UNDERSTANDING CONFLICT OF INTEREST

Types, importance and strategies

Are You Managing Conflicts of Interest?

Effective governance, risk management and internal audit practices are fundamental to ensuring transparency, accountability and the responsible use of public resources.

One of the most critical aspects of good governance is the management of conflicts of interest (COIs), whether they are actual, perceived or potential. Managing COIs effectively is essential to maintaining public trust, complying with regulations and ensuring that decisions are made with the public good in mind.

As we have seen regularly in the media, high profile cases of COIs not being managed can lead to reputational damage, which takes years to recover.

WHAT IS A CONFLICT OF INTEREST?

A COI occurs when an organisation official, employee or contractor has competing interests that could compromise their impartiality, influence their decision-making or otherwise interfere with their ability to act in the best interests of the organisation and the public. These COIs can arise from personal financial interests, relationships or even personal beliefs that could affect an individual's professional judgment.

COIs not only undermine the integrity of decision-making but also erode the public's confidence in the organisation. Managing them effectively is therefore critical to upholding the principles of transparency, fairness and accountability.

TYPES OF CONFLICTS OF INTEREST

COIs can manifest in several ways, and it's crucial to address each one appropriately.

Here are the three primary categories:

- **Actual COIs:** this occurs when there is a clear, direct conflict between an individual's personal interests and their public duties. For example, an employee who makes procurement decisions for a project while holding a financial stake in a supplier bidding for the contract.
- **Perceived COIs:** Even if no actual conflict exists, the appearance of a conflict can be just as damaging. If an organisation official has a close personal relationship with a vendor, for example, the public might perceive that decisions are being influenced by that relationship, even if no undue influence is exerted.
- **Potential COIs:** These are conflicts that could arise in the future. An employee with ties to a company seeking future contracts might not have a conflict in the moment, but if that company is awarded a contract, a potential conflict could arise.

IMPORTANCE OF IDENTIFYING AND MANAGING CONFLICTS OF INTEREST

1. Maintaining public trust and confidence

The integrity of decision-making is paramount. The community expects that decisions are made based on the merit of the issue at hand, not influenced by private interests.

If COIs are not properly managed, the public may lose confidence in the fairness and transparency of decision-making processes, undermining trust in the organisation.

2. Legal and regulatory compliance

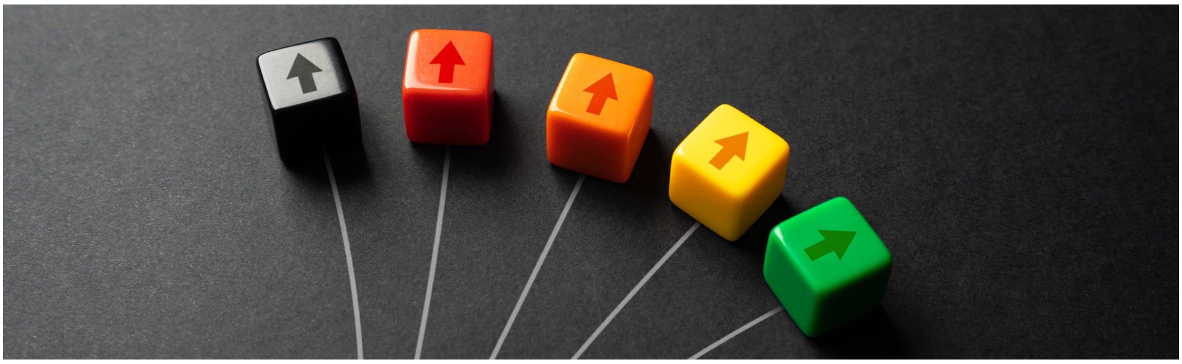
The Western Australian public and private sectors are governed by a range of laws, regulations and ethical guidelines designed to manage COIs and promote transparency. For example, ASX, ASIC, ACNC, state and local government legislation, regulations and codes of conduct, provide clear standards for dealing with COIs. Failing to comply with these guidelines can expose organisations to legal, financial and reputational risks.

3. Ensuring impartial decision making

COIs, whether actual or perceived, can cloud judgement and lead to decisions that favour personal or private interests over the public good. By identifying and managing COIs, organisations ensure that decisions are made impartially and in the best interests of the state and its community.

4. Protecting the integrity of procurement, contracting and discretionary processes

Procurement is one of the area's most vulnerable to COIs, as decisions often involve significant funds. Whether it's awarding contracts, hiring consultants or selecting vendors, the appearance or existence of a COI in procurement can undermine the legitimacy of the process. By enforcing strict COI policies and conducting regular audits, organisations can protect the integrity of their procurement and contracting processes.



