MANAGING CONFLICTS OF INTERESTS
GUIDELINES FOR EVALUATION PANELS
INTRODUCTION

In recognising that building trust and confidence in the Samoa Public Service is a key cornerstone of good governance, these Guidelines are intended to provide the core principles, institutional strategies and practical tools and direction to manage Conflicts of Interest in the Samoa Public Service.

Fundamentally, serving the interests of the Samoa Public Service places an expectation on public officials to exercise integrity in a fair and unbiased way. As such, Government is to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making. In that regard, inadequate management of conflicts of interest by public officials potentially weakens trust and confidence in public institutions such as the Public Service Commission.

These Guidelines provide a practical direction for public servants within the Samoa Public Service to manage actual or apparent conflicts of interest. The inevitable nature of a close-knit community, such as Samoa, and the increasing number of individuals employed in the Samoa Public Service means more public servants and officials with private interests which may directly impact on their current roles.

Some of the most common conflicts of interest arise in evaluation panels for recruitment and selection, procurement, dual roles, gifts and secondary employment. Whilst a conflict of interest is not ipso facto corruption, there is recognition that private interests and public duties of public officials, if not adequately managed, can result in corruption. As such, these Guidelines do not set a prohibition of all private interests on the part of public officials, but to maintain and sustain the exercise of integrity in administrative decisions as well as recognising that an unresolved conflict of interest may result in the abuse of public office and position.

An appropriate definition that is relevant to these Guidelines is that a “conflict of interest” involves a conflict between the public duty and private interests of a public servant, in which that public servant has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

OBJECTIVES

There are many definitions of various approaches of the term “conflict of interest”. Conflicts of interests cannot be prohibited absolutely, given that all public servants employed within the Samoa Public Service have legitimate private interests as a result of their capacity as private citizens. As such, conflicts of interests simply must be defined, identified and managed or resolved.

For the purposes of understanding conflicts of interest, it is practical to define what constitutes a private interest. Private interests are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public servant. A conflict of interest may involve other legitimate private-capacity activities such as personal

---

1 Public Servant is defined in the Acts Interpretation Act 2015 as a person employed in the public service and includes a person taken to be a public servant under any enactment.
affiliations and associations as well as family interests, if those interests are considered to improperly influence the public servant’s performance of their duties.

In a close-knitted society like Samoa, individuals are connected to one another by virtue of kinships in blood lines, chiefly titles, marriages or through either maternal or paternal relations. In addition, connected individuals are regularly seen to carry out business together. However, in extended families where individuals are connected, members may not associate on a regular basis except at family funerals or weddings.

In *Leleua v Lands and Titles Court*[^2] Justice Vui Clarence Nelson reinforces the above assertion as follows:

“...because I am related to the primary parties to the litigation, I am therefore acting as a judge in my own case. Here, the connection is not close or immediate. The second respondent as I understand her genealogy, the relationship is through marriage into a different branch of the family. As for the third respondent, the connection is through titles and marriage to my father’s cousin. These are not what I would regard as a close connection.”

As such, the importance of defining, identifying and managing conflicts of interest in a close-knitted society cannot be overemphasised given that when conflicts of interests are not managed or resolved appropriately, it has the potential to weaken public servants’ adherence to impartiality, fairness in public decision-making and legitimacy. Such ideals build public confidence and trust in decision-making within public institutions.

The tools and strategies in the Guidelines provide direction for public servants, managers and decision-makers on evaluation panels to identify risks and manage emergent conflicts of interest. The Guidelines incorporate core principles of honesty, transparency, openness, independence, good faith and service to the public. Essentially, the Guidelines should be able to foster public confidence and trust as well as to promote a culture where conflicts of interest are properly identified and managed or resolved, in a transparent manner.

The use of these Guidelines compel evaluation panelists to demonstrate integrity, honesty, transparency, openness, independence and good faith by:

- serving the interests of the public;
- using powers in a responsible manner;
- acting with honesty and transparency; and
- promoting individual responsibility and personal example.

These Guidelines should be used as a guide for evaluation panels to carry out assessments and decision-making. Ideally, these Guidelines should not be limited to evaluation panels, but for all instances where actual, apparent or potential conflicts of interest may arise.

FEATURES OF INTEGRITY

Integrity has many features in public administration and governance. However, the core features of integrity that are fundamental in addressing conflicts of interest are independence and impartiality.

Independence is to stand-alone without fear or favour of another’s views and doctrines. When performing evaluation roles, a public servant must have a clear and free of any influence conscience to assess and make a decision.

