

# OAG Best Practice Guide: Conflict of Interest

Customer Advisory Services  
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## Best Practice Guides

The Office of the Auditor General (OAG) significantly contributes to the functioning of public services and public accountability. The office has embarked on expanding its role through advisory activities to reinforce its audit work. One such activity involves producing best practice guides that can be widely used in the Fiji public sector.

Through the introduction of best practice guides, we have endeavoured to ensure the best impact possible on public policies and their implementation. In doing so, OAG is focused on improving processes in the public sector, in order to enhance the economy and efficiency of public administration and improve public governance.

This is also an endeavour by the OAG to align itself to the *ISSAI<sup>1</sup> 12: Value and Benefits of SAIs*, which conveys that the ultimate role of a supreme audit institution is to have impact, to make a difference in the lives of citizens. In line with this standard, our ultimate objective is better visibility of the value and benefits of our work for our audited entities, for decision-makers in Parliament, government and administration, as well as our citizens.

More importantly, this best practice guide is designed to help public entities do the right thing.

## Acknowledgement

The OAG acknowledges the Independent Commission Against Corruption (ICAC) New South Wales, for their permission in allowing the OAG to use materials produced by the Commission as the main reference materials for this best practice guide.

## Disclaimer

*This best practice guide has been compiled for reference only and is not intended to represent the best or only approach to conflict of interest or any particular issue. We have done our best to ensure that the publications and other information in this guide are up to date, however some information in a publication will inevitably lose relevance or currency over time.*

*One should not treat information in this guide as amounting to definitive professional advice about any specific matter. Users should seek appropriate accounting, legal or other professional advice to address specific facts and circumstances. The OAG does not accept legal responsibility for reliance on information in this guide.*

*Members or officials of public office should utilize this guide in light of their professional judgment, and the facts and circumstances involved in their public office and each particular engagement or situation. The OAG disclaims any responsibility or liability that may occur, directly or indirectly, as a consequence of the use and application of this guide.*

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<sup>1</sup> International Standard of Supreme Audit Institutions

## Glossary

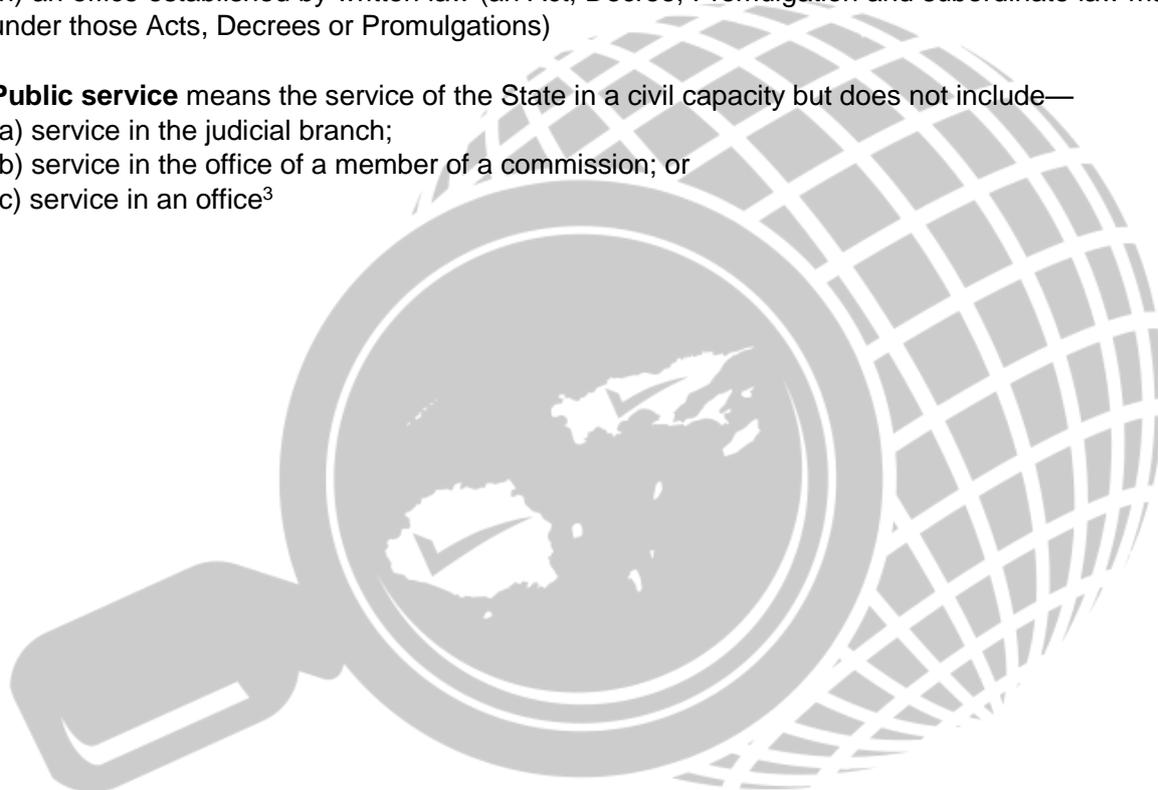
**Public officer** means the holder of a public office<sup>2</sup>

