

Aboriginal and Torres Strait Islander Elected Body - Conflicts of Interest Policy Advice



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Issued By: WhoG IRPSE, WCAG, CMTEDD

Purpose

1. The purpose of the Aboriginal and Torres Strait Islander Elected Body Conflicts of Interest Policy Advice is to provide guidance on the management of conflicts of interest (whether they be perceived, potential or actual) for ACT public servants who are also members of the Aboriginal and Torres Strait Islander Elected Body (the Elected Body).

Application

2. This advice applies to all ACT public servants who are elected to the Elected Body. This advice may also be useful to ACT public servants who are considering running for election as a member of the Elected Body.
3. Former ACT public servants who are elected to the Elected Body should be aware of their obligations as former staff not to disclose any information gained in the course of their employment without express permission of the relevant Director-General. For further information, see section 153(2) of the Crimes Act 1900.

Background

4. The election of an ACT public servant to the Elected Body has the potential for conflicts of interest to arise between their duties to the Elected Body and those required in their employment with the ACT Public Service (ACTPS).
5. Where a public servant is a member of the Elected Body, they have dual obligations relating to both their employment with the ACTPS, and to their role on the Elected Body.
6. Under the *Public Sector Management Act 1994* (PSM Act) there is a general principle that the obligation of the public servant to their ACTPS employment has primacy over secondary employment, interests or engagements. These obligations continue if a public servant becomes a member of the Elected Body.
7. Election to the Elected Body is a prestigious and important role within the community, however for ACT public servants, membership of the Elected Body is considered to be a role which is secondary to their appointment as an officer of the ACTPS.

Key Legislative and Other Provisions

8. Section 9 of the PSM Act details the requirements of a public employee (which includes members of the Elected Body) in performing his or her duties, including the management of conflicts of interest. Section 9 of the PSM Act sets out that:

if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties –

(i) disclose the interest to his or her supervisor; and

(ii) take reasonable action to avoid the conflict;

as soon as possible after the relevant facts come to the employee's notice;

(m) not disclose, without lawful authority –

(i) any information acquired by him or her as a consequence of his or her employment; or;

(ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment.

9. All ACTPS employees are also bound by the [ACT Public Service Code of Conduct](#), which provides guidance on the sorts of behaviours expected of employees consistent with section 9 of the PSM Act. A breach of the ACTPS Code of Conduct equates to a breach of section 9 under the PSM Act.
10. Under section 27(2) of the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (Elected Body Act), members of the Elected Body are required to disclose where they have a material interest in an issue being considered, or about to be considered, by the Elected Body. The member must disclose the nature of the interest at a meeting of the Elected Body as soon as practicable after the relevant facts come to the member's knowledge.
11. In accordance with section 27(2) of the Elected Body Act, the disclosure must be recorded in the Elected Body's minutes and, unless the Elected Body otherwise decides, the member must not:
 - a. be present when the Elected Body considers the issue; or
 - b. take part in a decision of the Elected Body on the issue.
12. Schedule 1 of the *Aboriginal and Torres Strait Islander Elected Body Regulation 2017* (Elected Body Regulations) contains the Code of Conduct for Elected Body members. Under section 1.3, an Elected Body member must take all reasonable steps to avoid any actual or perceived conflict of interest in exercising the member's functions under the Elected Body Act.
13. The [Governance Principles – Appointments, Boards and Committees](#) sets out the requirements for recognising and managing conflicts of interest, including guidance for public servants appointed or elected as board members. The Governance Principles also provide advice and guidance on pre-election and election periods.
14. For further information and guidance in relation to the management of conflicts of interest, please refer to the [Whole of Government Conflict of Interest Policy](#).
15. Under section 153(1) of the *Crimes Act 1900*, a current ACT public servant commits an offence if they disclose any information gained in the course of their employment without express permission of the relevant Director-General.

Responsibilities

16. A public servant that is considering to be a candidate to be elected to the Elected Body should first refer to the PSM Act and discuss with their direct supervisor whether a potential conflict of interest could arise.
17. An ACTPS employee who is elected to the Elected Body must seek approval for secondary employment prior to taking up their position on the Elected Body. A [Second Job Application form](#) will need to be completed and agreed by their supervisor in accordance with section 244 of the PSM Act. Such approval will provide details as to the appropriate and reasonable use of government resources in performing Elected Body functions.
18. Under section 6 of the Elected Body Regulations, all Elected Body members must table a declaration of pecuniary and personal interests. The Declaration of Private Interests form should be completed and tabled at the Elected Body meeting and provided to the Minister.
19. The supervisor of an ACTPS employee who is elected to the Elected Body must ensure that such employees are aware of the requirement to adequately manage any conflicts of interest. This

includes that those employees, in their capacity as Elected Body members, should not deal with matters relating to their ACTPS employment. It also includes ensuring that the performance of their role as an Elected Body member does not impact on the performance of their role as an ACT public servant.

