

Conflict of Interest Policy

Tool 1 – Examples and Definitions

It is recognised that public confidence is vital to the proper operation of the ACT Public Sector (ACTPS) and this may be jeopardised if the community perceives a conflict of interest exists. It is therefore necessary that either perceived, potential or actual conflicts of interests are effectively managed in a transparent and impartial manner.

There is a vast variety of roles and responsibilities within ACTPS. The purpose of this guidance material is to provide examples of the differing conflicts of interest and situations that may arise. Understanding the types of conflict of interest you are dealing with will help determine the most appropriate method in managing the situation.

This document is to be read conjunction with the ACTPS *Conflict of Interests policy*.

Perceived conflict of interest

A perceived conflict of interest arises when it appears to an outsider that an employee's private interest could improperly influence the performance of their duties, but this is not the case.

Examples include:

- > you are volunteering for a community organisation, which has just been awarded a grant by your work area; or
- > you have won a spare car park space under the office building that was drawn through a ballot by the Chief Executive Officer, to whom you are related to.

While no actual conflict may have occurred in these situations, it may still cause staff to lose trust in the integrity of the organisation.

Potential conflict of interest

A potential conflict of interest arises where an employee has private interests that are of such a nature that a conflict of interest would arise if the employee were to become involved in official responsibilities related to those interests in the future.

Examples include:

- > you have just commenced working in the land agency, your partner works in a building firm who regularly submits land applications; or
- > you have a paid or unpaid commitment outside of your employment that involves you taking frequent or prolonged absence from your paid employment.

Actual conflict of interest

An actual conflict of interest is where the improper influence is occurring or has occurred in the past. An actual conflict of interest can arise when an employee's decision-making responsibilities are compromised or affected by their private or personal interests.

Examples include:

- > approving a development application for a company that you own shares in;
- > providing professional services to/or representing clients who have dealings with you in your role;
- > awarding a contract to a company that your family works for; or

- > receiving free tickets to sporting or entertainment venues from clients such as developers, builders or commercial businesses, etc.

An actual conflict of interest may also exist in recruitment processes. If a panel member is aware that a family member or close personal friend is applying for a position, the conflict must be declared to the delegate as soon as possible.

Private/Personal interests

Private/personal interests are those interests that can bring benefits or disadvantages to public officials/non-public officials as individuals, or to others whom they may wish to benefit or disadvantage. Private interests may be pecuniary or non-pecuniary.

A conflict of interest may be perceived if you have significant personal/ family relationships with clients, contractors or other staff working in the same (or a related) organisation.

Example

You conduct risk assessments of individuals who have applied for registration under the *Working with Vulnerable People Act 2008* (ACT). Your partner, who works in the disability sector, submits an application for registration under the *Working with Vulnerable People Act 2008* (ACT).

In this case, your private interests as a partner have the potential to, and may be perceived to conflict with your duties as a public servant. Your obligation under section 9 of the *Public Sector Management Act 1994* requires you to declare the conflict to your supervisor, and take reasonable action to avoid the conflict, e.g. ensuring that you do not in any way deal with the risk assessment of your partner's application for registration.

Pecuniary/Financial

Pecuniary interests involve an actual or potential financial gain or loss. They may result from the employee or a related party or close friend owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Money does not need to actually change hands for an interest to be pecuniary.

Example

A conflict of interest exists where a staff member, who has budgetary responsibilities for an organisational unit, also has a personal interest (or a person with whom the member has a close personal relationship has a personal interest) in an activity that is to be funded out of that unit.

A pecuniary conflict of interest may also arise where second job arrangements limit performance in your public duties.

Non-pecuniary

Non-pecuniary interests do not have a financial component but may arise from personal or family relationships or involvement in sporting, social, religious or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias your judgement or decisions.

Example

Using the ACT Government logo to increase the profile of a community choir you have organised independent of Government sponsorship and without approval would constitute a non-pecuniary conflict of interest and a breach of the acceptable use of Government logos.

