Social accountability, ethics, and the public interest: 
Dealing with conflict of interest in the public sector

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Abstract

Conflicts of interest have been recognised around the world as a key element in the decline of trust in government and public institutions and it is internationally recognised that good governance requires effective systems for preventing and managing this problem. Conflict of interest erodes the public trust in government that is essential for meaningful levels of operational democracy.

Drawing on two unique studies of conflict of interest, this paper explores the meaning and dimensions of the problem of conflict of interest. The two studies involved detailed examination of complaint case files from members of the public—one study examined ten years of police internal investigations complaint files in relation to conflict of interest; the second study examined a sample of complaints about conflict of interest in the public sector broadly. These studies provide distinctive insights into the nature of conflict of interest as a problem for public sector ethics. The elements of conflict of interest are clearly defined in the paper, bringing clarity to a debate that has often been clouded by confusion between terms such as ‘real’, ‘apparent’ and ‘potential’ conflicts of interest.

Based on the two empirical studies, the paper analyses and explores appropriate regulatory and management approaches for conflict of interest. This analysis is undertaken on three planes: (1) dealing with private interests that are identifiably problematic in the way they clash with the duties of public officials; (2) managing conflicts as they arise in the course of public sector work—exploring problems of preferential and adverse treatment, and particular conflicts of interest that arise in policing and the public sector context; and (3) developing ethical and accountable organisational cultures based on greater awareness and training for staff and managers about the range of common conflicts of interest and appropriate strategies for dealing with them.

Overall, it is concluded that effective and meaningful public sector ethics in the pursuit of the public interest must be based on an ethos of social accountability and a commitment to prioritise the public interest in both fact and appearance.
Introduction

Conflicts of interest give rise to one of the most common forms of unethical conduct in public service and have been recognised around the world to be an important contributing factor in a general decline in perceived standards of conduct in public office (Kernaghan and Langford 1990: 133; Committee on Standards in Public Life 1995; Young 1998, 2006; Stark 2000; Cepeda Ulloa 2004; Graham 2006; Ombudsman Victoria 2008b). They have the potential to adversely affect good public administration, to diminish accountability, to damage public confidence in public sector integrity, and to undermine the trust which citizens hold in governments, official institutions, public officials,1 and democratic systems more broadly. Bodies such as the Organisation for Economic Co-Operation and Development, the European Union, Asian Development Bank, and Transparency International have all recognised that effective systems for dealing with conflicts of interest are an essential element in public governance and accountability (Organisation for Economic Co-Operation and Development 2003a, 2005, 2006; Raile 2004; Asian Development Bank and Organisation for Economic Co-Operation and Development 2006b, 2006a; Pope 2000b). For example:

Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizens’ trust in public institutions (Organisation for Economic Co-Operation and Development 2003b: 1).

Good governance requires that conflicts of interest are clearly understood and managed within public sector organisations. Although conflict of interest is not in itself corruption, the two are conceptually and practically linked because the improper influence of private interests in the performance of public duties may lead to a range of ethical transgressions (Ombudsman Victoria 2008b: 69). When conflicts of interest arise, public sector organisations must have systems to clearly and quickly identify and resolve them in an ethical and accountable manner. This requires multifaceted strategies incorporating effective frameworks for prevention, detection, and penalisation of conflicts of interest, and external oversight mechanisms such as independent auditors or ombudsmen to investigate specific cases and publicly report on the effectiveness of policy and procedures as part of a system for democratic and accountable government (Organisation for Economic Co-Operation and Development 2006). This sort of multifaceted approach also requires reflection on the nature and purposes of public sector activity and a clear commitment to an ethos of

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1 For the purposes of this paper, the term “public official” or “public officer” is used to refer to any employee who works within the public sector. This encompasses office- or street-level employees, managers and executives, and may also be taken to include elected government officials.
integrity, ethics and social accountability in the pursuit of the public interest. For this to be effective, an ethos of accountability must be embraced by individuals and managers working in the public sector, by public sector organisations, agencies and units, and by the public sector as a whole.

Despite recognition of the challenges posed by conflicts of interest, the nature of the problem is often poorly-understood and regulation and management within the public sector is often inadequate (Ombudsman Victoria 2008b). These issues have become more complex and more important in an environment characterised by greater interconnection and collaboration between the public sector and business and not-for-profit sectors. Broader trends in New Public Management, including outsourcing, contracting-out, public/private partnerships, self-regulation, sponsorships, and a significant interchange of personnel between the public and private sectors, have broken down some traditional public sector employment cultures and their attendant obligations and loyalties (see Hood 1995b, 1995a; Jones et al. 2001a, 2001b; Olson et al. 1998; Peters and Savoie 1998; Pollitt 1993; Davids and Hancock 1998).

To explore the issues introduced above, this paper draws on, integrates, and extends two empirical studies of conflict of interest in the public sector in the Australian state of Victoria. Each study examines public complaints about conflict of interest—the first in relation to policing and the second in relation to the public sector more generally. Both studies were made possible through the agreement and assistance of Victoria Police and Ombudsman Victoria in providing full research access to original complaint case files. Analysis of these real-life cases provides distinctive insights into practical and ethical concerns about conflict of interest as a public problem, encompassing evidence about two key elements that only become evident when examining real-life cases:

(1) Practical understandings (or misunderstandings) of the issue on the part of public sector employees and managers as they are confronted with complaints about a range of issues. These (mis)understandings are significant because they lie at the heart of (in)effective management of the issue from the perspective of public sector ethics and accountability.

(2) The understandings, attitudes, and concerns of members of the public (as complainants), and associated perceptions about conflict of interest and the public sector generally. These are important dimensions of the problem of conflict of interest, because at its core conflict of interest is about the interrelation between public perceptions and public trust in government.

The remainder of the paper is organised into five substantive sections. First, we provide an explication of the problem by clearly defining the constituent elements of conflict of interest in a manner that clarifies issues that are often confused through the use of terms like ‘real’, ‘apparent’ and ‘potential’ conflict of interest. The next three sections explore regulatory and management approaches for conflict of interest on three levels. First, the dimension of interests and the desirability (from the perspective of public sector ethics) of limiting the public officials’ private interests of problematic areas is examined. Second, the dimensions of day-to-day management of conflict of interest by
individuals and organisations in the public sector are explored. This analysis focuses on the manifestations of conflicts in terms of preferential and adverse treatment as well as several areas of public sector activity that are particularly vulnerable to conflicts of interest. The next section then considers the overarching necessity to develop awareness of conflict of interest issues within ethical and socially accountable organisational cultures. The final section briefly explicates the conclusions from the analysis.

Defining the problem: interests, conflicts, and perceptions

There is a distinction between conflict of interest and other forms of official wrongdoing, even though the two are related and examination of conflict of interest does not always clearly or unambiguously distinguish the problem of conflict from breaches or other neglects of official duty that may flow from conflicts of interest (see Davids 2008; c.f. Parker 1987). To bring clarity to this debate, Davids (2008) elaborates a clear conceptual and practical distinction between (i) problematic or potentially problematic situations (conflicts of interest); (ii) problematic actions (breaches or neglects of duty that flow from conflicts of interest); and (iii) problems of perception or appearances of conflict of interest, judged using a “reasonable person” standard.

The particular value of a clearly defined concept of conflict of interest is in tying these three elements together and bringing to attention the capacity of private interests to affect the performance of public duties. The concept of conflict of interest adds to notions of public sector ethics, accountability, and integrity by encompassing situations anterior to neglects of duty and considering the significance of public perceptions. The concept comprises three components: interests, conflicts, and public perceptions.

Interests

The value of the concept of conflict of interest for public sector ethics and accountability is the recognition that all persons operating in public roles will have many interests apart from those associated with the performance of official duties and that some of those interests may have a tendency to interfere with the performance of official duties. Many influences, loyalties, and other non-financial concerns are capable of encumbering an official such that the performance of duties specific to an official role is compromised. The types of interests that may fit this category include subjective or ideological biases, associational and partisan affiliations and attachments, predispositions and prejudgements, and even moral beliefs and aesthetic judgements. The interests of family, friends, professional colleagues, or other associates are relevant interests of concern because these interests, too, may influence a public officer in the performance of official duty. Enmity towards individuals or
groups may also be regarded as a relevant interest, because just as a conflict of interest may be manifested in preferential treatment for friends, it may lead to adverse treatment for enemies.

Unfortunately, a frequent failure to distinguish conflict of interest from other forms of misconduct, is compounded by traditional enunciations of conflict of interest that limit concern to private financial interests (Owen 1997). For example, Black’s Law Dictionary defines a conflict of interest as relating to the “private pecuniary interest of the individual” (cited in Carson 1994: 390). This narrow conception of interests emphasises only a subset of ethical concerns and ignores the capacity of a range of non-financial interests to interfere with the performance of public duties in much the same way as financial interests. Rather than focusing on the diversion or misappropriation of financial resources, it is the capacity of a given private interest to influence the effective performance of an official that is the key factor that is raised by the notion of conflict of interest.

Any particular private interest that may influence the performance of public duties can be regarded as problematic and the key distinction to be drawn is between interests that are encumbering and those that are not. Regulatory concern should be directed to avoidable conflicts and those that relate to interests not held in common with other members of society principally by virtue of being a citizen. For example, generalised interests held in common with other members of society may relate to a general status as home owner, investor, taxpayer, parent, or employee. These interests, expressed in a general sense, cannot be regarded as sufficiently personal interests, but specific investments, home localities, or schools, for example, may be regarded as relevant interests that may encumber an official.

**Conflicts**

The second key element of conflict of interest concerns the manner in which private interests become problematic when they conflict with official duties. Conflict takes place in the mind, impairing, undermining, or disrupting competent judgement such that it is unable to function in a ‘disinterested’ manner. Because one cannot peer into the mind of a person in order to determine whether a private interest actually affected the particular judgement, decision, or action of a public official, conflict of interest concerns focus not on subjective states of mind, but on situations that can be objectively perceived as giving rise to conflicts (see Stark 2000; Davids 2008). Taking this approach, a conflict is regarded to be present when there is a capacity for a known private interest to affect the performance of official duties. Although the real issue of concern is the possibility that individuals are judgementally impaired by their own interests, regulation focuses on interests that can objectively be determined to encumber or impair judgement and therefore generally prohibits the

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2 The duties of public sector employees are broadly defined to encompass explicit work roles and a range of other factors that pertain to good governance, effective management, furtherance of the public interest, and the maintenance of public trust.
holding of certain kinds of interests altogether and/or taking any official decision or action that materially affects those interests.