20. The appropriate Senior Executive Responsible for Business Integrity and Risk (SERBIR) in each relevant directorate should brief and provide guidance to employees who are Elected Body members. In conjunction with the employee and supervisor it may be appropriate to identify any issue associated with the employee's position and how to manage them. Further information regarding the role of the SERBIRs can be found in the [Whole of Government Conflict of Interest Policy](#).
21. Elected Body members who are ACT public servants should complete a conflict of interest declaration at the first meeting of the Elected Body following an Elected Body election. The only way for ACTPS employees on the Elected Body to effectively manage new conflicts of interest that arise during an Elected Body member's term is to:
 - a. not participate in closed session Elected Body discussions that relate to their current business area. It is acceptable to comment on other business areas within their Directorate in this environment. The current practice of Elected Body meetings is to declare conflicts of interest related to the meeting agenda, have it recorded and, as necessary, not participate in the meeting discussion or decision making; and
 - b. not comment in public forums about any matter relating to their Directorate. Public forums are considered to be open community discussions or formal Elected Body hearings that are open to the public.

For example, a Justice and Community Safety (JACS) employee from Corrections should not participate in any discussions relating to Corrections but may comment on matters relating to the Emergency Services Agency in a closed session; however, it would be inappropriate to do so in a public forum as both areas fall within the JACS directorate.

In cases where the Elected Body meets with a Minister, individual members should refrain from discussing any matter which directly impacts on their individual work situation. Broader issues may be discussed provided any personal interest is declared.

22. It is strongly recommended that Elected Body members who are also ACT public servants, meet with their respective Director-General to discuss any perceived or actual conflicts of interest prior to Elected Body hearings to identify the best ways to manage those conflicts of interest.
23. It would be inappropriate for an Elected Body member who is an ACTPS employee to ask questions of an employee from their directorate at public forums such as Elected Body hearings or during community forums. For example, it would be inappropriate for an Elected Body member who is an employee in Housing ACT to put questions to any other Community Services Directorate employee appearing at the Elected Body hearings.
24. There are no circumstances where it would be appropriate for any information gained by an employee in the course of ACTPS duties, personal or otherwise, to be disclosed outside of the workplace. This applies even if this information is of direct interest to the Elected Body such as diversity programs including Indigenous traineeships. The necessity to manage conflicts of interest is heightened if the employee works in a business area that has access to sensitive personal information. Examples include areas that have access to staff personnel files or client case management files relating to Corrections, Youth Justice, health records or student records. This section in no way limits the ability of an Elected Body member to make a Public Interest Disclosure regardless of how the member comes into possession of the information which is the subject of the disclosure. Any such disclosure should be made in accordance with the *Public Interest Disclosure Act 2012* (Public Interest Disclosure Act).
25. The responsibilities outlined in this policy advice are in addition to Elected Body members' existing obligations under the Elected Body Act and the Elected Body Regulations.

Addressing Complaints

26. Elected Body members should be briefed by their portfolio of which they have responsibility for, on where to take complaints. This may include:
- for staffing matters, the relevant directorate Human Resources or Corporate areas;
 - for service delivery matters, the directorate's usual complaints mechanism; and
 - for concerns in relation to disclosable conduct via an identified disclosure officer, in accordance with the Public Interest Disclosure Act.

References

27. The relevant legislation, policy and employment arrangements underlying this operational guidance are:
- [Public Sector Management Act 1994](#), particularly section 9: Code of Conduct
 - [ACT Public Service Code of Conduct](#)
 - [Aboriginal and Torres Strait Islander Elected Body Act 2008](#)
 - [Aboriginal and Torres Strait Islander Elected Body Regulation 2017](#)
 - [Crimes Act 1900](#)
 - [Whole of Government Conflict of Interest Policy](#)
 - [Governance Principles – Appointments, Boards and Committees](#)
 - [Second Jobs Application form](#)
 - ACT Aboriginal and Torres Strait Islander Elected Body Disclosure of Interest Form

Further Information

28. For further information please contact Senior Director, Whole of Government Industrial Relations and Public Sector Employment Group, Workforce Capability and Governance Division at the Chief Minister, Treasury and Economic Development Directorate.

Review

29. This policy advice is due for review before the term of each Elected Body, or earlier where there are changes that affect the operation of this policy advice.

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Approval Authority

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On behalf of the Head of Service
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