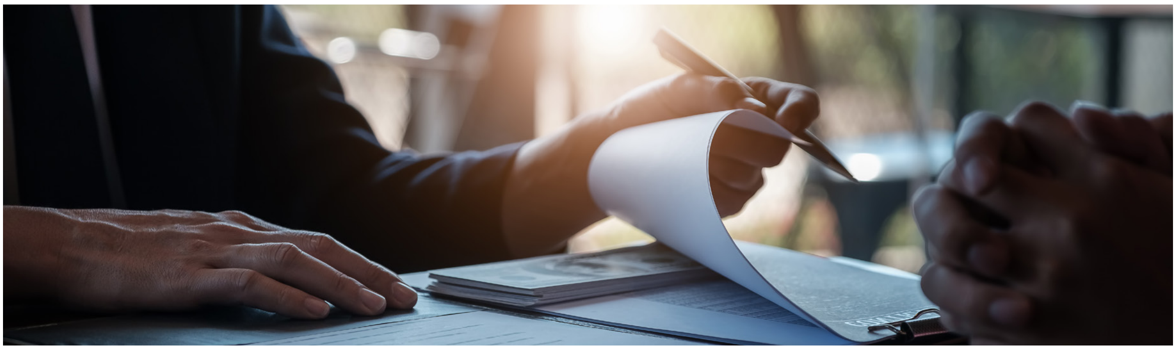
IDENTIFYING CONFLICTS OF INTEREST

To manage COIs effectively, it is critical to first identify them.

Here are some key steps:

- **Establish integrity framework, and COI policies, procedures, registers** – organisations should develop clear, comprehensive COI policies aligned with legislation, regulations and better practice principles. These policies should define what constitutes a conflict, outline disclosure requirements, and establish procedures for managing COIs. Regularly reviewing and updating these policies is essential to ensure they remain fit for purpose.
- **Encourage transparent self-disclosure** – employees, contractors, volunteers, contractors and Board and Committee members should be encouraged to self-disclose all personal interests as a Declaration of Interest, as well as any personal interests, relationships or financial ties that could create a COI on a regular basis. This can be done through annual declarations or as new conflicts arise. People that participate in discretionary functions should also have a specific COI declaration process to ensure that all involved are not bias in their decisions.
- **Regular training and awareness programs** – all employees, consultants, volunteers, Board and Committee members should undergo induction and regular training on COI policies, ethical standards and how to identify and manage potential conflicts.

  An informed workforce is critical to preventing and managing COIs effectively. The Conflicts of Interest Guide, COI Quick Reference Guide for Public Officers, and COI Guide for Managers can assist organisations in managing COI. Regular reminders and training will ensure that all stakeholders understand their responsibility to disclose potential conflicts.
- **Internal audits and risk assessments** – organisations should perform regular internal audits and risk assessments to identify areas of vulnerability. High-risk areas such as sponsorship, grants, procurement, tendering processes and employment practices should be subject to rigorous scrutiny to detect any COIs that may impact the integrity of these processes. Regular internal audits should assess whether COI policies are well designed, whether they are being adhered to, identify any areas of concern and recommend improvements to mitigate risks. Risk management teams should also work closely with internal audit to ensure that COI-related risks are integrated into broader risk management strategies.
- **External reviews, monitoring and audits** – in some cases, third-party assessments or independent reviews can help identify potential conflicts that internal processes might miss. External auditors or integrity bodies like the Corruption and Crime Commission (CCC) can provide an objective perspective on whether conflicts are being properly managed.



MANAGING CONFLICTS OF INTEREST

Once conflicts have been identified, it's important to take appropriate actions to manage them. Declarations alone are not enough! This often involves a more structured approach to ensure that any action taken complies with legal and ethical standards.

Some ways to manage COIs based on the [6 R's in the Conflict of Interest Guide] include:

1. **Record** – recording the declarations of a COI in a register is an important first step to manage the declaration. Full disclosure to supervisors or relevant oversight bodies is necessary. This transparency ensures that appropriate measures can be taken, such as reassigning responsibilities or involving independent third parties to oversee decisions.
2. **Restrict involvement from the decision-making** – in cases where a COI exists, the individual involved should restrict themselves from decision-making processes that could be influenced by their personal interests. For example, if a public servant is involved in the procurement of services from a third-party they have financial ties to, they must step aside from any discussions or decisions related to that procurement.
3. **Removal from the decision making** – in cases where a COI exists the individual may be required to be removed 100% from the matter altogether. This could be the best option to preserve the integrity of the decision process.
4. **Recruiting independent oversight** – if the person cannot restrict themselves from the decision making, there may be a need to engage independent oversight, review or oversee the process
5. **Relinquish or separation of interests** – in some cases, individuals may be required to relinquish or divest themselves of conflicting financial interests or relationships. This is particularly true in high-risk areas such as procurement or contracting, where ongoing financial interests in vendors or service providers may undermine public confidence.
6. **Resignation** – this is the last resort when COI cannot be effectively managed in any other way. with ties to a company seeking future contracts might not have a conflict in the moment, but if that company is awarded a contract, a potential conflict could arise.

CONCLUSION

Managing COIs is a cornerstone of good governance. By proactively identifying and addressing actual, perceived and potential COIs, organisations can ensure that decisions are made impartially, transparently and in the best interests of the public. Moore Australia specialises in helping organisations develop robust governance, risk and internal audit frameworks to manage COIs effectively. Contact us today to learn more about how we can help strengthen your COI governance frameworks and practices.

GOVERNANCE AND RISK ADVISORY SERVICES

Our governance and risk advisory team works with public and private clients to help them create, evaluate and maintain governance and risk approaches that support sound management and informed decision making.

At Moore Australia, we take an integrated approach to managing risk and governance. We work with you to develop a detailed understanding of your risk appetite and exposure and ensure strong linkages between your risk profile and corporate strategy. We'll verify that your organisation's risk and governance frameworks are in place, appropriate for your business, and consistently adhered to.

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