

Ministry for Primary Industries

Organisational Guidelines: Conflicts of Interest

Issue Date: November 2020

Review Date: November 2022

Owner: Director Human Resources

Overview

Conflicts of interest can arise during the ordinary course of our employment. It is quite normal to have them, but it is important we know how to identify and manage such conflicts in order to maintain the integrity and decisions of the affected individual and of MPI.

This guideline presents a framework to help MPI workers and managers deal with conflicts of interest situations; it will not provide exhaustive solutions because there are so many potential permutations. It will also offer some examples and strategies to assist people in identifying and addressing possible conflicts.

A conflict of interest declaration should be regarded as a living document. As your situation (personal and / or work) changes, you will need to regularly consider any actual, perceived or potential conflicts of interest that may relate to your work at MPI and have conversations about them. We will prompt you often, for example when you start at MPI, if you change roles, or in a Government election year, but we cannot always be aware of what is happening for you. If in doubt, talk it out with your manager or a Human Resources representative.

Why do we care about conflicts of interest?

Conflicts of interest involve ethical considerations and if not properly managed can undermine legitimate decision making; compromise the development of policy and the delivery of services to the public and industry; affect the allocation of public resources; encourage corruption; damage public confidence in the organisation and / or the State sector as a whole.

Increased co-operation between the public and private sectors - such as public / private partnerships, sponsorships, contracting out and self-regulation - has added complexity and increased the potential for conflicts of interest to arise.

Standards of Integrity and Conduct

As public servants we are obliged to carry out our duties fairly, impartially, responsibly and honestly. These minimum standards of integrity and behaviour are outlined in the [Public Service Commission Standards of Integrity and Conduct](#) which applies to everybody who works in the public sector so that:

- The people of New Zealand trust Public Service agencies, and their employees, to be impartial and responsible when using their powers
- New Zealanders are confident that we work in their interest and treat them with fairness and respect

- We act in a spirit of service to New Zealand.

For example, we must:

- Ensure our actions are not affected by our personal interests or relationships
- Never misuse our position for personal gain
- Decline gifts or benefits that place us under any obligation or perceived influence
- Avoid work or non-work activities that may harm the reputation of MPI or of the Public Service.

The [MPI Code of Conduct](#) further sets out what MPI as an employer expects from its employees and what employees can expect from MPI consistent with [Our Values](#) and expectations.

What are conflicts of interest?

A conflict of interest is where a person's interests or obligations conflict with, or have the potential to conflict with, the responsibilities of their job or position. It means that their independence, objectivity or impartiality could be called into question, regardless of whether they actually receive a benefit as a result of the conflict.

Conflicts of interest may arise in several ways - through a relationship, activity, strong personal views, family or community expectations - and it should be identified whether the conflict is actual or may be perceived.

An MPI worker may also be compromised if they receive gifts, invitations or other benefits from a person who stands to gain from a decision.

Conflicts of interest can be caused by (and are not limited to):

- secondary employment
- private business interests or involvement (e.g. shareholdings, board memberships, investments, property ownership, government contracts)
- professional or legal obligations or debts owed to someone else
- holding another office
- gifts, benefits and hospitality
- strong beliefs or public statements that may indicate predetermination
- family or other personal relationships
- membership of a club, society or association.

In the case of personal relationships and affiliations, the judgement to disclose these will typically depend on the closeness of the relationship and the degree to which MPI's decisions or activities could affect them.

Guidance from the Office of the Auditor-General notes that a relationship could be 'close' because of the directness of the link, or because of the degree or strength of association. Simply being acquainted with someone, or having worked with them, would not normally create any problem. A longstanding, close or very recent association, however, might do.

Sensitive areas of work

Areas of work that create high risk environments for conflicts of interest include:

- interacting regularly with the private sector
- contracting and procurement
- inspecting, regulating or monitoring of standards, businesses, equipment or premises
- carrying out regulatory tests and procedures
- issuing qualifications or licences
- issuing, or reviewing the issue of, fines or other sanctions
- allocating grants of public funds, or providing subsidies, financial assistance, concessions or other relief to those in need
- making determinations or handing down judgement about individuals or disputes
- making appointments to positions
- fishing activities
- participation in coordinated government responses to events of high significance.

Specific instances

An worker must not, without prior disclosure to and approval from their Manager:

- accept secondary employment
- be involved in a decision by MPI to recruit, appoint, employ or assess the performance of a relative or friend
- commit MPI to a commercial arrangement with a relative or friend, or an organisation in which the MPI worker member, a relative or a friend has (or has had) a significant financial, contractual or employment interest
- be involved in policy development or delivering MPI services that could result in a direct financial benefit to the staff member, a relative or friend
- act as a spokesperson for an organisation on issues that relate to MPI's work
- develop policy or strategies for an organisation on issues that relate to MPI's work
- accept a gift in connection with the worker's official role, that may place the worker or MPI under any obligation or perceived influence; or
- participate in or influence a decision to award a contract or other authorisation where the worker is a friend, relative, or has a contractual relationship with an applicant or tenderer or has had a professional relationship with an applicant or tenderer, and has opinions that could reflect bias or predetermination.