This approach is *prophylactic* or *preventive* in orientation because particular rules and regulations are designed to (indirectly) prevent something *other than* that which is specifically prohibited. For example, rules that prohibit public officials from receiving gifts under an array of circumstances do not reflect a position that the giving and receiving of gifts is intrinsically bad. Rather, they are designed to prevent the receipt of gifts from influencing—or being seen to influence—the performance of public duty. A prophylactic approach is generally regarded as more effective than a hortatory approach which would merely exhort officials to not become psychologically beholden to gift givers.

The particular advantage of the prophylactic approach over the hortatory approach is that it deals with directly observable states that can be objectively perceived as conflicting with official duties (applying the perspective of a reasonable person), rather than interpretations of perceived mental states. It also obviates the need to judge the subjective ‘rightness’ of the decision or action and eliminates difficulties with subjective defences such as ‘I would not allow myself to be influenced …’

**Appearances and perceptions**

Public sector ethics and accountability in relation to conflict of interest is complex because, on the one hand, many functions in the public sector are necessarily carried out within a broad realm of judgement and discretion on the part of individual public officials, while, on the other hand, it is within this discretionary realm that individuals may have the greatest capacity to benefit private interests. Understanding conflicts of interest requires that both the range of *interests* that may be regarded as problematic and the ways in which such interests may conflict with official duties be comprehended. Sound public administration and maintenance of public perceptions of integrity also requires that the private interests of public officials not be *seen* to influence the performance of public functions. As noted by the Victorian Ombudsman:

> The key issue in the notion of conflict of interest is the matter of perception. In other words, for a conflict of interest to arise it is not necessary that a person should have done anything improper: it is sufficient that third parties might reasonably question the ability of that person to act impartially or reasonably ask whether that person could have gained a personal benefit (The Ombudsman 2003: 77).

The public trust implicit in public employment (including the ideals and practice of service) means that, at the point of a decision or action, private or sectional gain must always be subsumed to the wider public interest. Public trust is closely tied to the issue of integrity, and it is the mere capacity of a private interest to affect performance of public duties that makes conflicts of interest problematic from a public sector ethics and accountability perspective. If a public official acts officially in relation to an issue or matter in which they may reasonably be perceived to have a private interest, those
official actions are likely to be tainted in the public mind. Unreasonable or irrational perceptions cannot be regulated against or controlled for, but if a reasonable person could perceive, on the basis of known facts, that a conflict of interest exists, then the conflict of interest so perceived is a problem, regardless of the technical or professional correctness or appropriateness of actual actions or decisions taken.

**Formalising the definitions**

With the above considerations in mind, the following definitions of conflict of interest were developed as a result of the theoretical and empirical research reported in this paper:

- **A conflict of interest** is any conflict between the personal interests of a public officer and the officer’s duty to act in the public interest.
- The **personal interests** of a public officer include those of family members, friends, associates, organisations to which the officer belongs, and other similar interests.
- **Interests** include financial and non-financial interests.
- **Financial interests** include receipt or possession of money and goods in a range of circumstances, including outside employment and private business activities.
- **Non-financial interests** include influences, loyalties, subjective or ideological biases, personal beliefs and predispositions, membership of civic organisations and associations, partisan affiliations and attachments, predispositions and prejudgements, moral beliefs and aesthetic judgements, and enmity towards individuals or groups.
- A **conflict** exists in any situation where a public official could be influenced, or could be reasonably perceived by an outside observer to be influenced, by a private interest when performing an official function.
- **Acting in the public interest** encompasses obligations in regard to administration, ethics, and performance, in accordance with recognised public sector principles and values.³

(see Davids 2008: Ch 2; Ombudsman Victoria 2008b: 62)

**Empirical materials**

This paper draws on two empirical investigations into conflict of interest:

1. A ten-year study of conflict of interest complaints against police officers in Victoria. This study involved the researcher being granted unfettered access to complaint case files held by the

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³ For example, the United Kingdom’s Committee on Standards in Public Life enunciated seven “principles of public life”: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership (Committee on Standards in Public Life 1995). Victoria’s *Public Administration Act 2004* (s.7) outlines core public sector values of responsiveness, integrity, impartiality, accountability, respect, leadership, and human rights.
Victoria Police Ethical Standards Department (see Davids 2005, 2006, 2008). (This study is referred to throughout this paper as “the Policing Study”.)

2. A study of a sample of conflict of interest complaints against employees in government Departments and statutory authorities falling under the jurisdiction of the Victorian Ombudsman. As part of a collaborative research engagement, the authors of this paper undertook a review of conflict of interest complaints in the form of an Enquiry into conflict of interest in the Victorian public sector 2006–2007, conducted under the ‘Own Motion’ investigation powers of the Victorian Ombudsman. The Enquiry resulted in a report presented by the Ombudsman to the Victorian Parliament in March 2008 (Ombudsman Victoria 2008b). (This study is referred to throughout this paper as “the Public Sector Study”.)

For both empirical studies, all scenarios and situations in the case files are ‘true stories’ that are not based on statements about what various players claim they think or would do, but what was actually said and done in real situations. Unlike comparable research which often draws on paper-based questionnaires, constructed scenarios, or individualised memoir-style accounts, this research dealt with real-life complaints about real public sector and police behaviours.

**Study 1—Victoria Police**

Corruption and misconduct in policing are relatively constant phenomena that have been related in various ways to concerns about conflict of interest (see Fitzgerald 1989; Wood 1997; Kennedy 2004a, 2004b; Miller 2003; HM Inspectorate of Constabulary 1999; Newburn 1999; Finnane 1994; Knapp 1972; Mollen 1994). In Victoria, particular concerns about conflict of interest arose following a series of public scandals in the 1980s and 1990s, and ensuing public debate over allegations of excessive use of (and sometimes lethal) force, discriminatory policing, sexual impropriety, and kickback scams engaged in by a large number of police officers (Davids 2008: Ch 1). This rise in concern was evidenced in a series of reports from the Victorian Ombudsman in the 1990s (The Deputy Ombudsman (Police Complaints) 1993, 1994, 1995; The Ombudsman 1994, 1997, 1998b, 1998a).

**Internal investigation complaint files**

The key data for this study are a ten year (1988–1998) sample of internal investigation complaint case files relating to conflict of interest in Victoria Police (see Davids 2005, 2006, 2008). The full data set consists of 377 case files involving 539 police officers, made available to the researcher by the Victoria Police Ethical Standards Department (formerly the Internal Investigations Department). According to the dual-entry cross-notification complaints classification and coding system operated by Victoria Police and Ombudsman Victoria, these cases represented all complaints against police for the period where conflict of interest was (at the time of establishing the complaint case file) believed to form the principal focus of the allegations. The 377 cases represented
approximately 3.5 per cent of complaints against police for all matters during the period. (The data set was extensive, but a range of factors including the multidimensional nature of many complaints necessarily mean that it was not practically possible to include all conflict of interest cases for the period in the data set—see Davids 2005.) Case files were examined in their entirety and in their original state, including all investigation notes, correspondence, and comments from the Ombudsman, whose statutory responsibility under the Police Regulation Act 1958 included oversight of the investigation of all public complaints against police (a function now performed by Victoria’s Office of Police Integrity).

**Study 2: The Victorian Public Sector**

The Victorian Ombudsman is an independent statutory office holder with the power to investigate, review, and resolve complaints about administrative actions taken by government departments and agencies. The Ombudsman’s jurisdiction encompasses all government departments and more than 600 public sector agencies including 12 professional boards, 79 local councils, universities and government schools, public and private prisons, authorised officers on public transport and animal welfare (RSPCA) inspections.

**Longstanding concerns and an ‘Own Motion’ Enquiry**

The Ombudsman’s longstanding concerns about conflict of interest were expressed in Annual Reports from his office over many years. As noted in 2002:

> Over the years and on a number of occasions, my predecessors and I have had cause to write about the issue of conflict of interest in the Annual Report. This year is no exception and … there is still a distinct lack of understanding of the concept of conflict of interest in the community (The Ombudsman 2002: 147)

In 2003, there was a special section of the Annual Report devoted to the problem, clearly articulating it as an “… ethical dilemma [that] goes to the essence of the expectation that public officials should perform their duties in a fair and unbiased way”. However, the Acting Ombudsman noted, conflict of interest is often misinterpreted and mishandled with a common misconception that a conflict of interest is tolerable if no benefit is actually gained (The Ombudsman 2003: 77). The issue of conflict of interest continued to be a focus in a number of Ombudsman’s investigations in 2004 and again a special section of the Annual Report focused on this problem (Ombudsman Victoria 2004: 89)

It might have been expected that repeated formal concerns expressed in Annual Reports from the Ombudsman, and in particular individual cases, would have led to effective procedures to deal with the issue and a reduction in conflict of interest complaints from members of the public. However, the problem persisted and continuing concerns over the volume of complaints, complexity of the issues, and inadequate public administration and management in this area led the Ombudsman
in 2006 to announce an intention to undertake a formal enquiry under his “Own Motion” powers (Ombudsman Victoria 2006b: 13). As part of a collaborative research engagement, the authors of this paper were sworn in as officers of the Ombudsman for the purposes of conducting the enquiry on behalf of the Ombudsman.

Staff in the Ombudsman’s office identified a sample of 2003–2006 cases that included conflict of interest as a primary focus of the complaint. A detailed examination of a sample of 45 complaints was undertaken. As with the Victoria Police study, these case files were examined in their entirety and in their original state, including all documentation held by the Ombudsman.