**Public office** means—

- (a) an office created by, or continued in existence under, this Constitution;
- (b) an office in respect of which this Constitution makes provision;
- (c) an office of a member of a commission (a commission established by or continued in existence under, this Constitution);
- (d) an office in a State service (the public service and the disciplined force);
- (e) an office of Judge;
- (f) an office of Magistrate or an office in a court created by written law;
- (g) an office in, or as a member of, a statutory authority; or
- (h) an office established by written law (an Act, Decree, Promulgation and subordinate law made under those Acts, Decrees or Promulgations)

**Public service** means the service of the State in a civil capacity but does not include—

- (a) service in the judicial branch;
- (b) service in the office of a member of a commission; or
- (c) service in an office<sup>3</sup>



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<sup>2</sup> For the purpose of this guide, this term also refers to public officials

<sup>3</sup> Definitions as stated in the 2013 Constitution of the Republic of Fiji

## Contents

Best Practice Guides.....	1
Acknowledgement.....	1
<i>Disclaimer</i> .....	1
Glossary .....	2
1.0 Objective .....	4
2.0 The Auditor-General’s Role .....	4
3.0 Personal Interests and Public Duty .....	4
4.0 Defining Conflict of Interest.....	5
5.0 Identifying Conflict of Interest .....	6
6.0 Conflicts of Duties .....	7
7.0 Identifying and Managing Conflict of Interest in the Public Sector.....	7
8.0 Disclosing Interests and Conflicts of Interest.....	10
9.0 Deal with breaches .....	12
10.0 Being proactive in identifying conflicts of interest.....	13
11.0 Conclusion .....	13



## 1.0 Objective

Increasing stakeholder expectations is evident across the current public sector landscape. Citizens expect public officials to carry out their duties in a manner that does not give them, or their close connections and associates, undue personal benefit. Public officials are also expected to refrain from allowing their private interests to influence their duties and decision making in public administration.

In order to identify, and manage this issue, public offices and public office holders need to be aware of what constitutes a conflict of interest. Personnel at all levels of a public entity may need to identify and disclose conflicts of interest, or help to manage conflicts of interest. This guide explains the key concepts relating to conflict of interest, and also suggests a guideline for public sector entities to consider when managing conflicts of interest.

## 2.0 The Auditor-General's Role

The Auditor-General is responsible under the Constitution of the Republic of Fiji for auditing public sector entities and reporting to Parliament. In this role as the auditor of all public entities, he has an interest in encouraging them to carry out their activities lawfully and responsibly.

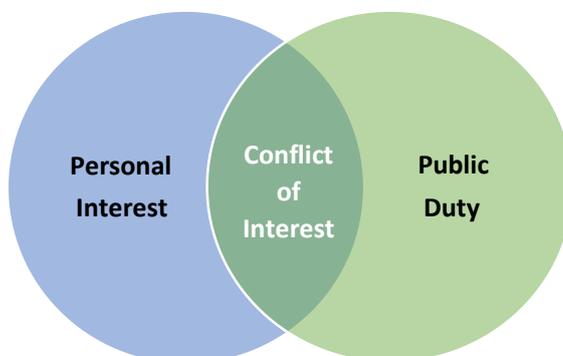
A public entity's annual audit report could be affected by breaches of law or inadequate disclosure of related party transactions. Similarly, under his performance audit and special investigation functions, the Auditor-General may examine matters concerning a public entity's use of its resources, or its compliance with its statutory obligations, or matters appearing to show a lack of financial probity by a public entity or its members, office holders, or employees.<sup>4</sup>

## 3.0 Personal Interests and Public Duty

Every member or official of a public office has a number of professional and personal interests and roles. Occasionally, some of those interests or roles overlap. This is where a conflict of interest occurs.

