

# Conflict of Interest Policy

## Tool 2 – Information Sheet

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 perceived, potential and actual conflicts of interests are effectively managed in a transparent and impartial manner.

The purpose of this document is to assist public servants (including permanent officers, temporary employees and casual workers), supervisors/managers and delegates in dealing with any actual, perceived or potential conflict of interests. This document is general advice only. Directorates/Agencies may have agency specific processes/procedures that needs to be followed. Employees are to check with their internal HR area and/or factsheets. For example, some business areas require a conflict of interest form to be submitted at various interaction points. Additionally, some business areas require annual or routine submissions regardless of whether they have a potential conflict or not.

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

## What to do if I have, or suspect I have, a Conflict of Interest?

### Is it a conflict of interest?

Conflict of interests include any tendency toward favour or prejudice resulting from a connection, friendship, animosity or other personal involvement that could bias your judgement or decisions.

You must ensure that your official responsibilities do not conflict, or do not appear to conflict with your personal or financial interests, including the interests of your immediate family. This does not necessarily mean that you cannot have a personal or financial interest in a matter that your directorate/agency is dealing with, but the interest must be declared.

A conflict of interest can be perceived, potential or actual as follows:

- > **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 may or may not actually be the case. In determining if a perceived conflict of interest exists, the test is whether a reasonable observer would regard the employee's actions as reasonable. It is essential that someone other than the officer make this judgement.
- > **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; and
- > **Actual** conflict of interest is where the improper influence is occurring or has occurred in the past.

A conflict of interest can be pecuniary/financial or non-pecuniary:

- > **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.

- > **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.

A **Checklist** has been developed to provide a preliminary guide to determine if you have a conflict of interest. In identifying a conflict of interest, please refer to the *ACTPS Conflict of Interest Policy* and discuss the matter with your supervisor/manager.

## Disclosure of conflicts of interest

You are required to disclose any actual, potential or perceived conflict of interest to your supervisor/manager as soon as you become aware that such a conflict may exist in accordance with your obligations under the *Public Sector Management Act 1994*. Failure to do so, or a delay in doing so, may constitute misconduct, and result in disciplinary action against you.

A **Conflict of Interest Disclosure Form** has been developed and is available on the ACTPS Employment Portal. The form requires the following details: employee details, the declared conflict of interest, the duties affected by the conflict, restrictions and strategies implemented to manage the conflict and the date and signature of the employee and their supervisor/manager. Forms should be retained as a record within the business unit (or as per your directorate specific guidelines) and may be audited.

A proactive approach to assessing and managing conflict of interest risks is used within the ACTPS. Supervisors/managers will ensure that they are aware of the conflicts inherent in their team's work and functions and monitor the risks to which their employees are exposed.

Directorates/Agencies are expected to take a proportionate approach to managing conflict of interest risks. When using the **Conflict of Interest Disclosure Form**, the conflict of interest is identified as either high, medium or low. If applicable, a management strategy will be selected and identified on the **Conflict of Interest Disclosure Form** and will require ongoing monitoring. Further information on management strategies is provided below.

Conflicts of interest forms and written declarations of no conflicts of interest may be required in certain instances prior to undertaking investigations, inspections, audits and participating on recruitment and procurement tender evaluation panels or as required in accordance with your directorate/agency policy.

If you are unsure whether a conflict of interest exists, it is recommended that you discuss your concerns with your supervisor/manager.

An undeclared potential or perceived conflict of interest can cause embarrassment to you, the Directorate/Agency and the Territory even where you have acted properly.

The key test in identifying a conflict of interest is whether a reasonable person would observe that your private/personal interest could compromise or appear to compromise the proper performance of your duties as a public servant.

Supervisors/managers will consider disclosures by applying the conflict of interest test and will support you by carefully considering whether your integrity or the Territory's reputation would be at risk of an unresolved conflict of interest if a management strategy is not implemented.

When determining the most appropriate management strategy, supervisors/managers should assess the interests of the directorate/agency, territory, employee and public. Other factors to consider include the level and duties of the employee and the nature of the conflict of interest.

Conflicts that arise in the course of a meeting (such as for any board, committee, or council) must be discussed with a management strategy decided in the meeting, with the decision made by the members who do not have a conflict of interest. Interests that are declared, the nature of the conflict of interest and how it was managed must be documented.