**Regulation and management: dealing with conflicts of interest on three planes**

The performance of almost all functions in the public sector can be damaged by conflicts of interest. The complexities that accompany the many possible manifestations of conflict of interest mean that it is not a practical proposition to simply identify and prohibit all forms of conflict of interest. Effective management rests with sound measures for good governance generally, and steps to identify and deal with conflicts of interest when they arise within government Departments and agencies (Organisation for Economic Co-Operation and Development 2003c).

The analysis in the paper thus far suggests that for regulation and management of conflict of interest to be effective, it must address the interrelated elements of problematic interests, conflicts, and the development of ethical and accountable public sector cultures, whilst paying attention to both factual circumstances and public perceptions (appearances). These elements are explored in detail in the remainder of the paper. Constraints of space do not allow detailed exposition of cases, but individual case studies can be found in Davids (2008) and Ombudsman Victoria (2008b). The primary analytical emphasis is on issues relating to the maintenance of public confidence in public sector integrity. At an operational level within organisations, a prerequisite for effective conflict of interest management is clear understanding both of the nature and dimensions of conflict of interest and of appropriate means for appropriately dealing with the problem.

**Plane 1. Regulating private interests: delving into the private sphere**

The first element of regulation relates to prohibiting or limiting the conduct of specified areas of private activity—particular interests that are, by their nature, a concern for good governance and public administration because of the manner in which they impinge on or interact with an official role. Prohibition or regulation in this area is always controversial because it represents an intrusion into the private lives of public officers and may be regarded as a restriction on individual liberty, but it is justified by the overriding requirement of employment in the public sector that the public interest be
prioritised. Some areas of private activity may be regarded as inherently incompatible with particular public sector roles such that the only way conflict of interest problems can be avoided is to prohibit private involvement in such activities. In other areas, private involvement on the part of public officers may be regarded as acceptable, but still needs to be managed to ensure that conflicts with official duties do not arise. The overriding emphasis must relate to the protection of the public interest, including the need to preserve and maintain public confidence in the integrity and impartiality of the public sector.

The case file analyses for both the Policing Study and the Public Sector Study identified several problematic private interests, grouped here into four broad categories:

1. Outside/secondary employment and private business interests, including those of family, friends, and associates;
2. Post-employment;
3. Membership of civic, social, or political organisations;
4. Other personal relationships, including family law problems.

1. Outside/secondary employment and private business interests

When a public officer undertakes secondary or outside employment or private business activity official actions may be tainted if they favour, or may reasonably be perceived as favouring, the interests of the outside employer, the individual as an employee with that employer, or the private business interests of the person. The potential to negatively impact on public perceptions of integrity arises because public officers may be seen by a reasonable third-party observer to ‘serve two masters’ or to prioritise outside interests ahead of official/public duties.

It is for these reasons that standard employment conditions of public officers often include a requirement that outside or secondary employment or the conduct of private business activity not be undertaken without approval. Specifically, for police officers in Victoria, under section 69(1) of the Police Regulation Act 1958 approval from the Chief Commissioner of Victoria Police must be obtained in order to participate in outside or secondary employment, including private business activities. For the broader public sector, section 32 of the Public Administration Act 2004 requires that full-time employees must not engage in any other paid employment or carry on any business, profession or trade without permission.

For such provisions to be practically effective, three elements must be evident. First, permission must actually be sought by employees who wish to engage in outside employment or private business activity. Second, public sector managers who approve or reject such requests must be fully cognisant of the reasons for the approval provisions, keeping in mind that these are not simple

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4 The flow of discussion throughout the rest of the paper is not interrupted with constant case citations, but references to “the Policing Study” are supported by detailed case analyses in Davids (2008) while case analyses supporting “the Public Sector Study” are contained in Ombudsman Victoria (2008b).
blanket prohibitions because the legitimacy of desiring to earn extra income is recognised. Managers must understand the nature of conflict of interest and be mindful of the varied ways in which such activities may clash with official duties. Third, where breaches of these provisions are found and dealt with under disciplinary provisions, concerns about the conflicts of interest involved should be central to proceedings.

In the Policing Study, a number of contentious areas of outside employment were found, most notably, engagement in surveillance and security work. Case studies showed a general inability on the part of many police officers to clearly separate such work from their police duties. Specific problems in some cases included the appropriation of police resources for private benefit, misleading colleagues, and non-cooperation with investigators of complaints. Serious problems that arose in relation to involvement in private business activity included alleged or apparent attempts to use police powers or position to gain various forms of advantage in business dealings.

The Public Sector Study found concerns about conflict of interest in situations where an official position may have been used to solicit or otherwise gain advantages or benefits in relation to secondary employment arrangements, including the generation of business activity for providers of training (such as safety training or infection control training for health professionals), provision of government grants, and contracts/tenders. Private use of official resources, time, or confidential information in the context of outside employment or private business was also a significant problem. In addition to central government departments and agencies, concerns were evident in relation to associations between local government Councillors and Council officers and developers, recipients of Council grants and other forms of funding. Case studies showed a generally poor understanding on the part of some employees and managers about the conflicts of interest inherent in such situations.

Across both the Policing and Public Sector Studies, the analysis suggested that although managers and oversighting authorities may have general confidence in the integrity of individual employees, complainants and members of the public cannot be assumed to draw similar conclusions if they perceive that private employment or business relationships affect the work performed in a public role. Both studies also found that the employment and private business interests of family members, friends, and associates of public officials are of equivalent significance as a source of conflict of interest. In this context, the most serious concerns in the Policing Study related to apparent attempts to use police position, powers, or authority to assist family, friends, or associates in private business dealings. The main concerns in the Public Sector Study related to the conduct of business transactions between particular private parties and government agencies, semi-government bodies, and universities. Analysis showed that although investigation of particular cases may lead to a conclusion that appropriate formal processes were followed it was often the case that Departments and agencies had inadequate processes for managing and disclosing conflicts of interest and ensuring both the fact and appearance of probity of processes in a way that maintained public confidence in those processes.
2. Post-employment

Post-employment relates to public officials who leave the public service and take up private sector employment that is in some way related to (former) official duties (see Independent Commission Against Corruption 1997a). Potential problems are obvious in relation to government regulatory and policing functions, such as gaming, racing, and liquor licensing, but concerns are equally applicable across other areas of government, centring on three broad elements. First, a public employee may use an official position to enhance or cultivate future employment prospects, possibly by favouring the interests of a potential future employer. The conflict lies in the possibility that official conduct while still in public employment may be modified by a desire to improve post-separation employment prospects with particular potential employers or interests. This could include favouring particular private interests, going soft in areas of regulatory enforcement, or failing to act in an impartial manner. Once new employment has commenced, the second concern arises in that a former public official may seek to take improper advantage of previous office through the use of confidential information or knowledge, gaining privileged access to or preferential treatment from former colleagues, or attempting to influence former colleagues in the performance of their ongoing public duties.

The third concern relates to the potential for post-employment relationships to damage public confidence in the reputation of the public service and its capacity to serve the public interest. This may occur in any situation when a former public employee takes up private employment with a party with whom the official had prior dealings in their public role, or whose private interests the official had the capacity to influence whilst in public employment. This problem often comes to attention when ex-government ministers or senior public service managers take up private sector positions with organisations involved in government dealings, particularly if this is done soon after leaving office.

In this research, the main concerns about post-employment were found in the Public Sector Study, including included allegations of favouritism in the award of tenders and contracts and the use of government information in post-employment situations. In the local government arena, it was concluded that where former local government officers take up roles as development or planning consultants, members of the public may reasonably perceive conflicts of interest in relation to dealings between that person and the Council they formerly worked for. Whether or not there is an actual attempt to use an official’s former position to private advantage there is almost inevitably a loss of confidence in the objectivity and fairness of a planning and development processes. The sensitivity of local government in general and the planning and development application process in particular magnifies the potential damage to public trust in such circumstances.

The Policing Study did not include any complaints about post-employment conflicts of interest but the potential problem of divided loyalties arising in the context of potential ‘poaching’ of police employees by private contractors has been recognised by researchers (Ayling and Grabosky 2006:
The increasing use of private businesses in relation to various aspects of policing (Davids and Hancock 1998; Ayling and Grabosky 2006) also increases the potential for post-employment relationships to influence the performance of police duties (including administrative duties).

Restrictions on post-employment opportunities for public employees are somewhat controversial because they may be regarded as limiting an individual’s future right to earn an income and to prioritise personal and career interests over the public interest that ostensibly ceases upon leaving public employment. Balanced against this is the manner in which perceptions of favouritism, influence-peddling, and the use of inside information severely damages public trust. There is little argument that in certain circumstances the post-employment activities of public officials could lead a reasonable observer to question the propriety of their prior activities and actions as public officials.

Restrictions on future employment are not uncommon in the private sector (such as restrictions on working for a competitor) where they are regarded as a reasonable means to ensure senior managers are focused on the interests of their employer. This is one aspect of private business practice that has not yet been taken up widely in the public sector, notwithstanding the popularity of New Public Management. It is reasonable to expect that insider information, knowledge, connections, and influence of former public servants should not be directly or indirectly used to yield benefits to private parties. Specified restrictions on employment (for a defined period after leaving the public sector), particularly for senior public officers, are one mechanism that seeks to ensure this outcome. Restrictive covenants in relation to future employment in organisations with a close relationship to former public roles (such as in regulatory or oversight functions) could easily be made an agreed condition of public sector employment contract for senior officers. This mechanism could be supplemented by limiting official contacts between current public officers and former public officers engaged in private employment or business activity thus restricting particular dealings rather than future employment opportunities as such (see Independent Commission Against Corruption 1997a, 1998).

3. Membership of civic, social, or political organisations

A general principle that police officers and other public employees should be permitted to engage in the same types of civic, sporting, voluntary, associational, and political activities as other citizens is generally sound, but it should be recognised that involvements in such activities has the potential to present conflicts of interest similar to those outlined above in relation to outside employment and business relationships. Two competing principles are often at work in this domain: first, the impartiality of all public officers (in perception and fact); secondly, the rights of individuals as citizens to freedom of expression, assembly, and association. In some jurisdictions, police services attempt to exercise control over members in relation to political expression and engagement in political activity because even if an opinion is a personal one, when it is expressed publicly it may convey an impression of official sanction.
If a public officer has the capacity in an official role to affect the interests of a community association, civic group, or other similar organisation with which he or she is involved, the principles of impartiality demand that official decisions and actions in relation to such groups should be avoided. In addition to the issue of public perceptions, this research showed that there is considerable potential for personal involvements in community and civic organisations and local government elective office to have a material impact on the performance of public duty. The issues are most starkly illustrated in relation to local government elective office, where the potential for any elected member of a local government body to be involved in conflicts of interest is widely recognised (see Independent Commission Against Corruption 1997b).