In a small country like Fiji, where communities and organisations are often close-knit and people have many different connections, conflicts of interest sometimes cannot be avoided, and can arise without anyone being at fault. They need not cause problems when they are promptly disclosed and well managed.<sup>5</sup>

**Figure 1: Where Conflict of Interest Occurs – Overlapping of Interests or Roles**



Source: Managing Conflicts of Interest in the NSW Public Sector by ICAC NSW 2019

<sup>4</sup> Controller & Auditor General NZ: Good Practice Guide: Managing Conflicts of Interest - Guidance for Public Entities

<sup>5</sup> Controller & Auditor General NZ: Good Practice Guide: Managing Conflicts of Interest - Guidance for Public Entities

## 4.0 Defining Conflict of Interest

A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities (OECD, 2003).

### 4.1 Key Concepts in the Definition

**Public duty** – A broad concept that goes beyond public officials simply performing their official duties and responsibilities, and complying with policies and procedures.

It is a power, authority, duty or function that is conferred on a person as a holder of public office. It includes the duty to serve the public interest, the public office and the public in an ethical manner (ICAC NSW, 2019).

**Private or personal interest** – For a public official, these are interests that occur from one's private/personal life that can result in financial/material benefits, or disadvantages, to the public interest and to other individuals. These can also include the interests of the public official's close connections, including family connections and/or associates.

**Pecuniary interest** - Involve an actual or potential financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative or other 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 (ICAC and Crime & Misconduct Commission QLD, 2004).

**Non pecuniary interest** - Does not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency towards favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group (ICAC and Crime & Misconduct Commission QLD, 2004).

**Actual Conflict of Interest** - A conflict of interest that can be current or found to have existed at some point in time in the past;

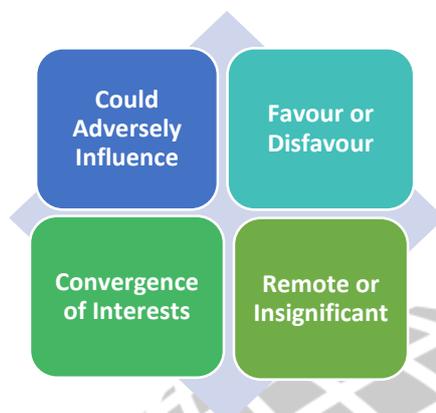
**Apparent Conflict of interest** – In contrast to an actual conflict of interest, in this case, an apparent conflict of interest is said to exist where it appears that the public official's private interest could improperly influence one's performance of their duties, but this may not be the case in reality;

**Potential Conflict of Interest** - Occurs when a public official has private interests that could conflict with carrying out their official duties in future (OECD, 2003).

## 5.0 Identifying Conflict of Interest

As listed in the guidelines on *Managing Conflicts of Interest in the NSW Public Sector by ICAC NSW 2019*, some guidance on identifying conflicts of interest are detailed in this section. A snapshot of this is shown in the following diagram:

**Figure 2: Guidance in Identifying Conflict of Interest**



### ***Favour or disfavour***

A personal interest can involve causing harm or disadvantage on another as well as conduct that improperly favours the public official or another. That is, a public official might have an incentive to extend either benefits or disadvantages on another party. Hence, a relationship with an enemy or a person that a public official dislikes could be a personal interest. Similarly, an official might benefit a personal business interest by making it difficult or impossible for competitors to operate effectively.

### ***Could adversely influence***

For a conflict of interest to exist, a public official does not have to engage in actual favouritism or partial/biased conduct. A conflict of interest arises if the relevant personal interest(s) could be improperly favoured over public duties. This “could test” is often misunderstood. Many officials incorrectly believe that a conflict of interest only arises once a personal interest has been favoured or a public duty has not been properly performed.

### ***Convergence of interests***

A conflict of interest exists even where the interests of the official and the public office are aligned (or appear to be aligned). Various terms have been used to describe this, including a “convergence of interests”, a “commonality of interests” or a “confluence of interests”.

This situation is risky because it can allow an official to rationalise their failure to disclose a conflict by claiming that “everyone benefits” or “nobody is harmed”. These situations do represent conflicts of interest because there is a reasonable perception that the official could be influenced by their personal interest. It is irrelevant that the public office may also benefit.

### ***Remote or insignificant***

An official’s personal interest in a matter is so remote or insignificant that it could not reasonably be regarded as having the potential to influence their duties. For example, an official making a decision to resurface a road in their own suburb will be insignificant if they rarely use that road, it is not near their property and the resurfacing will not affect the value of their property or the interests of their close connections.