A potential/perceived conflict of interest exists where a personal friend from your sporting club is purchasing a house/land package from a builder in a Suburban Land Agency Estate, and you are involved in the development or sale process in relation to the house or land

Conflict of duties/roles

Another type of conflict of interest is a conflict of duties or responsibilities. There are two situations to consider when assessing a conflict of duty. The first is where an employee has multiple roles or 'wears two hats'. In addition to their principal job, an employee may find that part of that job involves taking on another public sector or community-based role as well.

A common example is when a position in ACT Government includes being a member of a board of a statutory authority for which the Directorate or your position has some responsibility.

The conflicts in these circumstances, where there are competing interests, are not always recognised because no private interest is involved or apparent.

The second situation, which often arises from an employee having multiple roles, is the problem of employees acquiring confidential information in the course of their principal role that could be useful in relation to their work in another role.

The risk of conflicts of duty is increased as it may be difficult to keep multiple roles separate. The potential result of conflicts of duties could result in poor performance, improper or unlawful decision-making, misuse of Territory information, breach of intellectual property and/or the creation of bias for or against another person or group.

Whenever avoidable, an employee should not have roles with a competing relationship or where one has a regulatory or review role in relation to the other.

Conflicts of duties may be unavoidable in some instances such as in small communities where staff numbers are limited or where there is a lack of competition/specialist skills.

It is therefore important that roles are structured to separate functions and areas of work from each other and are adhered to and monitored by staff and management in those roles.

High risk conflict of interest areas within the public sector

Conflicts of interest may occur in any part of the ACTPS; however some functions and activities are higher risks than others and may require increased risk mitigation measures. Some high-risk public-sector functions and activities include:

- > Recruitment and management of employees;
- > Procurement, contract management and tendering;
- > Internal committee governance;
- > Allocation of public services or grants of public funds (e.g. sponsorships);
- > Regulatory roles, including:
 - inspecting, testing, regulating or monitoring standards, business, equipment or premises;
 - issuing, or reviewing the issue of, fines or other sanctions;
 - issuing qualifications or licences.
- > Positions where concurrent or other employment occurs (e.g. board positions, part-time or casual employment etc);
- > Functions and activities undertaken by contractors;
- > Collection, retention, access, use or distribution of confidential information;
- > Provision of goods or services, for example:
 - where demand frequently exceeds supply;
 - in a highly specialist area;
 - case management of clients on an individual basis; or
 - provision of subsidies, financial assistance, concessions or other relief to those in need;

- > Exercise discretionary power in any form of decision-making, for example:
 - make determinations or hand down judgement about individuals or disputes;
 - have discretion concerning planning and development applications or zoning decisions.
- > Private/Public Partnerships; and
- > Regular contact with individuals in high-risk industries (e.g. gambling and liquor industries etc).

Close Personal Relationships

The impact of many relationships, linkages and associations can be subjective. Therefore, an employee's own judgement cannot be relied upon exclusively in determining a conflict of interest. What is important may not be what the employee thinks, but what a reasonable and independent observer would think or conclude knowing all the facts. This is why personal relationships must be declared.

A close personal relationship is one in which there is a close connection between staff members or a staff member and client, and is not limited to where a pecuniary interest exists.

Close personal relationships may include, but are not limited to:

- > relationships with family members, including wife, husband, former wife or husband, intimate partner/s, former intimate partner/s, parent, step-parent, foster parents, foster children, foster siblings, sibling-by-birth, step-sibling, daughter, step-daughter, son, stepson, grandparent, step-grandparent, aunt-by-birth, uncle-by-birth and cousin-by-birth;
- > relationships between a family member and a client;
- > personal links between a friend and a client;
- > friendships with personal links outside of the workplace (may include social connections with clubs, religious groups, sporting teams);
- > relationships where one person is financially linked with or dependent on the other, relationships with a history of conflict between parties; and
- > incidental contacts with a client such as at a social function.