Several cases in the Policing Study demonstrated the sorts of conflicts associated with active involvement in local political activity, even where evidence may not lead to a definite conclusion that an officer actually sought to use an official position to gain a political advantage. Concerns included allegations of partisanship, harassment, and intimidation in local elections (whether the police officer was directly or indirectly involved). It must be recognised that the context of elections gives rise to various degrees of subjectivity on the part of complainants and evidence may be insufficient to support a complainant’s specific allegations, but the media attention that may flow from such matters is itself a cause for concern in terms of public perceptions of integrity and impartiality on the part of police (see Davids 2006). General concerns about involvement in local government led the Deputy Ombudsman to suggest that the interests of neither the Police Force nor the public are well served when police officers serve as municipal councillors, however police management in Victoria have taken the view that, although there is always a potential for conflicts of interest to arise, police officers should be permitted to serve as municipal councillors.

The Public Sector Study revealed some serious concerns when senior public officers become involved—in a private capacity—in activities that have political dimensions. The facts in one case are briefly reported here to illustrate the intricacies. This matter involved a senior Department of Sustainability and Environment officer who served in a private capacity as a State Council member of the RSPCA—a private body concerned with animal welfare issues. The complainant organisation alleged that the official’s RSPCA position led to compromise in his official duties because the latter included at least some interface with advice to government on hunting and game management issues (although the level of actual influence and involvement was arguable). There was no evidence or assertion that the official had acted improperly in his official capacity but the Ombudsman was concerned that there was a conflict of interest in being a senior officer of the government department responsible for animal policy while at the same time being a board member of an animal welfare interest group. Formal advice provided by the Victorian Government Solicitor’s Office was that there was no conflict of interest. This advice drew on a formalistic and narrow reading of the Code of Conduct for the Victorian Public Sector rather than with the broader issues of conflict of interest, thereby obviating the more nuanced concerns about conflict of interest relating to the maintenance of
ongoing public confidence in the impartial exercise of public duties. Eventually, the officer concerned resigned the RSPCA position (details of this case are reported in Ombudsman Victoria 2008b).

Both the Policing and Public Sector Studies found other problems in relation to connections with other civic, social, sporting, or community organisations such as ordinary (not executive) RSPCA membership, sporting and social club membership, and school councils. In the Policing Study, vociferous disputes were evident around issues such as sporting and social club activities where alcohol was served subject to liquor licensing rules, and on-ground enforcement of sporting rules.

This analysis clearly suggests that conflict of interest problems extend to an individual’s membership of a range of community groups and like organisations. In any area where there is a link to government administration (or police power) public concern may arise if there is an evident link between official and private roles. This conclusion suggests that there is a need to recognise that associations with various community-based activities can give rise to conflicts of interest that are of equivalent significance to issues such as private involvement in secondary employment and business arrangements. As with secondary employment and business activities, regulatory intervention is difficult because it may involve placing restrictions on what would otherwise be regarded as rightly belonging in the private realm. However, some regulation may be justified on the basis of the underlying rationale of ‘public service’ and the obligation to both prioritise the public interest and preserve/build justifiable confidence in the integrity of the public sector and its employees.

4. Other personal relationships, including family law problems

The evidence provided by both the Policing and Public Sector Studies suggested that a range of less formal private relationships may also give rise to conflict of interest problems. For example, family law disputes involving police officers or their family members gave rise to severe problems in the Policing Study. Misconduct included the use of confidential police information, the disclosure to outside parties of confidential police information, harassment, and other forms of duty failure or partiality in relation to domestic or private disputes. Conflicts of interest in association with several other types of problematic relationship also featured, including relationships with informers, suspects, convicted criminals, sex industry workers, and hoteliers (some of whom were former police officers), and attempts to facilitate intimate interpersonal relationships.

The Public Sector Study raised issues such as relationships between prison employees and convicted persons and between council officers and commercial developers or development applicants—the latter being particularly problematic in relation to the possible taint of development approval processes. Less formal personal relationships with neighbours, work colleagues, parents, and friends also gave rise to a number of problems in both studies.

A conclusion from both studies is that it is insufficient for public officers to simply assert that they did not (or would not) allow a situation where their performance of official duties was influenced
by private or personal relationships. Public confidence requires not only that public officers act properly in relation to official process but that they also be seen to do so.

In contrast to the kinds of employment and organisational relationships discussed earlier, prohibition of personal relationships is generally not considered acceptable except in narrowly defined circumstances such as relationships between police officers and convicted criminals. Therefore, where relationship-based conflicts of interest arise, integrity requires that the public officer declares the conflict of interest and withdraws from involvement in the matter unless and until all parties to the matter agree, after reasonable consideration, that the conflict of interest is not material to any actions or decisions to be taken. Public confidence may be buttressed if conflict of interest declarations and any decisions taken in relation thereto are recorded and made publicly-available as a record of due process.

**Regulating the not-so-private sphere**

Where particular kinds of interests that would otherwise be regarded as belonging to the personal and private realm have an inherent capacity to impinge on the performance of public duties or to diminish public trust and confidence in the integrity of members of the public sector, prohibition on the holding of such interests may be justified in the public interest. In the terms outlined earlier in the paper, this is prophylactic regulation based not in a judgement about the moral worth of the relationships but on their inherent capacity to interfere with the effective performance of public duties (including the obligation to maintain public confidence in the integrity of the sector). The mere existence of some particular private interests, such as secondary employment in an industry over which one has regulatory or oversight responsibility, is likely to cast doubt on the impartial performance of public duties, making prohibition of such interests unarguably justified. Other relationships, activities and involvements of concern are those which by virtue of their very nature could cause a reasonable member of the public to doubt the integrity of the public officer. Beyond prohibition of specific kinds of interests, public confidence will be bolstered if there are clear procedures for the declaration and recording of any conflict of interest and processes to ensure that, as far as possible, the public officer concerned has no part in official activity that affects such interests.

**Plane 2. Regulating the conduct of public activity: dealing with conflicts**

This section examines how interest of a more generalised nature may impact on actions taken within the realm of the public duties of a person, or may reasonably be seen to influence the conduct of official duty. As the preceding discussion shows, some private interests (such as outside employment and civic activities) are identifiably problematic in the way they may clash with the official duties of a public officer. These sets of interests can be regulated and managed to minimise the chances of conflicts arising in the course of official duties.
The prophylaxis associated with such regulation should prevent some—but not all—conflicts of interest. Two principal factors make a second level of regulation and management necessary. The first factor is that prophylaxis is not always effective—despite regulation, some prohibited or limited interests will still be held by individuals. Second, a range of other private interests are more generalised in nature, and cannot be regulated and managed prophylactically. Any person has many more interests than those considered in the previous section, some of which may conflict with official duty.

The second level of regulation and management (Plane 2) involves the structure and regulation of public activity and work duties. Based on an analysis of the complaint cases in the Policing and Public Sector Studies, three broad problem areas were identified, each of which consists of several dimensions. Complaints in this area tended to go beyond conflict of interest itself, including allegations of actual breaches of duty—such breaches are themselves manifestations of conflict of interest. The areas examined in this section are:

1. Conflicts manifested in preferential treatment for a public official or other party;
2. Conflicts manifested in adverse treatment to another party;
3. Other identifiable contexts where conflicts of interest arise in policing and the public sector.

1. Preferential treatment

Concerns about preferential treatment are at the core of many complaints about conflict of interest. As a general problem, preferential treatment involves an official acting in a way that is, or appears to be, partial to particular individuals or groups—particularly family members or close associates—whether or not the other party has solicited or sought such preferment. Although it may be the case that preferential treatment for family members and friends is regarded as legitimate or acceptable in the private sector, this is not the case in the public sector where care must always be taken to ensure objectivity and impartiality in official dealings. In the extreme, preferential treatment is manifested as nepotism or cronyism (see Pope 2000a) and at any time perceptions of favouritism are likely to undermine public confidence.

Preferential treatment may involve undue influence or abuse of office, both of which are serious forms of misconduct or, in the extreme, corruption. The concept of undue influence focuses attention on relationships between two parties such that one has influence over the other such that the influential party receives preferential treatment in relation to the performance of the official’s public duties. Abuse of office involves the use (or attempted use) an official position by one person to coerce another public official to provide preferential treatment to the official or other associates. Abuse of office is principally distinguished from undue influence by the element of coercion, which may be affected in any of several ways, including implicit threats or offers to reciprocate the provision of favours.
Police officers are particularly vulnerable to undue influence and abuse of office because the discretionary elements that are integral to policing provide many opportunities for such influence to be exercised away from the immediate gaze of colleagues or managers. It is also possible that undue influence could be exercised from inside a police force to the extent that one officer may seek to influence a fellow officer to perform (or not perform) official duties in a particular way. The broader public service is also vulnerable to these problems because day-to-day work incorporates many opportunities—and requirements—for the application of judgement and discretion.

Preferential treatment may also be evident absent the exercise of undue influence or abuse of office, when an unsolicited or unsought benefit is provided to a friend or associated of a police or public officer. The absence of influence over the officer concerned may be regarded as mitigating the seriousness of the ethical transgression, but the breach of duties of integrity, impartiality, and fair treatment damage perceptions of the public sector regardless of the motivation for the preferential treatment provided.

An additional dimension of the problem of preferential treatment is evident in the problem of self-dealing—where a public official deals in an official capacity with himself or herself in a private capacity, gaining a personal benefit. A conflict of interest is always involved in such circumstances and there can be no reasonable perception of impartiality or objectivity because the individual is involved in both sides of a decision, transaction or event. For an individual to act in such circumstances may be regarded by neutral observers and members of the public as bordering on corruption. Quite reasonably, members of the public are unlikely to have any level of trust in public processes that involve self-dealing.