Identifying possible conflicts of interest

The existence of other interests does not necessarily cause a conflict. A conflict occurs where there is a *connection* between the interest and the person's responsibilities to MPI. A good test is:

"Will the person's responsibilities to MPI be affected by some other interest or duty that the person has, or will there be a likely perception that this will be the case?"

If there is a risk, or likely perception, of this, there is a possible conflict of interest. It is not relevant whether the person acts in that way.

Other useful tests to consider are:

- **Front page of the newspaper.** Would exposure withstand external or public scrutiny? Would I be happy if my interest appeared in the local newspaper? Could it undermine public trust in MPI?
- **Internal review.** Would I be embarrassed if my colleagues or the MPI Director-General became aware of my interest?

Some conflict of interest case studies is noted in **Appendix 2**.

What to do?

While conflicts of interest should be avoided where possible, there are occasions where a conflict is unavoidable - particularly in smaller communities and specialist industries, including many of the sectors MPI operates in. Difficult judgements may be called for. In these cases, the conflict must be managed openly and effectively, with adequate measures put in place to support the integrity of the person and MPI.

There are two basic steps:

- identifying and **declaring** the conflict of interest; and
- **managing** (avoiding or mitigating) the conflict.

Identification and disclosure of a conflict of interest is the responsibility of individual worker. Managing the conflict is primarily a management responsibility. Both steps should be documented to ensure the situation and decisions are agreed and transparent.

Declaring conflicts of interest

All people who are going to work for MPI must complete a conflicts of interest declaration, either as part of their recruitment process or some other engagement process, e.g. contracting or volunteering. A declaration will also need to be completed every Government election year, when a person changes role within MPI, and at other appropriate times as requested by MPI.

As soon as an actual, perceived or potential conflict of interest arises, MPI management must be notified. It is better to err on the side of caution and transparency and raise the issue, even if uncertain or unconcerned about a possible conflict, before committing to an action that may result in a conflict of interest.

It is usually sufficient that the declaration is disclosed to the person's direct manager, but if the conflict is (or could become) sufficiently critical, the manager should notify their own manager of the conflict and potential risk. In this event, the conflict may also be notified to the Deputy Director-General of the business unit, and / or the MPI Director-General.

All conflict of interest declarations will be retained in the central register managed by Human Resources.

Managing conflicts of interest

The manager will, in consultation with the person who has declared the conflict of interest and, if necessary, other managers within their directorate and business unit, decide the action(s) required to resolve or manage the situation.

Each conflict of interest should be considered on a case-by-case basis according to the situation and the degree of seriousness and sensitivity. Judgement and careful assessment are important.

Considerations should include:

- the type and size of the private interest
- the nature or significance of the activity being undertaken by MPI, and the nature and extent of the person's involvement in this area
- the degree to which the person's private interest could influence, or be influenced by, MPI's decision or activity, and the actual (or potential or perceived) impact of this
- the practicality and possible consequences of different options for avoiding or mitigating the conflict, and
- whether the situation could undermine public trust in the person or in MPI.

Mechanisms ranging from increased transparency and scrutiny, and declining gifts and hospitality, to severing connections, should be utilised to prevent potential conflicts of interest arising or to help resolve any actual or perceived conflicts that occur.

Where the conflict is remote or insignificant, a formal record of the conflict and a note that no further action is to be taken may be all that is needed. For more serious cases, further steps are likely to be required. Withdrawal from, or restrictions on, involvement in the matter are options that can be used.

Possible management options are listed in **Appendix 4**.

Managing conflicts of interest

Most conflicts are expected to be resolved between the person concerned and their manager. One-up review is recommended in line with a 'no surprises' principle. Where the parties are unable to reach agreement, the final decision rests with the Director-General.

At any time prior to the final decision, the person concerned, their manager or the Director-General may ask for an independent review of the situation, guidance and / or recommendations or to assist in resolving specific conflicts. A review of this nature would ideally be undertaken by senior members of Human Resources, Legal Services, Assurance and Evaluation (Professional Standards Unit) or MPI Policy.

Updates

Situations change over time. When a material change occurs or is being considered, the person should discuss this in a timely manner with their manager / contract manager at the time and record the outcome, using the declaration process.

Declarations should also be reviewed from time to time in order to discuss the agreed actions and, if necessary, update disclosures and their management.

Confidentiality of records

Conflict of interest records must be held in the HR system and other relevant employment files. All records will be treated confidentially and handled in line with the Privacy Act 1993 and MPI's policy on personal information.

