



Queensland Government
Treasury

Government Owned Corporations

Code of Conduct and Conflicts of Interest Best Practice Guide for Government Owned Corporations

Version 1.0

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1.0 Revision History

Version	Date	Contact	Changes
1.0	February 2009	OGOC	Initial release

2.0 Introduction

This guide has been developed to assist Government owned corporations (GOCs) with the development of a code of conduct (or equivalent documents) and more specifically conflicts of interest policies that meet the expectations and/or requirements of shareholding Ministers.

This guide supports the recommendations of Principle 3 of the Corporate Governance Guidelines for Government Owned Corporations and should be read in conjunction with these guidelines.

The guide discusses the following points that are relevant in the development of code of conduct/conflicts of interest policies as follows:

- Purpose of code of conduct and conflicts of interest policies;
- Code of conduct – content;
- Conflicts of interests – guiding principles; and
- Guidelines for conflicts of interest policies.

In summary, GOC boards are accountable for ensuring GOCs have appropriate codes of conduct and policies for trading in securities in place in accordance with the principles of the Corporate Governance Guidelines. Boards are further accountable for ensuring the policies are applied and enforced.

For ease of reference, the term “code of conduct” is used from this point forward to refer to both the code of conduct or policies and procedures that are equivalent to a code of conduct.

3.0 Purpose of Code of Conduct and Conflicts of Interest Policies

The high level of public accountability which applies to GOCs as a result of their public ownership requires the establishment and implementation of good corporate governance principles. GOCs must be properly managed on behalf of their ultimate owners, the people of Queensland.

The public has an expectation that the conduct or the perceived conduct of board members, executive and employees adheres to the highest ethical and moral standards. In this respect, shareholding Ministers and the public can gain confidence through GOCs clearly articulating appropriate practices for directors, senior executives and employees.

A code of conduct assists in developing a common understanding at the company level of expected behaviour and provides a framework for dealing with situations that are or may be perceived as unacceptable by shareholding Ministers and the public. Further, a code of conduct mitigates the risk of board members or employees engaging in conduct which may compromise their work or may cause a breach of legislative requirements or Government policy.

As part of the code of conduct, a clear set of policies and procedures for identifying, disclosing and managing misconduct and conflicts of interest will lead to a reduced risk of improper behaviour occurring, and provides an efficient mechanism to deal with any accusations of bias. Clear definitions are required in the code of conduct/conflicts of interest policy to ensure a clear understanding of what is understood by misconduct and situations that may give rise to conflicts of interest.

GOCs, as publicly owned companies, must also ensure that conflicts of interests are seen to be managed in a transparent and accountable manner. The perception that conflicts of interests are not being managed properly can undermine confidence in the integrity of the GOC board or management.

It is not required for GOCs to adopt a separate code of conduct for directors and senior executives. Depending on the nature and size of the GOC, the code of conduct for directors and senior executives may be separate or form part of the corporate code of conduct.

4.0 Code of Conduct – Content

It is expected that whether or not a separate code is established for directors and executives, the code of conduct would address the issues listed below. It is recognised that some of these issues may be addressed through alternative means, such as policy and procedure documents, that are separate from the code of conduct.

- **Ethical standards and guidelines** – outline the ethical standards and principles of the company including the company's core values and expected conduct in compliance with the ethical standards. Identify measures adopted to encourage the reporting of unlawful or unethical behaviour and to actively promote ethical behaviour.
- **Commitment to code of conduct** - provide a clear commitment by the board and senior executives to the code of conduct.
- **Company's responsibilities** - detail the company's responsibilities to shareholding Ministers, clients, business partners, consumers and the public generally.
- **Responsibilities to the individual** - this might include the company's privacy policy, and its policy on the use of privileged or confidential information.
- **Complaints** – detail the company's policies in respect of dealing with complaints made by members of the public and stakeholders, including board members, senior managers and employees of the company.
- **Employment practices** - this might include reference to occupational health and safety, employment opportunity practices, special entitlements above the statutory minimum, employee security trading policies, training and further education support policy, practices on drug and alcohol usage and on outside employment.
- **Fraud** – define what constitutes fraud, which may include examples and clearly outline how the company would handle fraud if it were to arise.
- **Gifts and benefits** – include clear guidelines on the acceptability of gifts and benefits, including appropriateness, limits and the use of gift registers, including reporting mechanisms.
- **Active compliance with legislation** - state the measures in place to promote compliance with legislation applying to the GOC.
- **Conflicts of interests** - specify how the company handles actual, potential or perceived conflicts of interest. The issue of conflicts of interest and dealing with them is a pivotal element of the code of conduct and is therefore discussed as a separate item in this guide.
- **Managing breaches of code of conduct** - describe the means by which the company monitors and ensures compliance with its code and clearly outline its policies in respect of any breaches, including reporting mechanisms and reporting lines, anti-victimisation provisions, disciplinary actions and grievance and appeal rights. GOCs must inform shareholding Ministers in a timely manner of any potential or actual breach of the code of conduct by GOC board members, chief and senior executives and, where material, by GOC employees.

