

# FACT SHEET

## PUBLIC INTEREST

### THE MEANING OF THE TERM 'PUBLIC INTEREST'

The concept of the 'public interest' has been described as referring to considerations affecting the good order and functioning of the community and government affairs, for the well-being of citizens. The expression 'for the common good' is also used.

What is in the 'public interest' is incapable of precise definition as there is no single and immutable public interest. In some ways it is easier to make general statements about what is not in the public interest than what is in the public interest.

For example it can be said that the public interest is distinguishable from a private interest because it extends beyond the interests of an individual (or possibly even a group of individuals) to the interests of the community as a whole, or at least a particular group, sector or geographical division of the community.

However, even such a statement must be qualified because there are some circumstances where an individual's private interests – in privacy and procedural fairness, for example – are regarded as being in the public interest.

### SERVING THE PUBLIC INTEREST

Public officials should perform their official functions and duties, and exercise any discretionary powers, in ways that promote or preserve the public interest.

How do they do this?

As a first step, public officials must determine the public interest as it applies to them by referring to the purposes for which their organisation was established and the functions they and their organisation are required to perform.

They should consider:

- any enabling legislation setting out objectives, purposes or functions of the organisation
- relevant government policy
- their organisation's corporate plan or other relevant internal policy statements
- the duty statement for their position.

### BALANCING INTERESTS

It would be true to say that what is in the public interest often depends on the particular circumstances, and each circumstance raises a range of considerations that often conflict.

Sometimes conflicting public interest considerations need to be balanced.

Where such conflicts exist, it may be possible to address them through compromise or prioritisation. In other circumstances it may be necessary to choose one option at the expense of another. Sometimes it may be more appropriate to choose the 'least worst' option – the decision that causes the least harm rather than the most good.

One way of looking at our current system of government is that it provides a process through which conflicting points of view of what constitutes the 'public interest' can be identified and considered in the development of policy and the making of decisions.

A fundamental rationale for the parliamentary process of debate, for example, is to allow the community's elected representatives to assess competing interests and make informed decisions that are in the public interest.

The establishment of different government agencies to pursue goals which may conflict with each other from time-to-time also illustrates this point. Each organisation still has a legitimate role to play and

each of them contributes to decision-making in the public interest by advocating their point of view.

You could even say that the common law (as established by judges over time) is also a result of a process through which conflicting points of view are balanced up and a decision in the public interest is reached.

Every policy decision, such as a decision to build a road or to approve a development application, requires a balancing of interests, at least to some extent. In most cases there will be winners and losers. The decision-maker needs to consider all of those who may be affected as individuals but more importantly how the community at large may be affected.

The public interest can mean different things or be applied in different ways in different circumstances. The kinds of conflicts that often arise are:

- Where a decision would advance the interests of one group, sector or geographical division of the community at the expense of the interests of another. Such a decision can be in the public interest in certain circumstances. For example, granting resident parking permits near popular destinations may be in the public interest even though it inconveniences non-residents, because it helps to ensure residents are not overly inconvenienced by people visiting nearby areas.
- Between two government organisations responsible for advancing different causes which both provide some benefit to the public. For example, it is likely that in many respects a body responsible for protecting the natural environment and a body responsible for harvesting forestry products have equally valid but conflicting views about the public interest.
- Where a decision requires a balancing of one public interest consideration over another, such as the public interest in providing access to government documents against the public interest in preserving the security of sensitive information (relating to law enforcement, for example).

## CONFLICT BETWEEN PUBLIC AND PRIVATE INTERESTS

Sometimes there is a conflict between the public interest and a public official's private interest. These circumstances are simpler to resolve. Public officials must always act in the public interest ahead of their private interests and must endeavour to promote confidence in the integrity of public administration.

They must, as a matter of course, avoid situations where their private interests conflict, might potentially conflict, or might reasonably be seen to conflict with the impartial fulfilment of their official duties. Where conflicts between public and private interests cannot be avoided they must be appropriately disclosed and managed.

### FURTHER INFORMATION

For further information, see also:

- Good Conduct and Administrative Practice – Guidelines for state and local government, NSW Ombudsman, August 2003
- Fact Sheet 3 – Conflict of interests, NSW Ombudsman, July 2003.

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