INTEGRITY COMMISSION

Information Session for Senior Management and Members of Audit Committees

MANAGING CONFLICTS OF INTEREST

Officer

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Chief Executive

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PUBLIC TRUST IS CENTRAL

'There is a long history which attaches the characterisation of a public trusteeship to the holders of public office.

In the eighteenth-century case of R v Bembridge, holders of public office were regarded as holding offices of 'trust concerning the public'.

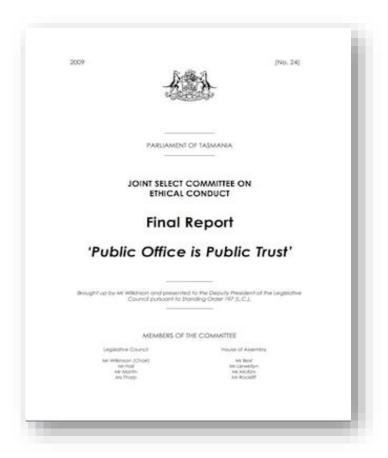
This reflected what Justice Paul Finn has called the 'circuitous route' by which English judges brought public officials 'into a fiduciary relationship with the public.'

Seventh Annual St Thomas More Forum Lecture
Public Office and Public Trust
(then) Chief Justice Robert French AC
22 June 2011, Canberra



PUBLIC TRUST IS CENTRAL

The genesis of the Integrity Commission





- Acting under the public trust means public officers must act on behalf of the whole community, not just sectional interests.
- What is 'reasonable' is central: but this is not a 'pub test'.
- What is reasonable depends on all the facts of the particular matter.
- Because we are dealing with perceptions, it's sensible to err on the side of caution.



A conflict of interest is a **conflict** between the **performance of a public duty** and a **private or personal interest**.

'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'.

Integrity Act 2009 (Qld), s10(1)



WHAT IS A PERSONAL OR PRIVATE INTEREST?

- A person's private, professional or business interests.
- The interests of individuals or groups with whom a person has a close association (such as relatives, friends or even enemies).
- They may not be pecuniary people are not only motivated by money.
- It's **good to have private interests**! They show connections to communities which is what we want our public officers to have ...



SPECIAL KINDS OF INTERESTS 'MATERIAL' CONFLICT

So as to protect and uphold the public interest, Ministers must take reasonable steps to avoid, resolve or disclose any **material conflict** of interest, **financial or non-financial**, that arises or is likely to arise, between their personal interests and their official duties.

Code of Conduct for Ministers (Tas.) 22 March 2018

A material conflict of interest is one that is significant or important or one which a reasonable person would think is important to the Minister's official duties or to a decision to be made by the Minister.

Code of Conduct for Ministers (Tas.) Guidance Notes, April 2014



SPECIAL KINDS OF INTERESTS PECUNIARY INTEREST

(1) A councillor or member has an interest in a matter if the councillor or member or a close associate would, if the matter were decided in a particular manner, receive, have an expectation of receiving or be likely to receive a pecuniary benefit or pecuniary detriment.

Local Government Act 2009 (Tas.), s49(1)



OFFICIAL RESPONSIBLITIES WHAT ARE THEY?

- It's important to understand exactly what these are in the circumstances of each case, eg:
 - do they involve decision-making?
 - do they involve giving advice?
 - what influence might the person have?
- These types of factors are relevant to what's reasonable in the particular circumstances.



THREE TYPES OF CONFLICT OF INTEREST

- Actual there <u>is</u> a conflict between an official duty or responsibility and a personal interest
- Perceived a reasonable person, knowing the facts, would consider that a conflict may exist, whether or not this is the case
- Potential a personal interest <u>could</u> conflict with official duty or responsibility in the future



Recruitment

Grants and permits

Regulatory functions

Procurement

Gifts and benefits

Secondary employment



It's not a problem if a conflict arises ...

- But conflicts <u>must</u> be managed.
- And this means more than just declaring them though that's a good first step.
- It's best if declaration of interests is systemised, and doesn't just rely on individuals.
- A personal view:
 Declarations should relate to the relevant official duty they are of limited value if there's no official duty to be exercised.



RECORD

RESTRICT

RECRUIT

REMOVE

RELINQUISH

RESIGN

The six Rs



Don't rest yet

- It's important to **monitor** the selected strategy, and to keep it under review because **circumstances can change**.
- Remember that we are dealing with perceptions.



ETHICAL LEADERSHIP IS **EFFECTIVE LEADERSHIP**

'There's no shortage of studies to show that the more integrity we think our leaders have, the more effective we find them as well.

Even more importantly, the behaviours that ethical leaders demonstrate are those that we all now recognise as effective behaviours as well.'

Associate Professor Michael Macauley Victoria University, NZ



ESSENTIAL TO ENSURING TRUST IN GOVERNMENT

INTEGRITY COMMISSION

- www.integrity.tas.gov.au
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