inevitable fact of organisational life and they are not in themselves a sign of wrongdoing, but they create risks which should be identified and managed. However, when these risks are not appropriately addressed, organisational performance and reputation can be seriously compromised, and the effects can be significant for the Department and for the individuals concerned.

This policy outlines the obligations on all employees to identify, report, and address conflicts of interest (COIs), and to subject them to ongoing monitoring. The policy also identifies the role of managers to take steps to address risks of COI in relation to their staff.

The **COI Toolkit** includes practical resources to assist employees and managers in identifying, managing and monitoring COIs.

For additional information about how the Department manages COI risks, see the **COI Framework**.

All employees are required to record COI declarations and agreed steps to avoid or manage COI. A Declaration of Conflict of Interest form available on eduPay is to be used to do so.

What is a conflict of interest?

COI arises in circumstances where an employee's public duty is influenced, or can be seen to be influenced, by a private interest.

Private interests include both financial and non-financial interests, and can include the interests of family members and close friends or associates. They can be positive or negative interests—personal enmity towards someone can be just as relevant as loyalty to them.

The public duty of all employees of the Department (both in the Teaching Service and the VPS) and employees of school councils includes the obligation to perform all duties in accordance with public sector values, which include *accountability*, *integrity* and *impartiality*. A conflict therefore arises if a private interest might undermine an employee's ability to perform a particular role in accordance with these values, whether or not the outcome of the task or function is affected; an employee's benevolent intention does not mean that risks of perceived COI can go unaddressed.

While COI can lead to corruption and fraud, it mostly arises innocently and independently of any fraudulent intent and should be managed with this in mind—with transparency, consistency and without favouritism or exception.

COI can be **actual**, **potential** or **perceived**. A potential COI refers to circumstances where it is foreseeable that a COI may arise in future and steps can be taken now to mitigate any risk. A **perceived** COI arises where a reasonable person might think that an employee could be unduly influenced by a private interest, even if the employee is confident of their own objectivity.

It is particularly important for employees to address risks of perceived COI because they are the most likely to be overlooked or underestimated.

An important consideration when identifying and managing COI is whether reasonable and fair minded people would consider that a private interest is likely to influence the public duty to the extent that it would create a risk for the organisation or undermine public sector values. Being able to identify these risks will assist employees and managers in taking appropriate steps to protect the public interest.

Because COI is inherently subjective and personal, individuals can be prone to underestimating or misrepresenting the extent of the influence a private interest might have. It is therefore critical that managers are involved in assisting employees to assess and address risks associated with COI.

Poor management of COI can have a serious effect on the Department, including:

- Poor substantive outcomes arising from decisions in which merit is compromised
- Loss of stakeholder confidence and the erosion of proper processes
- Considerable expense and loss of efficiency to remedy actions which are tainted by undisclosed or improperly managed COI
- Loss of employee trust in management
- Loss of public confidence in government.

*See the **COI Case Studies** for typical examples of conflicts of interest.*

Objectives

The purpose of this COI Policy is to enable the Department to manage COI risks effectively by identifying:

- the principles which inform the responsible management of COI risks in the Department
- the responsibilities of all Department employees and managers for the management of COI risks
- the steps employees can take to manage COI risks
- key resources available to assist employees to meet their responsibilities for managing COI risks.

Principles

The following four principles underpin the Department's management of risks of COI:

- Protecting the public interest through upholding public sector values
- Supporting transparency and accountability
- Promoting individual responsibility for integrity and impartiality
- Developing an organisational culture which encourages effective management of COI.

Responsibilities

ALL EMPLOYEES

All employees, including managers and Executive officers, have a responsibility to avoid any COI that may affect their public duty. Where a conflict is identified, reasonable steps must be taken to address it in order to protect the public interest.

The primary basis for this obligation is the *Code of Conduct for the Victorian Public Sector,* which is binding on all public sector employees including members of the Teaching Service and the VPS. It is also binding on School Council employees. Other instruments also impose obligations on particular groups within the Department, and this policy gives effect to those obligations.

All Department employees, including members of the Teaching Service and VPS employees, are responsible for:

- Being aware of their obligations to avoid and address COI
- Continually assessing their private interests and public duties in order and identify whenever they are subject to a COI
- Reporting identified COI to their manager, (or in certain circumstances to the relevant Panel, Committee or Board)
- Assessing the risks related to identified conflicts and taking reasonable steps to address these risks in accordance with Department policy and procedures so that the public interest is protected.