Some examples of matters that would be conflicts of interest if you are involved in any decision or action about them are:

- > taking part in assessing a tender application where you have, or have had, a close personal relationship with a person, or organisation that has submitted a tender application;
- > involvement in the development of policy which would have a direct impact on yourself or your family's activities such as a family business, personal involvement with affiliations or groups;
- > your spouse or a close friend is an applicant for a job with your Business Unit, and you are on the selection panel or the delegate;
- > personal relationship with a reporting staff member, peer, supervisor or higher authority in the operational chain of command (e.g. becoming responsible for supervision of family members, working in the same business unit/section);
- > any decision-making process (e.g. exercising a delegation) where a personal relationship with affected parties (including their referee or business employer) exist;
- > you (or a relative, or a close associate) hold shares or have a position in a company bidding for government work; and
- > you use government property or equipment, information, your position or government affiliation to pursue personal interests or the interests of another organisation.

Not a conflict of interest

Where an employee develops a positive working relationship with a colleague that becomes a friendship, it is not a conflict of interest. However, if the relationship is such that it would place either of these individuals in a position that may compromise, or appear to compromise the proper discharge of their official duties, then the conflict must be notified and managed appropriately in accordance with the ACT Public Service Conflict of Interest Policy.

Conflict of Interest Scenarios

Examples of some conflicts of interest are outlined below:

1. A Project Manager undertaking a new major project is allocated additional funding to allow for the recruitment of an administration officer on a six-month contract. The manager is an active member of a sporting club committee and is aware that one of the committee member's is experiencing financial difficulties and is in search of work. After a committee meeting, the manager suggests to the woman that a position is soon to be advertised in her team and recommends applying. The manager declares a conflict of interest and does not participate in the interview process however she informally recommends the woman to her staff member who will be sitting on the interview panel.
2. A cultural festival spanning two months has been arranged to showcase Canberra locally, nationally and internationally as a thriving and innovative arts centre. The creative director of the festival has been contracted for his local ties and international acclaim. In effort to attract broad interest, involvement has been sought from varying art disciplines and in some instances, this includes requests for national and international artists. One of the international artists approached is a close friend of the creative director.
3. The stepbrother of a policy officer is looking to purchase land under a Government joint venture. The policy officer works in an area unrelated to land purchase but has acquaintances that do and requests that priority is given for the release of a particular block of land.
4. An ICT specialist has recently started a personal business. Over the course of her 15 year career with the ACT Government, she has developed close working relationships and networks with colleagues and clients. When mentioning her new endeavours, a colleague expressed interest in the services and suggested putting notices up on the staff bulletin board and the portal.
5. A taskforce team was formed immediately following intensive flooding to the region. The lead of the taskforce had significant experience with national and international emergency relief work and recovery in short turn around. One of the major local construction businesses was contracted by the Taskforce. This business was headed by the lead of the taskforce's brother-in-law but due to the limited local competition for a local business able to meet the needs of the emergency, this relationship was overlooked and not declared.
6. A local rugby team was applying for a grant to travel to Scotland to attend a specialised training camp. The president of the club that sponsors the team was also a director in the ACT Government. His position as president was widely known throughout the community.
7. A staff member tasked with issuing parking infringement notices, has come across her partner's vehicle parked without a parking ticket displayed. She and her partner are experiencing financial difficulties and, as their morning was very hectic, she was aware that he was running late for work and highly stressed. She does not impose any charges.

This factsheet has been adapted from the Chief Minister, Treasury and Economic Development Directorate (ACT Government) Conflicts of Interest Policy and Guidelines; Conflict of Interest Guidance for Organisations, Victorian Public Sector Commission.

Review

This document is an attachment to the ACTPS Conflict of Interest Policy and is due for review in line with the policy.

Document name: ACTPS Conflict of Interest Policy Tool 1 – Examples and Definitions	Prepared by: Assistant Director, Industrial Relations and Public Sector Employment, Workforce Capability & Governance, CMTEDD
Policy Number: 10/2021	Feedback to: Industrial Relations and Public Sector Employment
Issue Date: 3 June 2021	Review Date: 3 June 2024