## 6.0 Conflicts of Duties

A conflict of duties occurs when an official has two or more public duties that are not compatible. While it is important to manage conflicting duties, they are fundamentally different from conflicts of interest because there is no personal interest involved (ICAC NSW, 2019).

## 7.0 Identifying and Managing Conflict of Interest in the Public Sector

The methods that a public office chooses to utilise with regards to managing conflict of interest within its organisation is largely dependent on its operating environment and its legislative requirements. A suggested guideline is provided in this section, with an outline provided in the schematic diagram Figure 2 in the next page.

### **1. Identify the types of conflict of interest that would typically occur in the public office**

Documenting of general conflict of interest situations for employees and management of the public entity, and also specific examples of unacceptable conflict of interest situations.

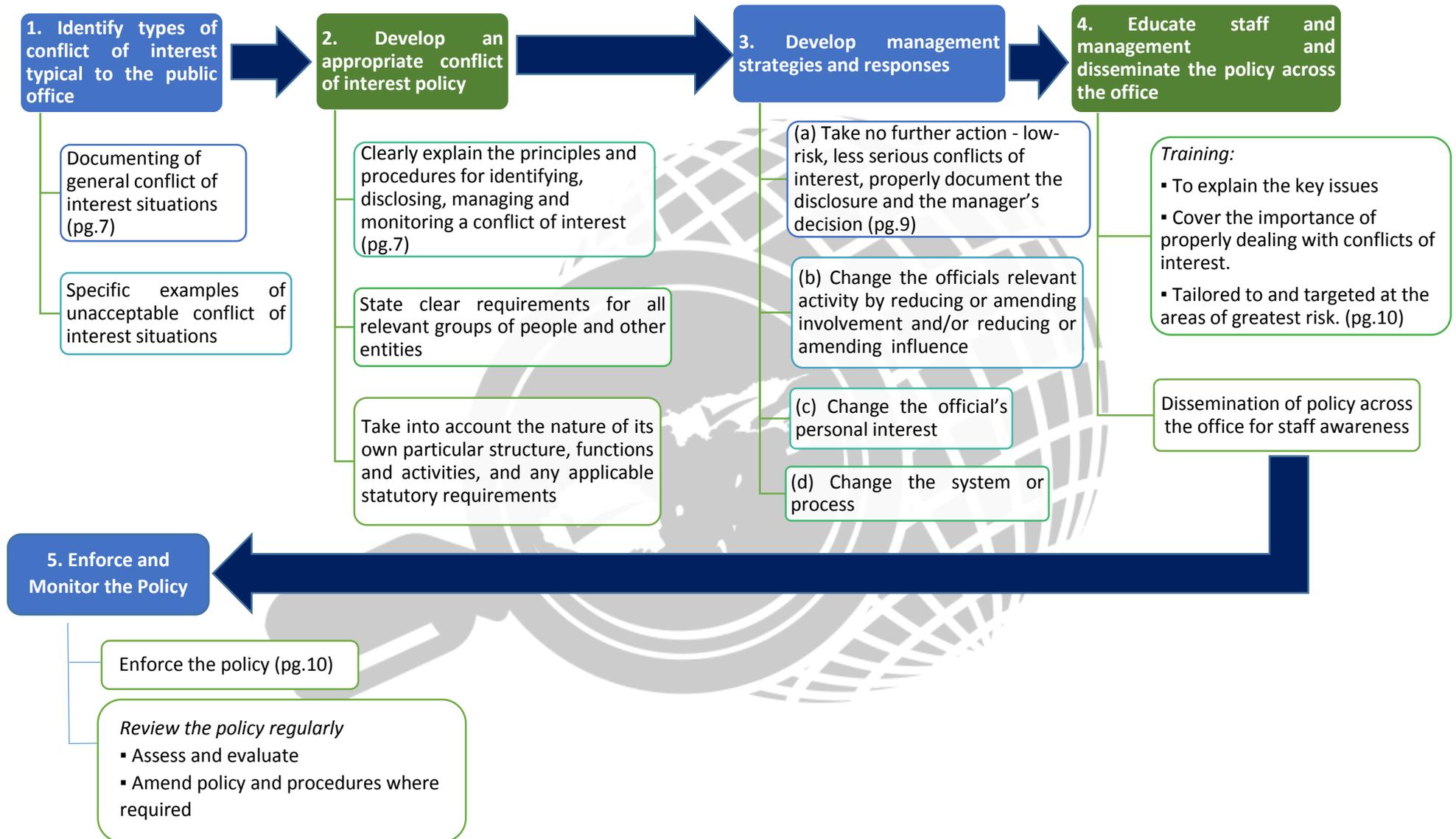
### **2. Develop an appropriate conflict of interest policy**