The Policing Study examined 74 separate occurrences of alleged preferential treatment and found several manifestations of the problem. Complaints of failure to exercise the duty of impartiality included alleged failure to take appropriate police action against a family member, friend, or other associated party, or seeking to delay or discontinue formal police processes. Many problems arose in relation to the participation of a police officer in formal police processes involving another police officer with whom they had a personal friendship.

Public complaints about preferential treatment for family, friends, colleagues and associates, or for a police officer him/herself were often soundly based, but sometimes were based on an assumption on the part of the complainant that was not supported by the evidence in police internal investigations (oversighted by the Ombudsman). Some cases involved apparently vexatious motives on the part of a complainant in alleging conflict of interest and preferential treatment. An interesting aspect of many of these complaints was the allegation of conflict of interest in the context of matters related to motor vehicles, such as traffic and associated infringements—perhaps reflecting both the combination of high visibility and sensitivity of such matters and the street-level reality of discretionary enforcement (as a practical matter, individual police officers apply considerable discretion in terms of the vigour with which enforcement in such matters is pursued).
In a similar vein, some cases involved allegations claiming that a police officer inappropriately sought a civil resolution of a matter between opposing parties rather than taking official police action. The breadth and vagueness of the law in many circumstances means that police “invariably under-enforce the law” and it is within the legitimate realm of discretion not to invoke the law in many cases of minor assaults and similar offences (Lustgarten 1986: Ch 1). For an aggrieved complainant, distress may flow from a police decision to advise private redress in a matter which could alternatively have been treated as a chargeable offence, making allegations of preferential treatment and conflict of interest to some degree understandable. This group of complaints regarding proposed civil resolution also included a number of motor vehicle-related matters (mostly relating to motor vehicle accidents). There were also a number of complaints around alleged inappropriate police intervention in matters involving neighbourhood/domestic disputes and a range of business and commercial transactions including collection of civil debts, disputes over payment for goods supplied, acceptance of cheques, matters related to commercial tenancy, and disputes over ownership or possession of property.

On the other hand, the Policing Study also found 68 instances of alleged misuse of authority or position as a police officer by taking official action in relation to a civil matter. In close to two-thirds of these cases complainants specifically alleged police officers had acted preferentially towards friends or to the advantage of other known personal interests. In approximately one-third of the cases alleging inappropriate use of police powers/authority in a matter that should have been left to civil resolution, the internal investigation resulted in a finding against the police officer, and there was an even higher rate of adverse findings where the complainant had specifically alleged a conflict of interest.

Taken as a whole these cases demonstrated the vulnerability of police officers to allegations of preferential treatment when dealing in an official capacity with family, friends, or associates, even if the relationship is not close and even in relation to relatively minor or routine police processes. Conflicts of interest of this type cannot be avoided altogether because “[b]eing approached by a friend or acquaintance of any degree is not a matter which in reality can be avoided” (The Deputy Ombudsman (Police Complaints) 1995: 27). However, what can be avoided is official action in a conflict of interest situation—a police officer can avoid breaching the duty of impartiality by not becoming officially involved in such circumstances:

… involvement is easily avoided by the member who is approached by directing the enquirer to a more appropriate member to deal with the matter. In such circumstances … the object of the police member approached should be to avoid performing any duties or undertaking any work in relation to the matter raised with him by the friend or acquaintance. Doing so denies the opportunity for any conflict to arise between the member’s professional duties and obligations, on the one hand, and on the other hand his personal connections with the friend or acquaintance … (The Deputy Ombudsman (Police Complaints) 1995: 27)

The Public Sector Study did not find widespread problems of undue influence, abuse of office, or self-dealing but there were various forms of preferential treatment alleged in a range of
circumstances. The evidence suggested that public sector processes are particularly vulnerable to such complaints of preferential treatment in areas involving tendering and contracting, development proposals and local planning issues, child protection, employment and appointment of staff, and allocation of grants. Local government is an area that is susceptible to allegations of preferential treatment because of the capacity of planning scheme amendments or development and building approvals, in particular, to result in significant financial advantage to some and (perceived) detriment to others (see Independent Commission Against Corruption 2005).

Two cases illustrate the seriousness and complexity that is sometimes involved in allegations of preferential treatment in the broader public sector. One involved an allegation that during a major (multi-million dollar) tender process involving a government agency, the Chief Executive Officer of the agency had taken an overseas holiday with a member of the consortium that was subsequently awarded the tender. An independent Departmental review found no evidence that the tender process itself had not been fair and equitable in terms of normal processes for provision of information and assessment of tenders, and the CEO was found to have paid his own holiday expenses. However problems were identified in the process of disclosing and managing conflicts of interest within the agency and the Ombudsman concluded that:

The CEO’s defence of his personal integrity and his subsequent attempt to demonstrate this by formally distancing himself from the selection process showed little understanding of the need to manage both the fact and the appearance of integrity … a third-party observer could reasonably have concluded that the CEO had a conflict of interest that *could have* affected the tender process. (Ombudsman Victoria 2008b: 38)

Even if a senior manager who has a conflict of interest seeks to avoid formal involvement in a process, the management of conflicts of interest by subordinates is not a satisfactory resolution because a third-party observer could reasonably conclude that a manager is in a position to influence subordinates directly or indirectly, even without being formally involved in official decision-making processes. This particular case attracted considerable media publicity and such controversies inevitably cause damage to perceptions of public sector integrity. Any attempt to deal with such issues must prioritise accountability and transparency if public confidence in the integrity of decision-making processes is to be sustained.

The second case of particular interest in the arena of preferential treatment involved interactions between two arms of a government organisation that operated under its own Act of Parliament to finance film production and participate in joint filmmaking ventures (for films financed by the organisation). The complainant alleged that these two roles were incompatible and that the finance arm may have influenced decisions within the production arm—specifically, that as a result of a joint venture contract dispute, the finance arm had ‘blacklisted’ the complainant’s organisation from future film funding. In relation to the conflict of interest aspects of the complaint (the contract dispute itself
fell outside the Ombudsman’s jurisdiction), the Ombudsman was satisfied that there had been no impropriety, but he concluded that a third-party observer may have formed an impression that the organisation was exploiting its unique dual role. Despite the ultimate outcome, the case illustrated the sensitivity surrounding allegations of self-dealing and their potential to diminish public confidence if a reasonable observer may conclude that one arm of government (or a government organisation) acts to favour the interests of another arm of government (or organisation) at the expense of outside parties or the broader general public.

2. Adverse treatment

Conflicts of interest may be manifested in adverse treatment—action by an official that is, or appears to be, against the interests of certain individuals with whom they have an acrimonious relationship. In both the Policing and Public Sector Studies, complaints in this area tended to involve a similar range of official processes to those in claims of preferential treatment. As with preferential treatment, the occasions in which judgement and discretion is applied in official processes provides many opportunities for adverse treatment, with the key difference being the relationship of enmity between the parties that provides the context for allegations of adverse treatment.

The Policing Study included 44 occurrences of alleged adverse treatment in cases where the police officer had a direct or indirect acrimonious relationship with the complainant. In about one-third of these cases there was an adverse finding supporting at least part of the complainant’s allegations. Therefore, as with allegations of preferential treatment, public complaints were often soundly based, but sometimes they were based on an assumption on the part of the complainant that a conflict of interest existed but which was not supported by internal investigations evidence. Again, many of these complaints alleged conflict of interest in the context of the sensitive area of law enforcement in traffic and associated matters. It is also of note that several complaints involved allegations that unreasonable action taken by police officers had benefited the private business or commercial interests of family members, including in landlord–tenant disputes, liquor licensing/enforcement, and debt collection.

A small number of these complaints alleged that formal charges had been wrongly laid or other action inappropriately taken in relation to criminal investigations against a person in an acrimonious relationship with a police officer (or family, friends, or associates). In most cases, the animosity was alleged to be rooted in a friendly relationship between the police officer and the victim of the alleged crime. Serious criminal matters were involved in these cases—assault, stalking, child molestation, and theft. In two cases a connection between the police officer and the alleged victim was found to be in evidence, although it was more difficult to prove that a relationship had actually influenced the process or outcome of an investigation. Conflict of interest concerns, however, do not require actual breaches of duty to be evidenced, because conflict of interest draws attention to the possibility that a police officer’s decisions in relation to a matter may not be fair and impartial. Even if the police officer
recognises the conflict of interest and seek to take a decision that is subjectively ‘right’ and unaffected by the relationship, the confidence of reasonable observers in the integrity of the process would still be diminished. It is not possible to easily distinguish this conclusion from the possibility that a complaint is motivated by the negative experiences or outcomes experienced in the matter.

An additional 29 cases involved various allegations of harassment or discrimination either in relation to a specific incident or as part of a wider pattern of ongoing harassment. Although most of these allegations were generalised in nature, they included direct or indirect allegations that police officers had misused the power and authority of their position. However, in general, the incidents complained of were relatively minor, involving claims of rude, aggressive, intemperate, or intimidatory behaviour. Only a small number of cases resulted in adverse findings for the police officer.

Although harassment claims are easy to make and may often be trivial or difficult to support evidentially, they should be regarded as a legitimate and potentially important part of conflict of interest allegations because they essentially involve assertions of subjective and ideological bias. Although such matters are difficult to prove, investigators must be aware of these issues as kind of interest that may conflict with the duties of fairness and impartiality. Subjective and ideological biases can be reflected in the treatment of persons whom police officers come into contact with in the course of their duties.

The Public Sector Study found allegations of adverse treatment in a range of public processes including land valuations, award of contracts, planning and development applications, employment and appointment decisions, supervision of employees, and the care of children. Principles of procedural fairness are a central plank of public administration, requiring that where a decision could affect the rights or interests of another party, that decision must be made in an impartial manner. In the Public Sector Study four issues were found to be of particular significance in cases involving claims of adverse treatment and lack of procedural fairness and impartiality:

- Prejudgement and prejudice;
- Ideological bias;
- Enhancement of professional reputation; and
- Organisational interest in the name of ‘community interest’.