Impartiality bears a more challenging threshold given that in an evaluation role, not only is the exercise of independence fundamental but to be impartial in the decision making process is core to identifying, managing and resolving conflicts of interest. Exercising impartiality requires the performance of evaluation functions without ill-will, bias, favourtism, affection or prejudice as well as avoiding any conduct that may reasonably occasion any perception of partiality.

Partiality or biasness has many layers depending on the context of any circumstance. Many judicial authorities in Samoa established a threshold application to determine the level of bias. This threshold test considers whether a fair minded person might reasonably apprehend or the reasonable suspicion test. This contrasts significantly with the bias test applied in England where the threshold is higher in that whether having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration.

As such, the Samoa judicial precedents applied the actual bias test and apparent bias. Where there is presumed to be actual bias, the individual should be automatically disqualified. In an apparent bias, it must ought to be decided whether there was a real danger of bias on the part of the judicial officer in question in the sense that the judicial officer might unfairly regard with favour or disfavour the case of a party to the issue under consideration.

Those legal threshold are applied objectively, viewed through the eyes of the reasonable observer aware of all the relevant circumstances. It is not the subjective perception of the particular litigant. Speculative accusations of bias are not enough.

APPLICATION OF BIAS

The real danger test in a situation of apparent bias should applied robustly in a jurisdiction the size of Samoa. The allegations of bias through distant impersonal associations and relationships would throw the management and operations of evaluation panel decision making into disarray and cause unnecessary delays through unwarranted challenges based on bias.

In the Leleua case, Justice Nelson made the following point as follows:

“We live in a country where everyone is related to each other in one way or another, through blood lines, through titles, through marriage. Extended families are by their very nature large, not only on the paternal side but on the maternal
side...we all know we do not associate on a regular basis with all persons that we are related to or have connections with...there are connections people are not even aware of until funerals or family weddings.”

The remote connections amongst public servants should not outweigh public duties when presiding over decision making. It is not enough to conclude that by virtue of that relationship or connection, a person might not bring an impartial mind to the task at hand. What is sufficient is articulating a logical connection between the associations and the feared deviation from the course of deciding a matter on its merits.

**INTEGRITY IN DECISION MAKING**

Public servants are expected to observe and adhere to the core principles in dealing with conflicts of interest matters to ensure the promotion of integrity in their decision-making and performance of official duties and responsibilities.

*Serving the interests of the public:*

- Decisions and advice by public servants should be on the basis of relevant law and policy as well as the merits of each case without any regard for private or personal gain.

- Public servants should restrict the operation of private interests that could compromise decision-making in which they participate in. Where this cannot be done, public servants are expected to abstain from involvement in decision-making that could be compromised by their private-capacity interests, affiliations and associations.

- Public servants should avoid private-capacity activities which could result in an improper advantage from ‘inside information’ obtained in the course of official duties, particularly when the information is not generally available to the public.

- Public servants should not seek or accept any form of improper benefit in the expectation of influencing the performance or non-performance of official duties or functions.

- Public servants should not take improper advantage of a public office or official position which they have held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

*Using powers in a responsible manner:*

- Public servants should act at all times in a manner that reflects and upholds integrity as examples to other public servants.

- Public servants should accept responsibility for identifying and resolving conflicts of interest in favour of the public’s interest when a conflict does arise.

- Public servants should demonstrate their commitment to integrity and professionalism in the effective application of policies addressing conflicts of interest.
Acting with honesty and transparency:

- Public servants should act in a manner that will bear the closest public scrutiny. This means discharging legal obligations and respecting Public Service Values, Principles and the Code of Conduct on impartiality and integrity.
- Public servants should disclose private interests and affiliations that could compromise performance of official public duties.
- Public servants should ensure consistency and an appropriately acceptable degree of openness in resolving or managing a conflict of interest situation.
- Public servants should promote scrutiny of their management of conflict of interest situations within the applicable legal framework.

Promoting individual responsibility and personal example:

- Public servants are expected to act at all times with integrity as an example to other public servants and the public.
- Public servants should accept responsibility for arranging their private-capacity affairs as reasonably possible so as to prevent conflicts of interest arising on appointment to public office.

It is not necessarily wrong or unethical to have a conflict of interest. However, to identify and manage the situation is paramount. Public servants and officials have a responsibility to serve the interests of the public at all times in the performance of their public duties. Personal interests, whether financial, family, friends or associates, should not influence public duty. It is not always possible to avoid a situation where a conflict of interest exists, particularly in a small country like Samoa. It is fundamental that these situations are correctly managed to ensure the interests of the public are protected.

