

# ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED BODY CONFLICTS OF INTEREST POLICY

## Purpose

1. To provide advice in relation to the management of potential conflicts of interest for ACT public servants (public servants) who are also members of the Aboriginal and Torres Strait Islander Elected Body (the Elected Body).
2. For clarity, this policy is not designed to regulate or constrain the manner in which the Elected Body is to conduct its business.

## Application

3. This advice applies to all ACT public servants who are elected to the Elected Body.
4. 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 the express permission of the relevant Director-General.

## Background

5. The appointment of an ACT Public Service (ACTPS) employee to the Elected Body has the potential for conflicts of interest to arise between duties for the Elected Body and those required in their employment.
6. 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. 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. Appointment 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.

## Principles

8. Section 9 of the PSM Act details the requirements of a public employee (which includes appointees to 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:
- (j) 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. The most effective way to manage a conflict of interest is for an employee to declare the conflict and to distance themselves from the source of the conflict.

## Responsibilities

10. An ACTPS employee who is appointed to the Elected Body must seek approval for secondary employment prior to taking up their position on the Elected Body. Such approval will provide details as to appropriate and reasonable use of government resources in performing Elected Body functions.
11. The manager or supervisor of an ACTPS employee who is appointed 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.
12. The appropriate Senior Executive Responsible for Business Integrity and Risk (SERBIR) in each relevant directorate should brief and guide 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.

13. 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, but 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.

14. 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.
15. 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.

16. 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.
17. Absences from the workplace to attend Elected Body meetings and events must be approved by an employee's supervisor/manager. Such approved leave must be appropriately reflected as flex time or other approved leave type. If the employee is paid in their capacity as an Elected Body member during the absence, the appropriate leave type is leave without pay.

### **Addressing Complaints**

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

### **Further Advice**

19. Further enquiries may be directed to the Senior Policy Officer, Workforce Capability and Governance Division, Chief Minister Treasury and Economic Development Directorate, on 6205 2391.

## Legislative Reference

20. The key principles of this policy are consistent with:

- *Public Sector Management Act 1994*
- *Aboriginal and Torres Strait Islander Elected Body Act 2008*
- ACT Government Boards and Committees Handbook
- ACT Aboriginal and Torres Strait Islander Elected Body Disclosure of Interest Form



Bronwen Overton-Clarke

Commissioner for Public Administration  
on behalf of Kathy Leigh, Head of Service

25 July 2016

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**PAYMENTS AND ABSENCES FOR ACTPS EMPLOYEES WHO ARE MEMBERS OF THE ABORIGINAL AND TORRES STRAIT ISLANDER ELECTED BODY**

- An important principle in public administration is the transparent and appropriate expenditure of public money.
- Where an ACT public servant is appointed to an ACT Board, Committee, Tribunal or elected position that attracts remuneration, it is important to avoid “double dipping”. That is, you can’t be paid simultaneously for two separate public service/sector roles.
- Given that Elected Body members receive payment for their Elected Body role under Remuneration Tribunal Determination 12 of 2016, it is important that they are not paid in their ACTPS role when engaged in Elected Body meetings.

[https://www.remunerationtribunal.act.gov.au/\\_data/assets/pdf\\_file/0010/1041868/Amended-Determination-12-of-2016-PTPOH.pdf](https://www.remunerationtribunal.act.gov.au/_data/assets/pdf_file/0010/1041868/Amended-Determination-12-of-2016-PTPOH.pdf)

Aboriginal and Torres Strait Islander Elected Body	Chair (per annum)	\$23,970
	Deputy Chair (per annum)	\$19,180
	Member (per annum)	\$14,385

- Annex D3 of the core Enterprise Agreement sets out that an ACT public servant can access leave at full pay to attend Elected Body meetings, **provided that they do not receive a fee for attending such a meeting.**
- As ACTPS officers receive their Elected Body annual fee on a fortnightly basis through the payroll system, leave taken from their public service roles for Elected Body meetings must be taken as unpaid leave.
- The Enterprise Agreement entitlement is for this leave to count as service for all purposes.
- There is no mechanism to apply for leave without pay through HR21. ACTPS officers taking leave to attend Elected Body meetings must therefore submit a manual form for leave without pay on each occasion. It should be noted on the form that “leave is to count as service under Enterprise Agreement Annex D3”.