MANAGERS

In addition to managing their own COI, managers play a role in supporting their staff to identify and address COI by:

- Being aware of the risks of COI which are inherent to the work of the staff they manage
- Making their staff aware of their obligations under COI policy and other relevant policies and procedures
- Identifying the training needs of their staff members in relation to COI policy and practice
- Advising their staff about appropriate ways to address COI
- Recording disclosures of COI reported to them by staff members
- Assisting staff members to identify and implement appropriate management strategies
- Continually monitoring the work of staff they manage and assessing the risks to which they might reasonably be exposed

- Taking appropriate disciplinary action in relation to employees who apparently fail to meet their obligations under Department policy
- Modelling Department values through transparent and consistent management of their own COI.

SCHOOL COUNCILS

School Councillors who are not employees of the Department (such as parents) are not bound by the *Code of Conduct for Victorian Public Sector Employees.* However, they are bound by the *Directors' Code of Conduct and Guidance Notes* (also called the *Victorian Public Entity Directors' Code of Conduct 2006*) issued by the Public Sector Standards Commissioner. Relevant duties under this Code are to:

- Act with honesty and integrity
- Act in good faith in the best interests of the public entity
- Act fairly and impartially
- Use information appropriately
- Use the position appropriately
- Act in a financially responsible manner
- Exercise due care, diligence and skills
- Comply with the establishing legislation
- Demonstrate leadership and stewardship.

Principals play a role, as executive officers of School Councils, in advising School Councillors about appropriate steps they should take to ensure responsible management of risks of COI. Councillors should be referred to the principles and processes outlined in this policy for guidance.

In addition, regulation 21 of the *Education and Training Reform Regulations 2007* requires that if a member of the school council or a member of his or her immediate family has any direct COI (including a pecuniary interest) in a subject or matter under discussion at a school council meeting, that member:

- must not be present during the discussion unless invited to do so by the person presiding at the meeting
- must not be present when a vote is taken on the matter
- may be included in the quorum for that meeting.

At risk areas

Risks of COI are typically significant in relation to three types of activity:

- Recruitment and Selection
- Procurement (tendering, purchasing, contracting)
- Funding allocation or licensing.

Other areas of high risk include contractor management, other work (external employment), receiving gifts, benefits or hospitality, complaints management and disciplinary processes, and managing private/public partnerships.

Principals and Business Managers undertake some of these functions regularly and therefore need to be particularly aware of the risks.

Activities which carry a high risk of COI should be subject to considered and systematic scrutiny. It is recommended that business units and schools undertake assessments of COI risk in relation to relevant roles and duties and, where appropriate, develop guidelines which identify specific expectations on employees for the responsible management of these risks. The **COI Toolkit** includes **Checklists** and **COI Best Practice Case Studies** which may assist in these processes.

CONTRACTORS AND EXTERNAL ORGANISATIONS

The Department expects organisations with which it partners and contractors it engages to comply with responsible practices in relation to managing COI. Where possible, this expectation should be incorporated into the instruments which determine or influence mutual expectations, such as memoranda of understanding and contracts for services.

It is for individual units throughout the Department to take steps to put into effect these expectations in the management of relationships with organisations.

OBLIGATION TO INCORPORATE COI MANAGEMENT IN SPECIFIC CIRCUMSTANCES

The management of COI in accordance with the Department policy should be incorporated into the work of the following groups, which are formed in the Department from time to time:

- Recruitment selection and evaluation panels
- Panels dealing with the procurement of goods or services
- Internal project boards and committees
- Panels dealing with the evaluation of grants.

This obligation rests with those responsible for the relevant process. The management of COI in the work of these groups should include the following steps:

