

Information Session for  
Senior Management and  
Members of Audit Committees

# MANAGING CONFLICTS OF INTEREST

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Officer



*‘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

INTEGRITY  
COMMISSION

The genesis of the Integrity  
Commission .....



# MANAGING CONFLICTS OF INTEREST

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- 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**.



# WHAT IS A CONFLICT OF INTEREST?

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 RESPONSIBILITIES 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 is 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 could conflict with official duty or responsibility in the future



# CONFLICT OF INTEREST HIGH RISK AREAS

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Recruitment

Grants and permits

Regulatory functions

Procurement

Gifts and benefits

Secondary employment



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

- But conflicts must 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.



## The six Rs

**RECORD**

**RESTRICT**

**RECRUIT**

**REMOVE**

**RELINQUISH**

**RESIGN**



## 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

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*'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



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TRUST IN GOVERNMENT

INTEGRITY  
COMMISSION

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