Agencies should have a conflicts of interest policy that clearly explains the principles and procedures for identifying, disclosing, managing and monitoring a conflict of interest. It is important that there are clear requirements for all relevant groups of people and other entities. These might include staff, contractors, consultants, people and entities providing services on behalf of a public office or otherwise acting for, or on behalf of, a public sector public office (ICAC NSW, 2019). The policy currently used by the OAG is provided on the office website at [www.oag.gov.fj](http://www.oag.gov.fj). The Fiji Independent Commission Against Corruption also provides a template for a conflict of interest policy on their website at [www.ficac.org.fj](http://www.ficac.org.fj).

In preparing its policies and procedures, a public office should take into account the nature of its own particular structure, functions and activities, and any applicable statutory requirements. It should consider what its operations are, what fields it operates in, and what sorts of problems or risks might typically arise. For example, the activities that a public office normally carries out such as contracting; allocating grants; public consultation; or regulatory decision-making (Controller and Auditor General, New Zealand, 2007).

Staff in higher risk roles, such as tender evaluation committees and other panels, should be given a copy of the policy. Agencies should also consider publishing their policy on their public website or otherwise making it available to key parties, such as suppliers. One way of ensuring that such policies have operational or practical effect is to incorporate them into employment contracts or contractual terms of engagement (ICAC NSW, 2019).

Figure 2: Guideline on Identifying & Managing Conflict of Interest



### 3. Develop management strategies and responses

When determining the level of risk associated with the conflict, the potential responses should be considered. Where the conflict of interest entails high risk, the public office should always consider removing the official from the relevant public activities. As this is not always practical, other alternatives should be considered.

As stated in the guidelines on *Managing Conflicts of Interest in the NSW Public Sector by ICAC NSW 2019*, the options to consider when managing a conflict of interest are:

#### a) Take no further action

For many low-risk, less serious conflicts of interest, no management action is required beyond properly documenting the disclosure and the manager's decision to take no further action. However, in cases where the conflict of interest is not minor in nature, agencies should take great care when deciding to take no further action. Normally some proportionate measures can be taken to reduce risk to an acceptable level.

#### b) Change the official's relevant activities

*Reduce or amend involvement* - often, the most effective way to manage a conflict of interest is to remove the relevant official so that they have no involvement in the matter. The logic is that their ability to misuse their position (or the perception that they might) is minimised if they have no involvement. Often, this can simply entail reallocating the official to different duties. Where entirely removing an official from a matter is not practical, agencies should consider ways to reduce involvement.

*Reduce or amend influence* - Even if they have little or no formal involvement, an official may still have substantial influence over a matter. This could be the case if the conflicted official is in a position to persuade colleagues, or if they have access to relevant information. The public office should consider ways to mitigate this, for example, transferring the matter to another unit or team that is unconnected with the official (this could include taking steps to ensure that the official's subordinates and close colleagues are not in key decision-making roles or changing reporting lines to ensure the official has less influence).

#### c) Change the official's personal interest

It may be appropriate for the conflicted official to modify the nature of their personal interest in some way. Most often, this involves disposing of a pecuniary interest. That is, relinquishing ownership by, for example, selling shares or land that is creating a conflict of interest. A public office may not be able to direct an employee to dispose of a privately-owned asset but it may be possible to negotiate an agreement with the conflicted official. While it is difficult to dispose of a non-pecuniary interest, such as a friendship, it may be possible for the official to give an undertaking to refrain from communicating with a particular person during a process such as a recruitment exercise or a tender.

#### d) Change the system or process

Without changing either the official's public activities or their private interest, it is usually feasible to strengthen the overall probity of the process. This tends to involve either stronger recordkeeping or additional monitoring and assurance. While controls of this nature may not directly prevent an official from favouring a personal interest, they increase the likelihood that any improper conduct will leave a trail and be detected. Some examples include documenting and publishing reasons for the decisions taken; creating audio or video recordings of key decisions or meetings.

The options should not be considered in isolation and a mix of responses may be appropriate (ICAC NSW, 2019).