It is important that the confidentiality of conflict of interest information is respected and details are disclosed only to those that have a legitimate need to know. If there is any doubt, you should discuss the situation with Human Resources or Legal Services.

Non-compliance

Non-compliance (failure to declare a conflict of interest or refusal to resolve or properly manage a conflict) may be regarded as a disciplinary matter (in respect of employees) and action may be taken in accordance with the MPI guidelines.

Depending on the circumstances and the seriousness of the breach, action may involve counselling and education, cautions or notice of unsatisfactory performance, through to dismissal and prosecution. Other actions could include cancellation of the affected decisions or contracts, and exclusion of beneficiaries from future dealings.

Whistleblowing (protected disclosures)

Whistleblowing is rare but may be necessary if you are concerned about a colleague having undisclosed interests. Such disclosures can be advised to MPI Human Resources or the Professional Standards Unit. For protections available under the Protected Disclosures Act 2000, follow the process outlined in the MPI Protected Disclosures procedure.

Final Note

Having a conflict of interest is not necessarily a problem. It is how it is handled that is important. Awareness and disclosure are key. If you are uncertain about a situation, please raise it with your manager. Alternatively, you can contact MPI Human Resources or the Professional Standards Unit to talk through any questions or concerns.

It may also be necessary to **Speak Up** if you are concerned about a colleague having an undisclosed interest. For more information, go to the [Speak Up Policy and Guidelines](#).

Appendix 1 - Definitions

| | |
|---|---|
| Conflict of duty | <p>Where a public sector employee has multiple roles and could be said to 'wear two hats'; that is, they have two official roles with a competitive relationship.</p> <p>Separation of duties is normally advised.</p> |
| Conflict of interest | <p>Conflicts of interest arise where two different interests intersect.</p> <p>In the public sector, they arise where a person's duties or responsibilities to a public entity could be affected by some other separate (and usually private) interest or duty they may have. (OAG, Managing Conflicts of Interest in the Public Sector, 2005).</p> <p><i>A situation whereby two or more of the interests held by, or entrusted to, a single person or party are considered incompatible or breach prescribed practice; a situation in which an individual may profit personally from decisions made in his or her official capacity.</i> (Oxford English Dictionary.)</p> |
| Non-pecuniary interest | <p>Non-pecuniary interests do not have a financial component but may arise from personal or family relationships or involvement in sporting, social or cultural activities.</p> <p>They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias your judgement or decisions.</p> |
| Pecuniary (or financial) interest | <p>Pecuniary interests involve an actual or potential financial gain or loss.</p> <p>They may result from the public official or a related party owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job.</p> <p>Money does not need to change hands for an interest to be pecuniary.</p> |
| Perceived (or apparent) conflict of interest | <p>A perceived conflict of interest exists where it appears that a public official's private interests could improperly influence the performance of their duties – whether this is the case or not.</p> |
| Potential conflict of interest | <p>A potential conflict of interest arises where a public official has private interests that could conflict with their official duties in the future.</p> |
| Private (or personal) interest | <p>Private interests are those interests that can bring benefits or disadvantages to public officials as individuals, or to others whom public officials wish to benefit or disadvantage.</p> <p>Private interests are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss; they also include many social and professional activities and interests.</p> |
| Public interest | <p>A central element of democratic government and administration.</p> <p>Acting in the public interest means carrying out official duties for the benefit of the public served by government, in a fair and unbiased way, and making decisions that are not affected by self-interest, private affiliations or the likelihood of personal gain or loss.</p> |

Appendix 2 - Conflict of Interest Case Studies

1. Contracting and procurement (refer MPI's Procurement policy and guidance)

MPI has advertised for a firm to supply IT software services. A member of the panel assessing the tenders has shares in one of the firms which has submitted a bid.

2. Making appointments to positions

A member of the selection panel has a close relationship with one of the applicants for the job.

3. Secondary employment

A Quarantine Officer, who pre-clears used vehicles in the country of origin and on arrival in New Zealand, also works for a private business importing and selling used cars. Competitors have complained several times that there may be a conflict, but no action appears to have been taken.

4. Gifts, benefits and hospitality

A Policy Adviser has been offered an all-expenses paid trip for two to a Pacific Island resort by a major overseas trade organisation to attend a conference.

5. Fishing activities

At a staff BBQ of the local MPI office large amounts of seafood are consumed, which raises questions about the origin of the seafood and how it was obtained.

6. Regulatory approvals

A senior MPI Officer has advised an applicant on how to make their proposed transitional facility comply with MPI rules and regulations. To assist the process, the Officer also recommended the services of a local firm where a member of their family worked. Subsequently, the Officer was responsible for approving the site.