Prejudgement, prejudice, and ideological bias

Victoria’s Public Administration Act 2004 requires that public officials should demonstrate impartiality by making decisions “on merit and without bias, caprice, favouritism or self-interest” (s.7(c)(i)). This means that where an individual holds strong personal views that are, in effect, encumbering interests, decisions should not be prejudged and the decision-maker must not allow their personal prejudices or ideological biases to affect a decision. This represents the subjective aspect of impartiality, but there is also an objective dimension—the activity of public officers must both be and
be seen to be impartial. Thus, if an individual’s prejudices are known by other parties (for example, on the basis of publicly stated opinions or by virtue of holding a position with an interest group), any decisions that could reasonably be seen to be influenced by those prejudices are likely to be tainted in the public eye. This was an issue in the case of the senior Department of Sustainability and Environment officer who also served as a State Council member of the RSPCA, discussed in the earlier section of this paper (Regulating Private Interests: Delving into the Private Sphere). The fact that the complainant may have been emotionally (and perhaps politically) attached to a particular position in relation to hunting issues is not relevant to the broader question of conflict of interest.

Other instructive cases examined in the Public Sector Study included matters involving child protection and foster care. In one, it was alleged that an officer in the government family services area had, as a result of prior professional dealings with another organisation, formed a negative preconceived of a father involved in a case overseen by the officer. In another case a involving a complaint relating to a foster care matter, the investigator assigned by the government agency was related to one of the foster carers related to the case. Both cases involved conflicts of interest that meant any investigation of a public complaint could reasonably be seen to lack the necessary impartiality in such matters, whether or not the investigator had actually formed a subjective prejudgment or was prejudiced in relation to the person being investigated.

Another significant case involved an allegation of adverse treatment based on an ideological affiliation between a government agency middle manager and a senior manager. It was alleged that the middle manager had been involved in racial vilification of clients but that the senior manager had not taken appropriate action when the matter had been raised by an agency employee. The two managers had previously been involved in open discussions with colleagues that included support of the White Australia Policy. An investigation concluded that the employee complaint had not been appropriately acted upon and it was concluded that this could “reasonably be interpreted as conduct that demonstrates inappropriate partiality on the basis of a commonly-held ideology” between the two managers (Ombudsman Victoria 2008b: 42). The investigator’s report noted that any individual is entitled to hold and discuss personal views, but a public officer must not allow personal views to interfere with policy implementation—in this case procedures for dealing with complaints about racial discrimination. This case provides insight into the range of interests that must be considered as potentially conflicting with public duties and the need to ensure open and accountable processes for dealing with internal complaints in government agencies.

Allegations of prejudgement, personal prejudice, or ideological bias are, to some extent, to be expected in sensitive areas of government activity where individuals may perceive that they have been treated unfairly or that their ‘rights’—personal or political—are impinged upon by official decisions. It is also possible that complaints may be complicated by a range of other concerns about public policy or organisational procedures and management issues (whether included in the complaint or not). However these complications in no way diminish the concerns about conflict of interest in relation to
personal prejudice or ideological bias. The cases reviewed in the Public Sector Study showed that particular attention is required in areas of public administration that are subject to personal or emotional attachment by individuals. Conflicts of interest can be avoided in such circumstances if any individual public officer does not become officially involved in a situation where a reasonable person could conclude that they may prejudge a matter based on a personal view, private interest, ideological bias, or previous association with a case. If the pragmatics of staffing and availability of expertise is such that some conflicts of interest cannot be avoided by non-involvement, the situation must be managed in an open, transparent and accountable manner.

For a complainant or a reasonable member of the public to accept that an outcome is fair, open, and accountable processes are required. Inadequate processes in the public sector (including those for dealing with complaints about conflict of interest) will understandably lead observers to question outcomes from those processes, even if formal investigation is able to find no evidence to suggest that the outcome should or would have been different if better processes had been followed. Public perceptions of both process and outcome are formed in light of information that is publicly available and where conflicts of interest are involved, perceptions of adverse and unfair treatment are understandable.

**Professional reputation and the pursuit of organisational interests against the public interest**

In addition to questions of prejudice and bias, the Public Sector Study also found two important additional dimensions of adverse treatment: (1) to a possible desire on the part of public officers to enhance a professional reputation; and (2) to the pursuit of the interests of the government organisation or agency in the name of ‘community interest’ but against the interests of particular members of the public who, in normal discourse, would themselves be regarded as proxies for ‘public interest’. The first issue includes the possibility that a public officer would treat adversely an aggrieved member of the public who is taken to be questioning the professionalism of the public officer. The study found that such situations may include matters such as questioning professional property valuations for the purpose of local council property taxes (rates). Such circumstances illustrate how public officers may have a conflict of interest if they seek to protect their own reputation when their judgment is questioned. Objections to property valuations or other professional judgements made by public officers must not be taken as personal slights on the professionalism of decision makers but must always be treated solely on their merit.

The second issue—pursuit of government agency interests against the public interest—involves a possible conflict with the rights of individual members of the public to fair and equitable treatment. At issue is a possible denial of proper process or fair, objective and impartial treatment. This is an organisational rather than individual conflict of interest because the questionable action may seem to serve the immediate interests of the organisation (possibly in the name of the public), but the issues of adverse treatment are no less significant. In the long term, the public interest cannot be served if
individuals have a reasonable basis to perceive that members of the public do not receive fair treatment from a government agency, even if it can be argued that the community overall benefits through increased government revenue receipts or in some other way. In questions of conflict of interest, the public interest cannot be regarded as identical with the immediate interests of a government department, organisation or agency.

The Public Sector Study found that this sort of conflict is particularly relevant where a public sector organisation has combined regulatory functions and commercial roles, but mundane government activities may also come under this category, wherever there is an organisational interest in issues such as increased revenue flow or reduced prices paid for assets, for example. The rights of citizens and others to fair and accountable treatment in their interactions with government agencies should not be overlooked in the pursuit of organisational interest in the name of community interest.

Several cases entailed circumstances in which officials seemed to identify organisational interests with wider community interest, rather than the latter being manifested in fair and reasonable administrative processes with open and accountable outcomes. A good illustration is provided by a case that involved the apparently revenue-driven issuance of parking infringement notices by a local authority (see also Ombudsman Victoria 2006a), resulting in a range of other unfair and misleading practices. Here, it was arguable that an organisational interest in increased revenue flow conflicted with the public interest in fair process and equitable access for motorists to parking spaces.

The public interest in such cases clearly includes the rights of private citizens to fair, objective and impartial treatment, and to open and transparent processes. These are wider, overriding rights of members of the public and parties with whom public organisations transact, are they not obviated by the pursuit of perceived organisational interests, whether or not this is rationalised as being in the ‘public interest’.

3. Conflicts of interest relating to policing and the public sector context

As noted throughout the paper, the public sector is characterised—at least in theory—by an overriding requirement to pursue the public interest and in this sense there is a major difference with private sector organisations. The infusion of private sector management practices (and managers) into the public sector in recent years and the pursuit of efficiency and ‘good management’—part of the trend, noted earlier, to New Public Management—creates the possibility of a diminution in awareness of appropriate ‘public interest’ issues. Yet the standards and expectations for ethics and accountability within the public sector continue to revolve around core values of integrity, impartiality, and accountability, as discussed in the introduction to this paper (Doig 1995 outlines some of the tensions; see also Ring and Perry 1985).

Both the Policing and Public Sector Studies identified four key areas where public sector organisations and agencies are particularly vulnerable to the fact and appearance of conflict of interest problems that go beyond the overarching questions of fair and equitable treatment as considered in the
earlier discussion. The four areas that stood out as being particularly exposed to the influence of private interests were:

- Acceptance of gifts and benefits (gratuities);
- Use or disclosure of government or police information;
- Use of official property; and
- Disposal of government assets.

Acceptance of gifts and benefits

The potential problems that can arise from the receipt of gifts, benefits, and other forms of gratuity are widely recognised throughout public sector jurisdictions (for example: Integrity Coordinating Group 2006; Independent Commission Against Corruption 2006; Crime and Misconduct Commission 2006; Public Service Commissioner undated). As with conflict of interest issues generally, the core concern is that the receipt of gifts and benefits may influence a public officer in the performance of official duty. Even without tangible influence, an impartial observer may conclude that gifts and benefits signify a reciprocal relationship between the public officer and the giver. In this sense, gifts may be regarded as a business transaction, as suggested by the New South Wales Independent Commission Against Corruption:

In a business context, gifts are rarely offered to an individual for purely charitable or hospitable reasons. It may be the case if the gift or benefit is of little or no commercial value, such as a corporate memento or marketing trinket. However, in cases where the gift or benefit has more than a nominal value, it is possible that it was offered to create a sense of obligation and even an expectation that something will be given in return.

Feelings of obligation can arise with the acceptance of a free meal, tickets to a sporting event or discounts on commercial purchases. Once such a gift is accepted, a public official can be compromised. If the giver later requests favourable treatment, it can be difficult to refuse. The giver may even threaten to allege you solicited the gift in the first place.

Individuals attempting to corrupt public officials often start with small inducements that appear to have no improper motive behind them (Independent Commission Against Corruption 1999: 6).

Even small or low-value gifts of gratitude may unintentionally influence—or be seen to influence—the actions of a public official, thereby damaging the reputation both of the individual and their organisation or agency. This can reasonably be seen as a form of ‘private payment for public acts’ and may lead members of public to question whether private deals and arrangements are behind public sector decisions. The Ombudsman expressed serious continuing concern over issue in his 2003 Annual Report:

... some persons employed in government service received and accepted invitations to attend lunches, dinners, sporting events, golf days, concerts and other like functions. The invitations were extended on behalf of organisations within the private sector that had direct dealings with the government body and by organisations that were potential suppliers of goods or services to the
body at some time in the future. In some instances the invitations included the spouse/partner of the invitee (The Ombudsman 2003: 78).