#### 4. Educate staff and management and disseminate the policy across the office

Training should be provided that not only explains the key issues, but also covers the importance of properly dealing with conflicts of interest. The training should be tailored to and targeted at the areas of greatest risk (ICAC NSW, 2019).

#### 5. Enforce and monitor the policy

*Communicate the organisations commitment to its policy* - awareness that supports compliance and anticipation of 'at risk' areas for prevention.

*Enforce the policy* - appropriate disclosure of adequate information and effective management of conflicts.

*Review the policy regularly* - assess and evaluate the policy in light of experience, and amend the policy and procedures where required to meet evolving situations in each entity's unique public sector environment (ICAC and Crime & Misconduct Commission QLD, 2004).

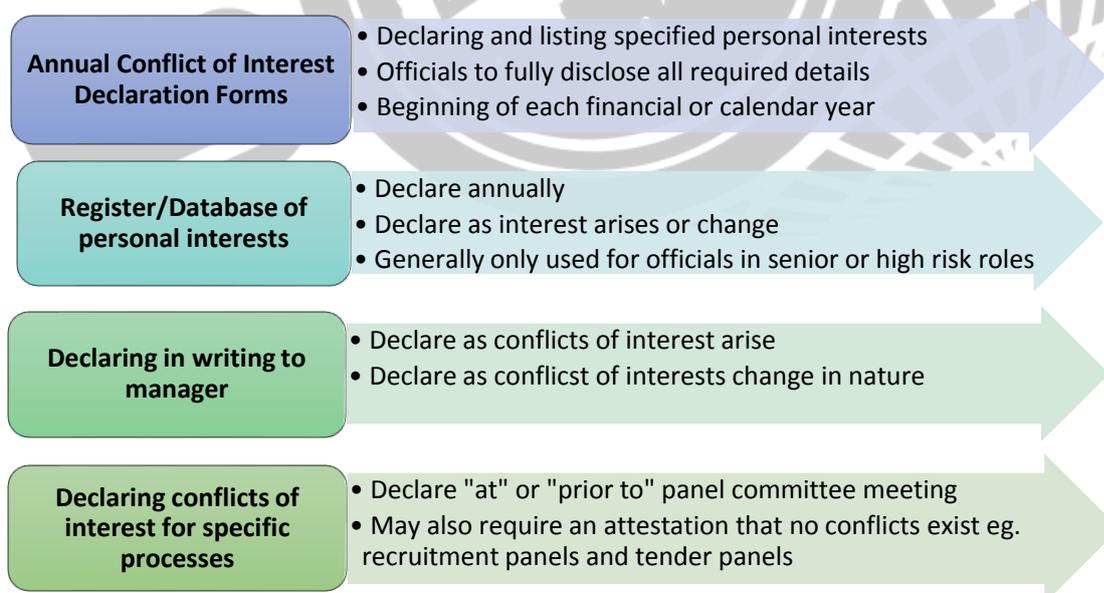
### 8.0 Disclosing Interests and Conflicts of Interest

All conflicts of interest should be disclosed promptly in writing to a manager or other relevant authority.

In addition, many officials in higher risk or senior roles are also required to disclose certain relevant personal interests, whether or not they presently conflict with a public duty. The two concepts of personal interests and conflicts of interest are connected in that conflicts of interest may arise from ongoing personal interests. In this context, personal interests may also be potential conflicts of interest. Such officials may be required to routinely disclose their financial interests or friends and family members who are known to have dealings with the public sector.

These methods are not mutually exclusive and often work independently of each other. Therefore, in some cases, it is appropriate for a matter to be disclosed in multiple ways (ICAC NSW, 2019). The diagram below indicates examples of these methods:

Figure 3: Typical Methods for Making and Recording Disclosures



Adapted from Managing Conflicts of Interest in the NSW Public Sector by ICAC NSW 2019

### **1. Annual Conflict of Interest Declaration Forms**

These forms can be filled and submitted by all employees in key positions, and management of public offices; declaring and listing specified personal interests. This can be done at the beginning of each financial or calendar year. An example of this is shown in the OAG Conflict of Interest Policy in *Annexure 1 – Declaration of Interest Form for OAG Management and Staff*, and *Annexure 2 – Declaration of Interest Form for On-Going Disclosure*.

Forms used to disclose conflicts of interest or personal interests should leave sufficient space for officials to fully disclose all required details. Some disclosures are complicated and require a substantial amount of information to be conveyed to allow a proper assessment (ICAC NSW, 2019).