Chairpersons of appeal panels for employment matters are not to have a conflict of interest. In the event where a chairperson does have a conflict of interest, the responsibility to chair will rotate to the next panel member who is without conflict<sup>1</sup>.

## Dealing with an unforeseen conflict of interest

It is not uncommon to be in a meeting or forum where a matter is raised in which someone present has an actual or perceived conflict of interest. If this is the case, the individual must inform the chairperson or presiding officer of the meeting or forum of the conflict of interest. If the chairperson or presiding officer feels that it is appropriate, the conflicted person will be asked to leave the meeting or forum while matters relating to conflict of interest are dealt with. If this situation arises, it is encouraged for the conflict of interest raised to be documented on the meeting/forums minutes/records.

An unforeseen conflict of interest may also arise in recruitment and selection processes. If a member of the recruitment panel learns that a family member or close personal friend has applied for a position, the matter must be raised with the delegate as soon as possible.

## Managing conflicts of interest (your own, or a member of your team)

The minimum requirement for all conflicts of interest is that they must be formally disclosed to your supervisor/manager, in writing. After declaring a conflict of interest to your supervisor/manager, you and your supervisor/manager can together choose from the recommended management strategies listed below to ensure the conflict of interest is handled effectively and transparently.

A management strategy is to be determined and agreed upon as soon as practicable following the identification of a conflict of interest. The chosen strategy must be recorded and approved on the Conflict of Interest form.

The **Decision-making Flowchart** is available on the ACTPS Employment Portal and outlines a process to be followed and suggests a set of options for managing a conflict of interest including the following:

### Management strategies<sup>2</sup>

Strategy	What this strategy means	When this is most suitable
<b>Register</b>	You formally register details of the existence of a perceived or potential conflict of interest.	For very low-risk conflicts of interest. Where recording the conflict of interest is sufficient to maintain transparency.
<b>Restrict</b>	Restrictions are placed on your involvement in the matter to oversee part or all of the process that deals with the matter.	You can be effectively separated from parts of the activity or process. The conflict of interest is not likely to arise frequently.
<b>Recruit</b>	Recruit a disinterested third-party to oversee part or all of the process that deals with the matter.	It is not feasible or desirable for you to be removed from the decision-making process. In small or isolated communities where

<sup>1</sup> For example, see ACTPS Administrative and Related Classifications Enterprise Agreement 2018-2021, cl J3.4.

<sup>2</sup> Independent Commission Against Corruption - New South Wales.

your particular expertise is necessary and genuinely not easily replaced.

<b>Remove</b>	You are removed completely from the matter.	For ongoing serious conflicts of interest, where restriction or recruitment of others is not appropriate.
<b>Relinquish</b>	The private interest that is creating the conflict is relinquished.	Where your commitment to public duty outweighs your attachment to your private interest.
<b>Resign</b>	You resign from your position with the agency.	No other options are workable. Where you cannot or will not relinquish your conflicting private work. Where you prefer this course as a matter of principle.

## Reviewing conflicts of interests

Registered conflicts are to be reviewed and recorded by supervisors/managers and employees as per individual directorate/agency requirements or as circumstances change. It could be convenient for conflict of interests to be discussed as part of individual performance and development discussions. In instances where the situation changes and the conflict requires a new management strategy, a new disclosure form must be submitted.

## Compliance

Supervisors/managers are responsible for ensuring that employees and other ACTPS representatives are aware of their obligations and understand the ACT Public Sector Conflict of Interest Policy.

Non-compliance might range from a simple failure to register a relevant personal interest to refusal to resolve or properly manage a conflict of interest of which the employee is aware.

Non-compliance is taken as a serious matter and could constitute a failure to comply with the obligations and standard of conduct expected of an employee, set out in the *Public Sector Management Act 1994* and the *Public Sector Management Standards 2016*.

Non-compliance may result in disciplinary action in accordance with your relevant Enterprise Agreement. If you allow your private interests to influence your official duties and decision-making, it could be classified as misconduct and attract disciplinary action.

Cessation of contract services may result where conflicts of interests are not declared, appropriately managed or avoided by a contractor.

Breaches of policy can be detected through monitoring mechanisms established for this purpose. These mechanisms will include management and internal controls as well as external oversight functions, such as independent auditors or the Ombudsman.

Non-compliance may also constitute fraud or corruption against the Territory and where suspected theft or criminal actions occur, the matter may be referred to the Australian Federal Police or other relevant authorities.

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.

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