Identifying a conflict of interest is an individual responsibility. CEOs and senior managers have an important role in ensuring conflict of interest situations are managed appropriately within Ministries.
MANAGING CONFLICTS OF INTEREST

There is no right or wrong way to identify every conflict of interest situation. However, here are some questions to ask when in doubt:

- Do I have a personal/private interest that may conflict, or be seen to conflict with my public, professional duty?
- Could there be benefits for me now or in the future that could cast doubt on my objectivity?
- Do I stand to gain from being involved in the decision making?
- How will my involvement in the decision making be perceived by others?
- Would my involvement in the decision making appear fair and reasonable in all circumstances?
- What are the consequences if I ignore a conflict of interest?
- What if my involvement is questioned publicly?
- Have I made any promises in relation to the decision making that I am involved in?

STRATEGIES TO MANAGE CONFLICTS OF INTEREST

- Record the disclosure of a conflict of interest in a final/outcomes report. It may be necessary to assess the conflict of interest and determine whether one or more of the following strategies is required.

- Restrict a public servant or official’s involvement in the matter by refraining to take part in the discussions, abstain from voting on decisions or restrict access to information relating to the conflict of interest.

- If it is not practical to restrict a public servant or official’s involvement, an independent third party may need to be engaged to participate in, oversee or review the integrity of the decision making process.

- Alternatively, remove the public servant or official’s involvement in the matter.

- Renounce all private interests that may possibly conflict with a public duty.

- Being open and transparent in responses to the public on addressing a conflict of interest situation i.e., complainant must be informed on the steps and measures taken to address, manage and resolve a conflict of interest that arose.
More often than not, public servants and officials find themselves in circumstances where they may not be able to decide on a matter impartially. Identifying the conflict of interest is a first step in acknowledging the conflict exists. Some of the most common conflict of interest situations are:

- Where there is an immediate family relationship between the decision-maker and the person to be evaluated; or
- Where there is a close relationship between the decision-maker and the person to be evaluated.

**AUTHORITY TO MANAGE CONFLICTS OF INTEREST**

The respective Ministry Human Resource Coordinators (HRCs) have an important role in ensuring administration and management of Ministries are effective and efficient. In doing so, many of these administrative functions are ensuring the recruitment and selection of staff, procure goods and services to the Ministry as well as to provide advice on the appropriate expenditure of Ministry budgets. Given their coordinating role in administrative matters within Ministries, HRCs are better placed to advise CEOs and senior managers on managing conflict of interest situations.

Ideally, CEOs and managers have a responsibility to manage conflicts of interest. In an evaluation panel, a chairperson is usually the authority that ensures administrative matters in decision making are properly done. As such, it is the chairperson that assumes the responsibility of addressing and managing a conflict of interest disclosed. The chairperson then has a duty to record the conflict of interest declared as well as the findings which may be any one or more of the strategies set out above.

However, if the chairperson declares a conflict of interest, then the other members of the evaluation panel may address and manage the conflict of interest. In addition, those members must record the nature of the conflict of interest, their findings in determining the extent of the conflict as well as the strategies adopted to resolve the conflict of interest.

Where the findings result in the removal of an evaluation panel member, then it is for the chairperson to arrange a replacement. Similarly, where the chairperson is removed or is stood down due to a conflict of interest determined, then the replacement of the chairperson is vested in the evaluation panel member who has the highest authority on the evaluation panel.

To illustrate the above, the evaluation panel for the recruitment and selection of a Chief Executive Officer in the Samoa Public Service comprises of 2 permanent members and 1 independent panel member. The chairperson of this evaluation panel is the Chairman of the Public Service Commission. If the Chairperson declares a conflict of interest and the findings resulted in the Chairperson being stood down due to the nature of the conflict, then the other permanent member of the panel assumes the role of chairmanship and arranges for a replacement.

---

3 Chairman of the Public Service Commission and the Chairman of the Remuneration Tribunal
In another circumstance, where both permanent members of the above evaluation panel declared conflicts of interest and as a result, are removed from the evaluation panel, the Chairman of the Public Service Commission may delegate his membership on the evaluation panel to another member of the Commission. Similarly, the Chairman of the Remuneration Tribunal delegates his membership to another member of the Remuneration Tribunal.

The above arrangement can be applied to evaluation panels in the recruitment and selection of Senior Executives\(^4\) and permanent employees appointed under the Public Service Act 2004. The respective chairpersons are vested with the task of addressing, managing and resolving any conflicts of interest declared. Where all members of an evaluation panel have conflicts of interest, then it is for the relevant CEO or manager of which Ministry position is being evaluated, to manage and resolve the conflict of interest.