5.0 Conflicts of Interest – Guiding Principles

A conflicts of interest policy is an intrinsic part of a company's code of conduct, as conflicts of interest may undermine employee and community confidence in the effective management of a company. Conflicts of interest can be actual, perceived or potential.

- An **actual conflict of interest** involves a direct conflict between an officer's current duties and responsibilities and existing private interests.
- A **perceived conflict of interest** can exist where it could be perceived, or appears, that an officer's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- A **potential conflict of interest** arises where a public official has interests that could conflict with their official duties in the future.

The following guiding principles are key considerations in the development of a conflicts of interest policy:

- **Protect public and shareholders' interest** – ensuring that the public and shareholding Ministers' interests are not compromised is the overriding objective of any conflicts of interest policy and associated management strategy. Directors and senior executives should act within the limits of their proper roles, and focus on the merits of each case without regard for private interests, personal attitudes or opinions. Directors, senior executives and employees must comply with the law and company policies without bias or favour and act with integrity.
- **Support transparency and accountability** – conflicts of interest must be seen to be managed fairly and effectively and the process for identifying, disclosing and managing conflicts of interest must be transparent, i.e. the process should be open to scrutiny and help maintain accountability.
- **Promote individual responsibility and personal example** – it is important for directors, senior executives and employees to take responsibility for identifying and acknowledging conflicts of interest. Clear policies and procedures should be in place to assist in the identification and reporting of conflicts of interest.
- **Build a supportive organisational culture** – provide and implement a policy environment that helps and encourages effective decision-making when conflicts of interest arise and encourages communication so employees are comfortable to disclose and discuss conflicts of interest.

6.0 Guidelines for Conflicts of Interest Policies

Outlined below are guidelines to be considered in developing and managing a conflicts of interest policy:

- **Identify** the different types of conflicts of interest that may occur and the main risk areas. Risks will differ from sector to sector (e.g. transport versus investment management) and also between GOCs within the same sector depending on company specific issues.
- **Develop** an appropriate conflicts of interest policy and associated strategies to manage these risks. A conflicts of interest policy should outline the expectations and responsibilities of employees and management in relation to:
 - recognising conflicts of interest, with clear examples;
 - disclosing how conflicts of interest are to be managed; and
 - monitoring the effectiveness of strategies to manage conflicts of interest.

The policy should include a requirement that shareholding Ministers be fully apprised, in a timely manner, of actual conflicts of interest arising with respect to board members, chief and senior executives and where material, GOC employees. Policies must also provide for the establishment and maintenance of a register of declared material personal interests of directors, senior executives and employees.

- **Educate** staff, managers and the senior executive and publish the conflicts of interest policy across the organisation. Consider an employee communication program involving some form of interactive discussion or training relating to any revised policy. Ensure managers know how to manage conflicts of interests and breaches of the code of conduct effectively to help maintain the GOC's functional integrity.
- **Lead** the organisation through example. Managers will need to demonstrate leadership commitment to the code of conduct and conflicts of interest policy by considering them a priority and modelling compliance and appropriate behaviour. Managers should encourage employees to disclose conflicts of interest and assist employees in resolving or managing conflicts of interest.
- **Communicate** the corporation's commitment to its policies and procedures to all stakeholders including business partners and contractors.
- **Enforce** the policy. Consequences of non-compliance should be clearly set out and employees made aware of these consequences as part of their training. If the code of conduct or conflicts of interest policy is breached, the board must give close consideration as to whether the matter should be referred to an independent regulator for review, such as the Australian Securities and Investments Commission. The nature and severity of the breach is a relevant factor.
- **Review** the policy regularly. The policy should be updated as necessary to ensure it remains relevant and effective in dealing with conflicts of interest. GOC boards have the discretion and are encouraged to seek (where appropriate) an independent external party to review their code of conduct/conflicts of interest policy, together with any declarations of conflicts of interest or any breaches of the code of conduct/conflicts of interest policy. A formal process should be established for regularly monitoring and evaluating the effectiveness of the conflicts of interest policy in terms of compliance and outcome.