In all of these cases, the private interest could compromise, or reasonably be perceived to compromise, the impartiality and decisions of the officer and of MPI. In the last case, the Officer also has a possible conflict of duty.

Appendix 3 - Conflicts of Interest Declaration Form

MPI Conflicts of Interest & Secondary Employment Declaration

Name:

Position:

Business Unit / Team:

All known or potential conflicts of interest must be declared below. If no conflicts of interest exist, please enter "NIL" and complete Secondary Employment Declaration.

| Potential conflict of interest <i>(e.g. Financial, Non-Financial, Conflict of Roles, Predetermination (personal bias))</i> | How this might impact on my work | Management actions agreed with my manager | Approved <i>(Manager to sign)</i> |
|---|----------------------------------|---|-----------------------------------|
| | | | |
| | | | |
| | | | |

Secondary Employment must be declared below. If no secondary employment exists, please enter "NIL" and sign the declaration.

| Secondary Employment | How this might impact on my work | Management actions agreed with my manager | Approved <i>(Manager to sign)</i> |
|----------------------|----------------------------------|---|-----------------------------------|
| | | | |

The information provided on this form is, to the best of my knowledge, a full declaration of any known or possible conflicts of interest I hold with regard to my position at MPI.

| | | | | | |
|-------------------|--|------|--|--|--|
| Signed (Employee) | | Date | | | |
| Signed (Manager) | | Date | | | |
| | | | | | |

Completed form to be sent to HR.Filing@mpi.govt.nz by the manager and held on the employee's personnel file.

Appendix 4 - Options for managing conflicts of interest

| Strategy | Possible action | When most suitable |
|--|--|--|
| <p>Register</p> <p>To formally record details of a conflict of interest</p> | <ul style="list-style-type: none"> - decide there is no conflict of interest or very low risk from the conflict - arrange additional oversight or review over the person - inform affected parties that a disclosure has been made and of the action taken | <ul style="list-style-type: none"> - for low-risk conflicts of interests and potential conflicts of interest - where the act of transparency through disclosing the conflict of interest is sufficient |
| <p>Restrict</p> <p>To put restrictions on the person's involvement</p> | <ul style="list-style-type: none"> - limit the person's involvement in discussions, criteria setting and decision-making processes - restrict the person's access to information, particularly sensitive or confidential information | <ul style="list-style-type: none"> - the person can be effectively separated from parts of the activity or process - the conflict of interest is not likely to arise frequently |
| <p>Recruit</p> <p>To use a third party to oversee part or all of the process</p> | <ul style="list-style-type: none"> - arrange for the affected decision to be made by an independent third party - engage in independent third party to oversee or review the integrity of the process - increase the number of people on decision making committees to balance the influence of the person with the conflict - seek the views of those likely to be concerned and ask whether they object to the person being involved | <ul style="list-style-type: none"> - it is not feasible or desirable to remove the person from the decision-making process - in small or isolated communities where the person's expertise is necessary and not easily replaced |
| <p>Remove</p> <p>To remove the person from the matter</p> | <ul style="list-style-type: none"> - remove the person from any involvement in the matter - remove the person from the situation where they may still exert, or be perceived to exert, a covert influence on the decisions or actions taken - re-arrange the person's duties and responsibilities to a non-conflicting function - transfer the person to another project or area | <ul style="list-style-type: none"> - for ongoing serious conflicts of interest, where ad hoc restrictions or recruitment of others is not appropriate |
| <p>Relinquish</p> <p>To give up the private interest</p> | <ul style="list-style-type: none"> - liquidate the private interest - divest or withdrew support from the interest - assign the conflicting interest to a genuinely blind trust or blind management arrangement for the period of the conflict | <ul style="list-style-type: none"> - when the person's commitment to MPI outweighs their attachment to the private interest |
| <p>Resign</p> <p>To leave the agency</p> | <ul style="list-style-type: none"> - resign from MPI - take extended leave without pay - secondment to another agency during the period of the conflict - transfer to another agency - take early retirement | <ul style="list-style-type: none"> - no other options are workable - the person cannot or will not relinquish the conflicting private interest and changes to their work responsibilities are not feasible - where this course is preferred as a matter of personal principle |

Note: all conflicts of interest should be formally documented together with the management action(s) adopted.

Appendix 5 - Additional information

[MPI policies and guidelines](#), available on the intranet (Kotahi)

Public Service Commission

[Standards of Integrity & Conduct](#)

[Understanding the Code of Conduct – Guidance for State Servants](#)

Office of the Controller and Auditor-General

[Conflicts of Interest Good Practice Guide](#)

[Managing Conflicts of Interest in the Public Sector, presentation by Edrick Child \(2005\)](#)

Organisation for Economic Cooperation and Development (OECD)

[OECD Guidelines and Country Experiences \(2003\)](#)

Released under the Official Information Act 1982