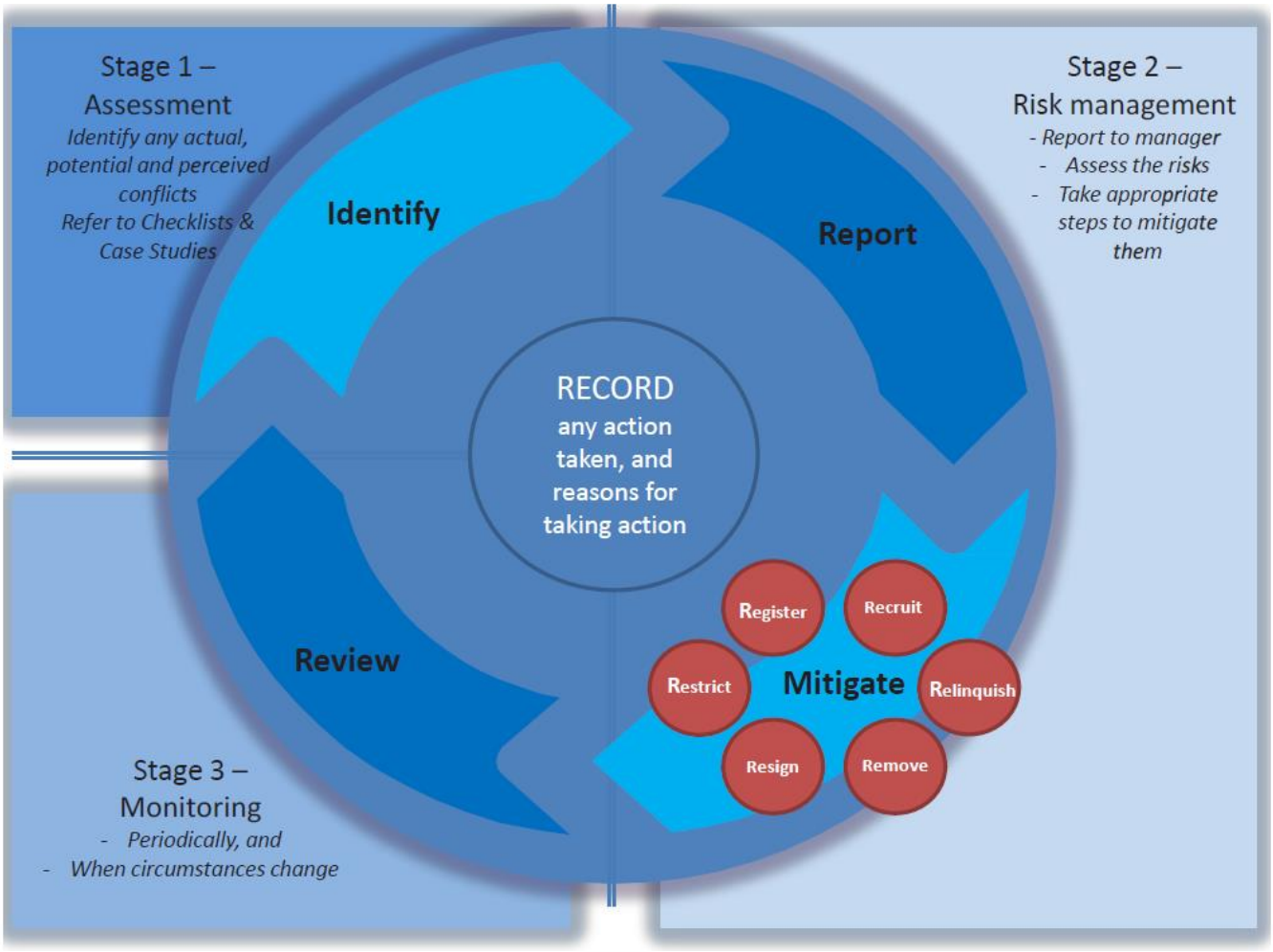
- An assessment of risks of COI to be incorporated into the Board/Panel/Committees' terms of reference
- Reporting and management of members' COI to be a standing agenda item at each meeting
- Steps taken to manage all reported COI to be recorded in the Board/Panel/Committee's proceedings.

Process for managing risks of COI

Responsible management of risks of COI involves three steps:

1. Assessment
2. Risk management
3. Monitoring

Fig 1 – Conflict of interest wheel



Stage 1 – Assessment: identify COI

- Scrutinise private interests and public duties to identify actual, potential or perceived COI. Use relevant checklists or guidelines established for particular activities or those available in the COI Toolkit.
- Managers can be consulted for advice.

Stage 2 – Risk management: report and address the risks of identified COI

- **Report** identified COI (actual, potential or perceived) to a senior authority, usually the line-manager. In certain circumstances conflicts can be reported to a relevant committee or board. However, it would rarely be sufficient for reports only to be made to peers or subordinates.
- Assess the risks to the public interest arising from any identified conflict. Consider in particular risks to stakeholder confidence, public confidence: cf. public sector values, Code of Conduct for the Victorian Public Sector.
- Take reasonable steps to address the risks of identified COI to protect the public interest. These steps may include the following:
    - **Register** the details of the actual, potential or perceived COI
    - **Restrict** the employee's involvement in the public duty subject to the conflict
    - **Recruit** a disinterested third party to oversee part or all of the public duty
    - **Remove** the employee from all responsibilities in relation to the public duty
    - The employee **relinquishes** the private interest
    - The employee **resigns** their public office temporarily or permanently

- **Record** your COI declaration and any decisions in relation to the management of COI (including decisions not to take any action). All staff are required to record COI declarations and management plans in the Declaration of Conflict of Interest form in eduPay.
- Maintain confidentiality in managing private information obtained in the assessment and management of COI.