The Policing Study found the receipt of gifts and benefits to be an ongoing problem of concern in policing, despite differing opinions on the issue in the police ethics literature (see Davids and Boyce 2008 for a detailed discussion of police gratuities). The problem is manifested in a reciprocal obligation between a police officer and a private individual or organisation—whether it be actual, implied, or perceived.

The Public Sector Study confirmed the continued compromising effect of gifts and benefits in the broader public sector and a coincident report by the Ombudsman on conflict of interest in local government examined the problem in that context (Ombudsman Victoria 2008a). One case in the Public Sector Study illustrates the significance of the problem in the public sector context. As the Ombudsman noted, this complaint alleged:

… that a senior public hospital manager was awarding contracts to a private company with which he had prior associations … the manager had received invitations to lunches, dinners and entertainment, as well as attended major sporting events in corporate boxes. The manager had not disclosed most of these gifts to his chief executive, nor had he disclosed his relationship with the company ...

In defending his actions, the manager claimed:

- He did not have a special relationship with the company, as he had also received benefits from numerous other companies.
- His personal connections with the company had no impact on his decisions to award contracts to it.
- Other senior managers at the hospital also accepted hospitality from private companies that did business with the hospital.
- It was part of the ‘Australian culture’ to accept such gifts and benefits.

(Ombudsman Victoria 2008b: 46)

The manager claimed that the organisation’s policy on the receipt of gifts and benefits was commonly flouted by senior staff. Evidence generally supported this assertion, leading the Ombudsman to conclude that “Underlying these poor practices was the even poorer example set by senior managers”. The manager in question had been recruited from the private sector and he stated that he had not changed his view about the appropriateness of accepting gifts and benefits when he entered the public sector. It is possible that different values may prevail in the private sector where the giving of gifts and benefits may be regarded as a legitimate promotional tool, and the receipt of at least some gifts and benefits could be considered as a performance incentive or reward. In addition, the private sector is characterised by strategic relationship building and networking in order to gain commercial advantage. Any of these approaches or attitudes are inappropriate in the public sector.
It is clear from this case that good organisational policy alone is insufficient without appropriate awareness, training, record-keeping and enforcement, all within a broader ethos of accountability that acknowledges the priority of the public interest and the need to ensure that this is pursued both in practice and appearance. Public sector guidance, such as the toolkit on Managing Gifts and Benefits in the Public Sector produced by the New South Wales Independent Commission Against Corruption (Independent Commission Against Corruption 2006) is only useful to the extent that it is (i) actually followed by organisations and agencies and (ii) internalised by individual members of staff and managers.

Use/disclosure of government or police information

Police and employees in many areas of the public sector have routine access to a range of sensitive, confidential, and personal information. Research undertaken for the British Home Office by Miller (2003: 7–8) suggested that “the picture of [police] corruption [in England and Wales] is dominated by the leaking of information to those outside the organisation”. Concerns in relation to the improper use and disclosure of police information have also been raised in a number of other studies and official reports (e.g. Deputy Ombudsman (Police Complaints) 1993; Criminal Justice Commission 2000; Independent Commission Against Corruption 1994; Director—Police Integrity 2005a, 2005b; Royal Canadian Mounted Police External Review Committee 1991). The misuse of information is also a problem across the entire public sector. In the 1990s, a blackmarket commercial trade in government information operated in New South Wales. The Independent Commission Against Corruption found a “vast information network” had developed with “Information from a variety of State and Commonwealth government sources … freely and regularly exchanged for many years” between corrupt public officers and private inquiry agents, insurance companies and financial institutions (Independent Commission Against Corruption 1992: 14).

Both the Policing and public Sector Studies confirmed the contemporary seriousness of this issue. The Policing Study examined 60 cases of use/disclosure of police information, with an overall substantiation rate of 50 per cent. The most notable problems included:

- use of police information to assist a police officer or family, friends, or associates in private business or commercial dealings, including in the establishment or running of private businesses, and in landlord/tenant disputes;
- use of police information to gain a personal advantage in private, non-commercial matters, such as family law disputes and attempts to facilitate or further intimate personal relationships;
- leaks of police information in the context of criminal investigations, legal, or associated matters.

Clearly the third group above has considerable potential for damage to be caused to individuals (whether leaked information about them is accurate or not) and to the reputation of police as a whole. In any of the circumstances outlined above, access to information is inappropriate because it breaches
clear protocols on access to police information, but, more seriously, it may be a precursor to a serious misconduct to the extent that it indicates a propensity to use an official position to advance private interests.

In the Public Sector Study, the problems were not as serious as found in the Policing Study, probably reflecting the sensitivity/volatility of confidential information in the two domains. However, private uses of government information were still found to problematic in contexts such as personal business dealings. In addition, the private use of sensitive or confidential information was noted as a particular concern in the Ombudsman’s report into conflict of interest in local government, where it was noted that “By reason of their position, council officers are likely to receive information that is not available to the wider community” (Ombudsman Victoria 2008a: 36). One area of particular concern was the use of council information in post-employment situations of the type discussed earlier in this paper.

Sometimes the private benefit obtained through personal use of information by a police officer or public employee may simply relate to the satisfaction of personal or professional ‘curiosity’, but other uses in the context of business dealings or outside employment arrangements presents more serious problems. Any private use of government information that is only available to an individual by virtue of a position as a public officer represents a failure of honesty and impartiality and the duty to put the public interest first.

Use of official property

Most employers accept limited private use of organisational property such as telephones, facsimile machines, computers, and sometimes vehicles, as a way of facilitating an appropriate work/life, provided it does not interfere with work responsibilities. However, the private use of government assets, consumable items, or other resources can represent a conflict of interest if that use:

- causes the property to be unavailable for official use;
- interferes with the performance of official work or duties;
- negatively impacts on work productivity;
- generates feelings of ill-will or favouritism if organisational guidelines for private use are not clear and transparently applied or are perceived to favour particular parties; or
- creates a reasonable perception that private interests prevail over the public interest.

In any of these circumstances, the private use of resources may be regarded as against the public interest and may damage the reputation of the public sector.

In the Policing Study, although some cases involved the private use of police resources such as vehicles, the misuse of a police officer’s identity as a police officer was the issue that raised most concern. In particular, the production of police identification, the wearing of (parts of) a police uniform in off-duty situations, the visible use of marked police vehicles, and the use of official police
letterhead or identifiable police fax machines in the context of private activities could all reasonably be seen as attempts to use an officer’s identity as a member of the Police Force for private advantage in commercial transactions and other interactions. The formal disciplinary offence under which such matters were usually dealt with was s.69(1)(e)) of the Police Regulation Act 1958 on engaging in conduct that is likely to bring the Force into disrepute or diminishing public confidence in it. This implicitly emphasises the aspect of conflict of interest that is of most concern in relation to private use of police resources—the effect on public perceptions of the Force as a whole and its members.

The Public Sector Study found that the private use of government vehicles was an area that caused certain levels of angst both within organisations and in the public eye—due to perceptions of favouritism and self-interest. It was concluded that approved private use of vehicles may be appropriate in some circumstances (such as for travel to and from the place of residence of field-workers), although it should be regarded as a privilege. Public perception should be a key consideration in setting agency policy and private use should be both judicious and appropriately recorded.

Disposal of government assets

Obsolete, out-of-date, or other government assets that are surplus to the requirements of a government department or agency may be disposed of in several ways. The simplest and easiest means may be to ‘sell’ such items to staff members, but this inevitably entails at least the possibility of a form of self-dealing in that such transaction are not usually undertaken on an arm’s-length basis. Victorian Government Purchasing Board (VGPB) policies for the procurement and disposal of government assets are mandatory for government Departments, the Victoria Police and a number of government Administrative Offices, and all other agencies are required to take these policies into account (Department of Treasury and Finance 2005). In general these policies require that the disposal of government assets that are “considered to be redundant, unserviceable, obsolete or surplus to requirements” is to be undertaken in accordance with systematic, ethical and transparent processes (Victorian Government Purchasing Board 2005).

The Policing Study examined seven cases where a police officer attempted to gain ownership of goods handled in an official police capacity, such as seized or recovered stolen property that was being disposed of. Problematically, alleged attempts to gain ownership of firearms constituted a prominent part of this problem: two cases related to firearms handed in to police during an official government firearm amnesty; a third involved an allegation that a police officer had colluded with a gun shop owner to obtain a firearm in a non-market transaction; and a fourth case involved an allegation that police officers had offered to buy a firearm that was seized for not being correctly stored. In general (but not in every instance), evidentiary problems meant these allegations were not upheld, but the general problem of police attempting to obtain firearms via off-market means could not generally be regarded as serving the public image of policing. The other cases in this group involved various issues
in relation to the disposal of lost, stolen and seized property (see Davids 2005: 558 ff. for detailed analysis).

The Public Sector Study found that, in some cases at least, a lack of sound organisational policies and lax supervision had facilitated breaches of proper procedure and a failure to achieve full value for the public sector. For example, in one case surplus asset disposal in a government agency was undertaken by giving staff the opportunity to purchase the items, but formal requirements in relation to asset disposal were not followed, leading to assets being sold for less than fair value and inadequate record-keeping. In some instances there was no record of the ostensible sale proceeds being received and it was also apparent that some assets had been taken without payment (although later returned).

**Plane 3. Developing ethical and accountable organisational cultures in the public sector**

Taken as a whole, the findings of both the Policing and Public Sector Studies provide clear evidence of insufficient understanding of conflict of interest issues in the police and the public sector. Conflict of interest is conceptually simple but complex in practice and there are many dimensions that need to be understood by employees and managers. These two studies explicate the practical dimensions of conflict of interest as a problem in a number of specific areas of public sector activity.

**Interlinked planes of regulation and management**

Although it is clear that not all conflicts of interest can be defined and prohibited in advance, there are a range of private interests that are, by their very nature, problematic. The analysis in this paper shows how these areas can form the basis of a first level of prophylactic regulation relating to conflicts of interest. Although such regulation is controversial because it intrudes on the private sphere, it is justified on the overriding principle of public service and prioritising the public interest. The latter includes recognition that perceptions of integrity, impartiality and accountability within the public sector are an integral component of ‘public interest’, since an effective public sector relies on these as essential elements of good governance.

