

CONFLICTS OF INTEREST

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The greatest threat to our security is not SARS or terrorism, but distrust of government. This goes far deeper than disdaining leadership squabbles. We never did like politicians. Australian police have been repeatedly exposed as corruptible. Governments in three states- NSW, Queensland and Western Australia - have had to set up anti corruption bodies to protect the integrity of public decision making from erosion by officials' private interests. The likelihood of conflicts of interest has never been as great, as governments increasingly form partnerships and develop relationships with business and the non profit sector to achieve their public policy goals. The moat of values is increasingly muddied.

At the same time, slippery values and an incapacity to identify, eliminate or manage conflicts of interest are very obvious, whether of the outright, 'children overboard'-style, or lies, or the rambling incoherence of Rodney Adler when he was asked to tell the Royal Commissioner how he distinguished between his own and his company's interests. When a major management consultancy firm can't foresee and prevent the realisation of the risk of an inherent conflict of interest in its offering consulting and auditing services to the same client, the public should be concerned. The failures of government and the private sector, whether that be the financial planning industry, AMP, HIH, Enron or the tobacco industry and its advisors – wound not only the wallet, but our willingness to work together, too.

Having a conflict of interest is not, in itself, wrong. It has the potential for wrongdoing and corruption, which must be avoided, eliminated or managed. We are not very good at this in Australia, though our relative isolation, interlocking loops of power elites, the increasing mobility of employment between the public and private sectors, the rising numbers of joint projects and temporary public offices, and the relatively small numbers of individuals making and influencing

public decisions, offer so much opportunity for discretionary and casual misuse of power. In Australia perhaps the narrow range of relationships are the most fertile ground for conflicts of interests. In a small town there are nothing like six degrees of separation between business, government and social cliques.

Recognising conflicts of interests and their potential risk requires distance. Dealing with them demands clarity, transparency and more than the language of integrity and the public interest. It is a problem not only in the small-town cultures of most of Australia but in complex cities and in more densely populated regions, such as Europe, because economic unions will only cohere if their members can trust each other enough.

That is one of the reasons the OECD set up a project for managing conflict of interest in the public service. Its recently released draft Guidelines, discussed in a Sydney workshop with anti corruption and public sector commissioners from across Australia and New Zealand on 2nd June, led by one of their authors, Janos Bartek, adopted a generic definition of conflict of interest:

“A conflict of interest’ involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which *could* [emphasis added] improperly influence the performance of their official duties and responsibilities.”

Note the use of the word ‘could’. Finding that you have a conflict of interest is not a revelation of wrongdoing. Bartek described the fact of a conflict of interests in terms of Chess: when you find that your King is in check, the situation must be resolved, and if it is not the consequence will be the end of the game.

A conflict of interest is potential, if the public officer is never in a position to make a decision which each interest could affect. If the elements of the definition are met, though, there is an actual conflict of interest, even if the public official with

conflicting public and private interests in, say, the benefit of awarding a contract to a friend or future political mentor which may be at odds with achieving the best price for the public purse, was not in fact influenced by these personal preferences.

If he was, the ‘conflict of interest’ has already become misconduct, abuse of office or at worst, corruption. But if it is managed properly; if it is identified and acknowledged, and adequate steps are taken both to make sure that misconduct does not in fact result, and that it is made apparent that they have been taken, then the conflict of interest has been managed to meet the true aim of public service, the protection of the common good, and of public service ethics, the preservation of public trust in their government.

It would be helpful if we had Australian standards for recognising and managing conflicts of interest. NSW’s ICAC and the Queensland CMC are working to produce a tool for use for this in Australia. It is timely. Most of Australia’s ‘corruption’ scandals have developed from cosy arrangements among powerful men to whom ethical edges have become smooth under the gentle buffing on the conference tables and in the boardrooms of power. That seems to be how even men standing on the high moral ground in religious institutions failed to recognise the conflict of interest between their duty to protect the rights and interests of sexually-abused children, their duty to their fellows and colleagues and their personal relationships with them and their families, and the interests of the religious institution in limiting its financial legal liabilities, and fell into error.