



Information Fact Sheet 8

Conflicts of Interest

The Code of Conduct for Justices of the Peace

The Code of Conduct for Justices of the Peace (JPs) outlines the general behaviour expected of JPs and under the heading Conflict of Interest states:

- We will disqualify ourselves from any proceedings in which our impartiality might **reasonably** be questioned; and
- If it is seen that a conflict may arise, we will disclose all actual and potential conflicts of interest known to us.

What is a conflict of interest?

In a recent Royal Commission, Commissioner Heydon considered what constitutes a conflict of interest and in his reasons for decision handed down on 31 August 2015, Commissioner Heydon cited the test set out in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 344 [6]. In that case, Gleeson CJ, McHugh, Gummow and Hayne JJ said:

“... a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.”

As a JP, conflict of interest may arise between your duty as a public officer and your personal or private interests. Many of you will come across conflict at some time. How these conflicts are managed and identified are important.

Threats to your perceived independence can arise if you, for example:

- Witness an affidavit for a family member or for a family business;
- Witness property development documents regarding land you or your family are interested in purchasing;

- Issue a warrant on a business competitor or someone you have a personal connection with;
- Perform a function as a JP where you have prior knowledge of the matter, such as witnessing the event;
- Performing a function as a JP where you or your business will financially benefit or which advances personal or business interests;
- Presiding in court where you have personal knowledge of the accused or the victim (i.e. family member, friend or work colleague).

How do you determine if you have a conflict of interest?

When considering whether a conflict of interest exists, ask the following questions:

- Have I assisted this person in the past?
- Do I know the person before me?
- Do I have a personal or private interest that may conflict, or be perceived to conflict with my public duty?
- Could there be benefits for me now, or in the future, that could cast doubt on my objectivity?
- How will my involvement in the decision/action be viewed by others?
- What would be the consequences if my involvement was questioned in public?
- Does my involvement in the decision appear fair and reasonable in all the circumstances?

What do you do if you think you have a conflict of interest?

Simply knowing someone does not automatically preclude you from dealing with a matter. It is possible, especially in smaller locations, that the accused person or victims are known to you or that you have dealt with them before. The person/s may also be a well-known sports person or community member. In these situations you need to ask:

- Does my knowledge of this accused person affect my ability to make a just and fair decision without malice or favour?
- How will my involvement be viewed by others?

Where you perceive that there is a conflict of interest you may ask the person to find another JP.

In the case of a matter before the court you should advise the court officer prior to the court commencing. If the identification of conflict arises during court you should inform the court, record the disclosure of the conflict of interest and remove yourself from the matter altogether.

Conflicts that could arise when issuing a Search Warrant

The issue of a search warrant is a serious matter, because it authorises interference with the privacy, rights and liberty of an individual.

JPs must be careful when exercising their discretion to issue a warrant and strict guidelines must be followed especially in respect to any real or perceived conflict of interest.

For this reason, when issuing a search warrant you should also consider:

- Your connection if any, with the person requesting the warrant.
- Your connection if any, with the person who is the subject to the warrant.
- The connection if any, with your private business.
- Any benefits for you now or in the future that could cast doubt on your objectivity when issuing the warrant?

For example, where a vehicle is seized under a warrant and the vehicle is subsequently towed away. If the search warrant is issued by a JP operating a private tow truck business involved in the removal of the vehicle, the JP has received a direct financial benefit for the performance of that task and under these circumstances, a conflict of interest has occurred.

Finally, when issuing a search warrant, to avoid a conflict, **you must never attend the execution of a warrant even when requested.**

For more information on this Fact Sheet, please refer to the Justice of the Peace Handbook available on www.dotag.wa.gov.au. Alternatively, you may contact:

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