This first plane of regulation and management should obviate some conflict of interest problems by eliminating problematic interests, however a number of conflicts would still be expected to arise in the ordinary course of events, related to a range of other, often more generalised, interests of public officers. The occurrence of conflicts of interest is not the issue here—the key problematic is appropriate management of conflicts of interest when they arise. Thus, the second plane of regulation and management relates to the conduct of public activity—work duties. This does not present the same difficulties as regulation of the private activities and involvements public officers, however it is an area of regulation that needs to be carefully crafted, and breaches must be dealt with appropriately.
On the basis of analysis in the two major empirical studies of conflict of interest reported in this paper, three broad areas for regulatory attention have been identified:

- **Conflict of interest and preferential treatment**—both in a general sense and in the specific areas of undue influence, abuse of office, and self-dealing.
- **Conflict of interest and adverse treatment**, particularly as manifested in prejudgement, prejudice, ideological bias, a desire to enhance professional reputation, and the pursuit of organisational interest in the name of community interest.
- **Particular areas of concern** that relate to the public sector (or policing) context—relating to particular activities conducted within government departments and agencies; identified areas of concern were the acceptance of gifts and benefits, use of government information, use of official property, and the disposal of government property.

Both the Police Study and the Public Sector Study found that at an operational level, street-level and supervising officers (in policing) and agency staff members and managers (in the public service) often have inadequate understandings of the nature of conflict of interest in all of the above areas. However, both studies also found that the office of the Ombudsman plays a significant role as an independent avenue of complaint and oversight, forming a crucial element in the system of public sector accountability. In numerous cases, the Ombudsman’s office made valuable contributions in relation to understanding the dimensions of conflict of interest—an understanding that has been reflected in Victorian Ombudsman Annual Reports over many years. The Ombudsman’s insights were often important to ensuring that matters involving conflict of interest were appropriately recognised and dealt with inside Victoria Police and many departments and agencies across the public sector.

However, the oversight of the Ombudsman is an expression of an *ex-post* model of passive accountability that is, ultimately, centred on adherence to rules (see Davids 2008: Chs 3 and 7). Conflict of interest as an ethical concept is *forward-looking* in two dimensions: (i) seeking to deal with possible neglects of duty before they actually happen (by envisioning ethical breaches that could flow from conflicts of interest); and (ii) anticipating public perceptions and the possible negative impacts on public trust in organisations, agencies, and the public sector as a whole. In terms of accountability systems, conflict of interest draws attention to the way in which formal accountability mechanisms bypass the central questions of moral responsibility that lie at the heart of corruption (Miller 1998: 51).

Therefore, greater awareness of the issues and better training for staff and managers to increase awareness of the range of common conflicts of interest that arise and appropriate strategies for dealing with them forms an essential third plane for a system of regulation and management of conflicts of interest. The core issue in this context is the development of ethical and socially accountable organisational cultures. The notion of ‘social accountability’ is used here to incorporate attention to
both ethical dimensions of conflict of interest as outlined above. Social accountability is proposed here as an expansive concept that includes a need to account for both facts and appearances to the extent that they impact on the confidence members of the public have in their public institutions.

**Accountable and ethical organisational cultures**

No area and no level of the public sector is exempt from conflict of interest problems. Central to the quest for accountable and ethical cultures throughout public service is a commitment to serve the public interest. An ethos of ethical conduct is required at every level—not as an optional appendage but as something that is recognised to be central to every action carried out in the name of the public. The development of commitment to public sector values must go beyond rhetoric and is not something that can be expected to arise spontaneously if left to individual organisations and agencies, especially in the context of managerialist public sector reforms which emphasise a different set of values (see Doig 1995; Davids and Hancock 1998). The evidence presented in this paper suggests that despite considerable attention to many of these issues in the last twenty years (in particular, since the advent of New Public Management), the on-the-ground practice in the public sector is still beset with conflict of interest problems. This is despite considerable effort on the part of regulatory bodies and anti-corruption agencies to produce codes of ethics that give due attention to these issues, and management guides dealing with conflict of interest in general and with specific problem areas such as the receipt of gifts and benefits (e.g. Independent Commission Against Corruption and Crime and Misconduct Commission 2004a, 2004b; Independent Commission Against Corruption 2006; Organisation for Economic Co-Operation and Development 2003b, 2005).

The issue of appropriate management styles for the public sector assumes greater significance in the context of increased interactions between the private and public sectors and the increased mobility of management between the two sectors. It is not uncommon in the contemporary public sector environment for officials to move regularly between the two sectors and there has been a degree of convergence between private and public sector management styles (see Organisation for Economic Co-Operation and Development 2003a) even though strategic issues and values differ appreciably between the two sectors (Ring and Perry 1985; Doig 1995). The resultant tensions and uncertainties create an environment where there may be more potential for actual or perceived conflicts of interest. Private sector and corporate management styles are not always appropriate in the public sector and public trust and confidence in the integrity of the sector requires both that practices and perceptions must be attended to in all matters. Conflict of interest attacks at the heart of public trust and public officers need to be clearly aware of the difference between the private and public sectors in terms of the need to always put the public interest first, and to be seen to do so.

Although sector-wide issues need to be addressed, it is also a truism to say that managers within organisations and agencies must lead by example, demonstrating a commitment to ethical and accountable conduct. The role of managers and supervisors should be recognised as critical and
Departments and agencies should challenge supervisors who seek to avoid any responsibility for ethical lapses on the part of subordinates. The key conclusion here is that supervisors are crucial in developing and maintaining a climate of appropriate ethical behaviour in their areas of responsibility. Lack of appropriate supervision enables bad practices to proliferate and in an enforcement void, corruption through fertile circumstances/opportunities can take seed. Some conflict of interest problems can start with what seem to be inconsequential matters such as the tolerance of minor rule-breaking in areas such as acceptance of gifts and benefits, private use of official information, or seemingly innocuous forms of preferential treatment. Ongoing training and professional development is required to ensure that managers and employees are cognisant of conflict of interest issues as they relate to particular roles within the public sector. Complainants may not always use the term ‘conflict of interest’ when making allegations of preferential or adverse treatment, so complaint-handling sections of organisations must also be able to recognise conflicts of interest and ensure that these matters are dealt with appropriately.

Public trust in government and the institutions of governance requires that conflict of interest issues should not be avoided but public sector organisations be encouraged—and required—to deal effectively with them as they arise. There should be no stigma for public officers who declare a conflict of interest and seek to avoid involvement in activities where their interests may be affected—indeed, this should be regarded as a clear declaration that the public interest will be prioritised. Conflicts should then be managed in an open and accountable manner at an agency level, without seeking to deny, delay, or otherwise avoid dealing with the problem.

The OECD’s Guidelines for Managing Conflict of Interest in the Public Service (Organisation for Economic Co-Operation and Development 2003c) rest on four key principles:

- Serving the public interest;
- Supporting transparency and scrutiny;
- Promoting individual responsibility and personal example; and
- Engendering organisational cultures which are intolerant of conflicts of interest

A broad commitment to ethics and recognition of the core obligation of accountability within organisations and to society at large is at the heart of this approach. The cases examined for both studies reported in this paper reveal that the day-to-day practice of public sector employees often falls short of the standards a reasonable member of the public may expect. Of serious concern is a common mistaken belief that a conflict of interest is not of particular concern if there is no nefarious intent or a specific breach of duty (see Davids 2008, 2006; Davids and Boyce 2008; Ombudsman Victoria 2008b). Public officers must develop a clear understanding of the distinction between having a conflict of interest and a breach of duty that flows from a conflict.
The conflation of conflicts of interest with breaches of duty effectively diminishes the problematic nature of conflict of interest itself, often by naming it only a potential or perceived conflict of interest if it does not result in a wider neglect of duty. Conflicts should be avoided where possible but where they cannot be avoided they should be resolved without waiting to see if culpable conduct or a public complaint results. Good intentions are not enough: public officers must consider how their actions would be regarded by outside parties and it must be recognised that conflicts of interest are problematic with or without attendant breaches of duty. On the other hand, the existence of a conflict of interest may only become evident at a management or oversight level at or after the point where a regulatory, ethical, or other breach occurs (a neglect of duty), or after specific allegations relating to conflicts of interest are made. In such circumstances it is important to separately consider a conflict of interest and any possible wider ethical breach.

Conclusions

Conflicts of interest damage citizen trust in public officials and institutions both because neglects of duty that may flow from them and the negative effects they have on public perceptions of integrity and impartiality, but reasonably-grounded perceptions alone are sufficient to undermine the effectiveness of the public sector. Thus, the capacity of a conflict of interest to influence the performance of duty makes it problematic whether or not it is actualised in a breach of duty because actions or decisions taken in a conflict of interest situation are tainted in the public eye.

The two empirical studies undertaken for this paper demonstrate a lack of clear understanding about the nature of the problem of conflict of interest and of appropriate ways of dealing with it on the part of street-level police officers and public sector employees. A finding of particular concern was that misunderstandings often extended to senior police ranks, and management and oversight levels within the broader public service. Confusion is evident about the important distinction between: (1) having a conflict of interest, (2) taking official actions or decisions when one has a conflict of interest, and (3) using an official position to pursue a private interest in a manner which is at variance with official duties. All three of these elements may present problems for public sector ethics and administration, but the evidence shows that this is often not well understood.

In policing, conflict of interest impinges on activities across the spectrum of police duties, including use of confidential police information, misuse of police resources, inappropriate involvement in police processes, and inappropriate use of police powers in a range of contexts. In the broader public sector, conflict of interest was shown to encompass a broad range of public sector practices including tendering and awarding of contracts, procurement of assets and other items, retirement and disposal of assets, and other transactions. The analysis in relation to both studies identified several categories of private interests that are at the root of many problems.
Inadequate recognition and management of conflicts of interest results in unsatisfactory levels of organisational and social accountability. Effectively dealing with the problem requires a combination of improved regulation, management action, ongoing ethics training to raise awareness of the issues, and development of ethical and accountable cultures within the public sector. Social accountability requires all players to be sufficiently attuned to conflict of interest issues so that they are dealt with in a way that earns and enhances trust in public sector institutions.

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