Stage 3 – Monitoring

- The identification and management of COI should be subject to regular review—periodically and in response to any changes in circumstances (such as changes in line-management).

RECORDING – DECLARATION OF CONFLICTS OF INTEREST FORM IN EDUPAY

All employees are required to record COI declarations and agreed steps to avoid or manage COI. A Declaration of Conflict of Interest form available on eduPay is to be used to do so.

LINE MANAGER'S ROLE

Identified conflicts must be reported to the employee's line-manager. It is rarely sufficient for conflicts to be disclosed only to subordinates or peers. Employees may also consult with their manager for assistance in identifying conflicts, or with any COI matters.

School principals who have identified COI are to report it to their Regional Director. Regions may develop processes to facilitate the reporting of COI in relation to certain circumstances (such as recruitment) which do not involve direct contact with the Regional Director.

Line-managers can provide guidance to employees about taking appropriate action to mitigate an identified COI. This ensures both integrity and parity in the protection of the public interest.

WHOSE RESPONSIBILITY IS IT TO TAKE ACTION?

While it is an employee's responsibility to take appropriate action to resolve an identified COI in the public interest, line-managers play a critical role in moderating these decisions and adding perspective to the options available.

In some circumstances, however, line-managers may consider it necessary to direct an employee to take action they do not wish to take to mitigate a COI. For example, they might direct the employee to relinquish a private interest while the employee does not consider this to be reasonably necessary. In such circumstances, the line-manager's direction may be a lawful and reasonable direction which the employee must follow or face disciplinary action.

If, however, the employee feels that their manager's direction is unreasonable or otherwise flawed, they can lodge a grievance with the Merit Protection Boards to challenge its validity.

COI Officer

The Department's **COI Officer** is responsible for providing advice to managers and members of the Principal Class on applying COI policy to situations where COI has been reported to them, or where they anticipate COI may be affecting their staff.

The manager, Employee Conduct Branch, is the designated COI Officer.

Phone: (03) 7022 0005

Email: employee.conduct@education.vic.gov.au

All employees—including managers—who want advice in relation to managing their own COI are encouraged to consult with their line-manager. This is consistent with the promotion of personal responsibility and the development of an organisational culture which promotes open and transparent management. If necessary, their managers can then seek further advice from the COI Officer on their behalf.

In some circumstances, however, an employee might want to seek advice before going to their manager to discuss a COI issue. In these cases, advice can be sought from the Employee Conduct Branch.

OTHER SOURCES OF ADVICE ON COI

Particular business groups in the Department may identify other sources of advice on managing COI risks inherent to certain roles or functions such as procurement, grant allocation and licensing.

Disciplinary action

An employee's failure to identify, report, address or monitor COI in accordance with this policy could constitute misconduct and could lead to disciplinary action which could lead to their dismissal. Further information about misconduct inquiries in relation to Teaching Service or VPS employees can be found on the Complaints, unsatisfactory performance and misconduct page on HRWeb.

Resources

TAILORED, REAL WORLD GUIDANCE IS BEST

The **COI Toolkit** contains resources which can assist employees in applying the above process to real-world situations.

Given the variety of circumstances in which COI may arise, the Department also recognises that high-level principles or generic examples may be inadequate guidance for resolving COI risks in specific circumstances. For this reason, business units throughout the Department are advised to identify clear expectations for employees about how the COI policy should apply to discrete situations. The resources in the COI Toolkit can be adapted for this purpose.

COI OFFICER

The manager, Employee Conduct Branch, is the designated COI Officer.

Phone: (03) 7022 0005

Email: employee.conduct@education.vic.gov.au

COI TOOLKIT

The COI Toolkit includes a range of resources to assist employees in understanding and applying the COI Policy to the different circumstances where conflicts of interest arise.

ADDITIONAL INFORMATION

- Other Employment
- Gifts, Benefits and Hospitality

Procurement

- For school locations
- For corporate locations
- Fraud and Corruption Control