**Immediate Family Relationship is as follows:**

- Grandparents (including adopted and step grandparents);
- Parents (including adopted and step parents);
- Spouse (including de facto spouse);
- Children (including adopted and step children);
- Siblings (including adopted and step siblings);
- First cousins;
- Spouse’s immediate family; and
- Any other relative living in the same household as the decision-maker.

**Close Relationship is as follows:**

- Family relationship other than that described above;
- Titles relationship (i.e., matai titles)
- Friendship;
- Longstanding relationship established through business or employment; or
- Any other prior dealings.

To determine whether it is in the interest of impartiality to disqualify an individual from making any decisions, consideration must be given to the rules and application of the test of bias.

**TYPES OF CONFLICTS OF INTEREST**

<table>
<thead>
<tr>
<th>Actual</th>
<th>Apparent</th>
<th>Potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where a conflict of interest exists between your official duties or responsibilities and your private interests.</td>
<td>Where there is an appearance that private interests could improperly influence the performance of official duties whether or not this is in fact the case.</td>
<td>Where your private interests could interfere or influence your official duties or responsibilities in the future.</td>
</tr>
</tbody>
</table>

\(^4\) Contract employees, consultants and managers positions appointed under the Public Service Act 2004.
LEGISLATIVE FRAMEWORK
The key legislation applicable to conflicts of interest are:

- Public Service Act 2004; and
- Public Service Code of Conduct.

CONFLICT OF INTEREST RISK AREAS

Many public administrative functions performed potentially lead to conflicts of interest. To be able to identify some potential risk areas within Ministries is a positive way forward in managing and resolving conflicts of interest:

- Managing procurement processes (i.e., evaluation bids, tender bids, contracts);
- Sponsorship from the private sector;
- Dual roles as a public servant or official;
- Community membership;
- Secondary employment;
- Gifts, benefits, rewards;
- Release of confidential information;
- Character references; and
- Use of resources.
PROCESS

1. Identify

Consider your private interests and the relationship between your official duties and responsibilities to identify a conflict of interest

Is there a conflict of interest (actual, apparent or potential)?

NO

No further action

YES

2. Avoid

Is the conflict avoidable?

YES

Record the disclosure/declaration of the conflict in a report/outcomes document

NO

Report the conflict of interest to the CEO or relevant manager

3. Report

Use one or more of the strategies above: record, restrict, engage, remove or renounce

4. Manage

- Maintain personal record in personnel file.
- Consider whether there has been any change

5. Monitor
CONCLUSION

For these Guidelines to realise its full potential value, declaring or disclosing a conflict of interest is an individual responsibility on all public servants and officials. Conflicts of interest may be actual, apparent or potential and the importance of identifying the nature and type of a conflict of interest is paramount to ensure public trust and confidence in public institutions.

The key to addressing, managing and resolving conflicts of interest is disclosing in full details the nature of the conflict particularly whether it is either actual, apparent or potential. Once the nature of the conflict of interest is determined, then one or more of the above strategies can be employed to manage and resolve the conflict of interest.

As mentioned earlier, these Guidelines do not prohibit the existence of private interests by public servants and officials. The emphasis of these Guidelines is to be able to manage and resolve the conflicts of interest using one or more of the strategies set out in these Guidelines. Government must ensure that appropriate management of conflicts of interest builds trust and confidence in decision making process and uphold integrity.

Public servants and officials placed in evaluation panels must demonstrate integrity to set an example to all public servants in the Samoa Public Service and gain the trust and confidence in evaluation process.

It is anticipated that these Guidelines contributes to a robust regime of integrity, transparency, good governance, openness, independence and good faith.
REFERENCES

Judicial Precedents:
- Ebner v Official Trustee in Bankruptcy [2000] HCA 63
- Webb v The Queen [1994] HCA 30
- R v Gough (1993) AC 646 at 670
- Asiata Peniamina and Others v Land and Titles Court and Others [2004] WSSC 12
- Leleua v Land and Titles Court [2009] WSSC 123 (4 December 2009)
- Siaso v Appellate of Land and Titles Court [2014] WSSC 26

Literature Research:
- Non-profit Risk Management Center, Resources for Developing or Revising Conflict of Interest Policies (www.nonprofitrisk.org)
- www.adm.monash.edu.au Conduct and Compliance Procedure – Conflict of Interest
- Draft Guidelines on Conflict of Interest by the Attorney General’s Office
- Public Service Code of Conduct
- PSC Recruitment and Selection Manual