### **2. An interests database or register**

The point of a register of personal interests is to provide a higher level of transparency, and therefore control, over officials in high-risk roles. Disclosing an interest before it becomes a conflict of interest also reduces the likelihood that an official will be tempted to conceal or favour the interest (ICAC NSW, 2019).

A central register provides a single source of information that can be easily analysed and used to assist an audit or investigation. It also allows agencies to ensure that conflicts of interests are being managed in a consistent, acceptable manner (ICAC NSW, 2019).

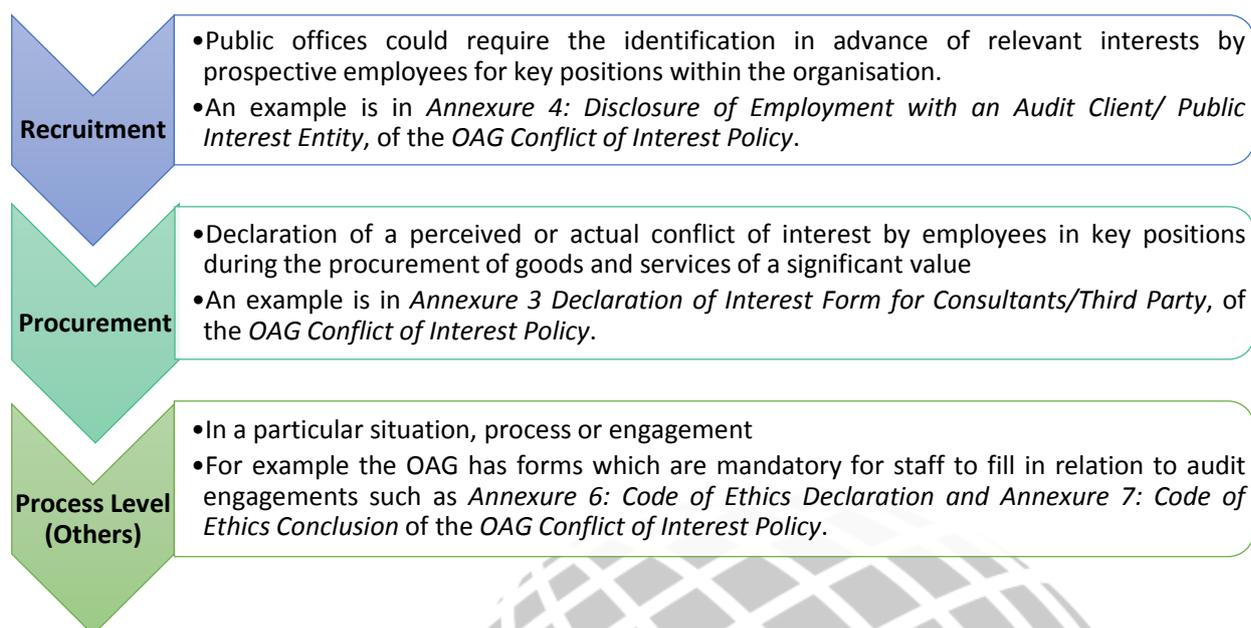
### **3. Declaring conflicts of interest for a specific process**

Public officials often participate in discrete processes that confer direct benefits or disadvantages on external parties. These include recruitment panels, tender panels or other procurement/disposal activities, awarding grants, as well as decisions to terminate any contract or take legal action.

Any conflict of interest arising in such a process is usually disclosed to the relevant chair, steering committee or project manager. This may not be the regular manager of the official making the disclosure.

It is noted that the requirement for disclosure as part of a specific process may be in addition to any general policy requirement to disclose personal interests or conflicts of interest (ICAC NSW, 2019).

Each public office has its own particular structure, functions and activities, and any applicable statutory requirements. Some examples of areas where a declaration of conflict of interest could be considered in operational levels are:

**Figure 3: Examples of Operational Areas for Declarations of Conflict of Interest**

Adapted from 'Good Practice Guide: Managing Conflicts of Interest - Guidance for Public Entities' (Controller and Auditor General, New Zealand 2007)

#### **4. Disclosing conflicts of interest to a manager**

Conflicts of interest should always be declared promptly and in writing. This avoids disputed accounts of conversations and whether the full extent of the interest or conflict of interest was properly disclosed. In practice, most agencies require officials to disclose conflicts of interest to their manager. It is also common to convey these disclosures to a governance or corruption prevention officer and/or to record them in a central register (as discussed in the previous section).

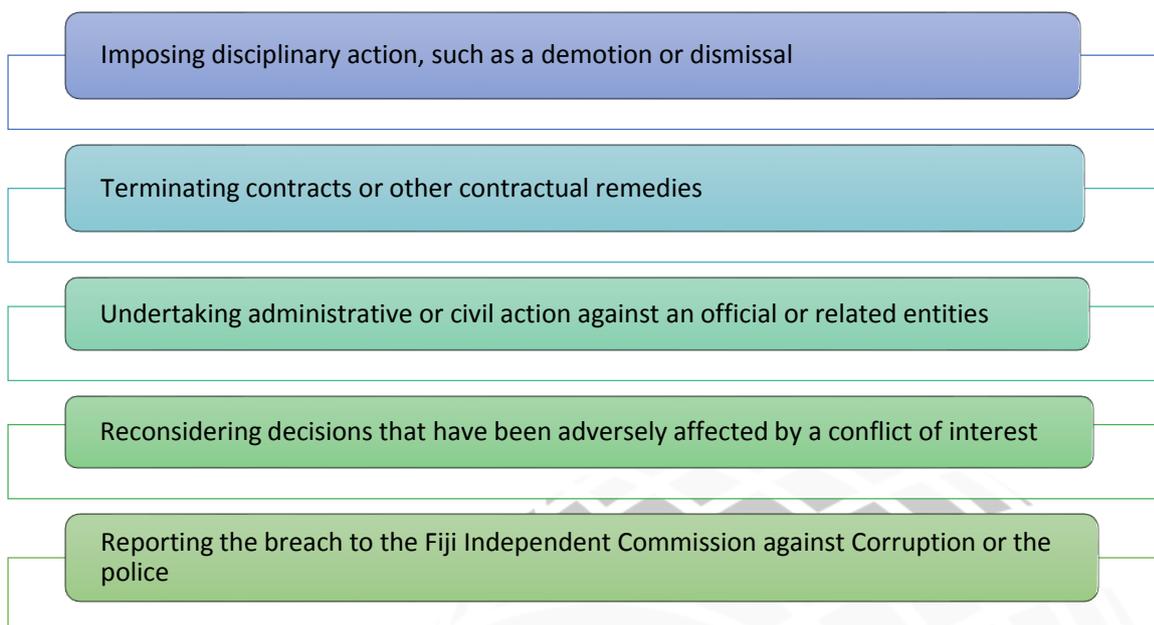
Importantly, a conflict of interest must still be disclosed even if the relevant private interest has already been registered. For example, if a senior executive has already disclosed that their spouse works for a particular supplier that does business with government (that is, disclosure of a personal interest), a further disclosure should be made (ICAC NSW, 2019).

In summary, a conflict of interest policy and its procedures may need to retain some flexibility for the exercise of judgement in individual cases. It should also state that the specific situations it covers are not an exhaustive list.

## **9.0 Deal with breaches**

Alleged breaches of a conflicts of interest policy or code of conduct should be properly investigated and, where appropriate, action taken. This may include the actions detailed in the following diagram:

**Figure 4: Actions to Deal with Breaches of Conflict of Interest Policy or Code of Conduct**



Adapted from Managing Conflicts of Interest in the NSW Public Sector by ICAC NSW 2019

Complaints about concealed or mismanaged conflicts of interest should be captured by a public office’s internal reporting policy and procedures. Employees, consultants, contractors and other relevant entities should be informed of their obligations in connection with conflicts of interest and the potential consequences of breaches (ICAC NSW, 2019).

### 10.0 Being proactive in identifying conflicts of interest

Officials may fail to disclose their conflicts of interest, whether intentionally or unintentionally. For this reason, it is recommended that agencies implement measures to identify undisclosed conflicts of interest. Some suggested measures are listed in the table below:

**Figure 5: Measures to Identify Undisclosed Conflicts of Interest**

Measures to Identify Undisclosed Conflict of Interest			
An internal reporting or complaint-handling function that allows staff and external parties to report concealed conflicts or other forms of misconduct	Examining audit reports	An internal audit function that has regard for suspicious transactions	Conducting background and due diligence checks on potential staff, suppliers, contractors and business partners

Adapted from Managing Conflicts of Interest in the NSW Public Sector by ICAC NSW 2019

### 11.0 Conclusion

Public servants have a duty to report all actual, potential or perceived conflicts of interest and resolve them in the public interest. The role of public offices as organisations is to identify major areas of activity where conflicts of interest may occur, and take the action necessary to establish policies and procedures for managing conflicts when they arise.

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