



Conflict of Interest Guidelines

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Introduction

Under the *Public Service Act 1999* (PS Act) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), all employees need to be aware of conflicts of interest and material personal interests that may arise from time to time.

Employees of the Office are employed under the PS Act and subject to the Australian Public Service (APS) Code of Conduct and Values. The APS Code of Conduct states that an APS employee must:

- take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their APS employment, and disclose details of any material personal interest in connection with their APS employment
- behave honestly and with integrity in connection with APS employment, and
- not make improper use of inside information or their duties, status, power or authority; in order to gain, or seek to gain, a benefit or advantage for themselves or any other person.

The PS Act Code of Conduct at section 13(7) requires an APS employee to take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment.

The PGPA Act at section 29 requires an official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity to disclose details of that interest. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) prescribes the requirements for how and when an official, including an accountable authority or a member of the accountable authority of a Commonwealth entity, must disclose material personal interests that relate to the affairs of the entity and the consequences of disclosing those interests.

Conflicts of interest are not wrong in themselves. It is how they are managed that is important. All conflicts of interest **must be disclosed and effectively managed**.

These guidelines are designed to provide specific guidance to employees in relation to such matters, given the importance of maintaining the independence and integrity of our Office.

Additional ACT Ombudsman *Declaration of Interest Guidelines* are designed specifically for staff in the Office working on ACT related matters and form part of the ACT's integrity framework, www.ombudsman.act.gov.au.

Conflicts of interest

A conflict of interest exists where it appears likely that an employee could be influenced or perceived to be influenced by their personal interests (or those of their immediate family members) in the performance of his or her duty. Conflicts of interests may be real, apparent or potential:

- **Real** – where a direct conflict exists between current official duties and existing private interests.
- **Apparent** – where it appears or could be perceived that private interests are improperly influencing the performance of official duties whether or not that is actually the case.
- **Potential** – where private interests are not, but could, come into direct conflict with official duties.

Conflicts of interest can be pecuniary (financial) in nature or non-pecuniary. Some examples of non-pecuniary conflicts of interest include:

- personal, social and community relationships

- family relationships
- sporting, cultural or voluntary activities and relationships
- any tendency toward favour or prejudice, such as animosity toward a person or group.

Examples of potential conflicts of interest:

- An employee deals with a complaint in which the decision maker or complainant is known to them.
- An employee has social and personal relationships with the area within an agency they are investigating or inspecting.
- An employee who is in dispute with, or currently seeking assistance from an agency in his or her private capacity, is involved in the management of complaints about that agency.
- The Office seeks to procure the services of a local business and a relative of the business owner is involved in the procurement process.
- An employee is known, for example through their public comments on social media, to hold views on a particular subject that could suggest he or she might not bring an open mind to the subject.
- An employee has a second job (paid or voluntary) in an area related to a current complaints investigation, that could suggest he or she might not bring an open mind to the subject.
- An employee is known to have received gifts from a government agency or community stakeholder group.

Avoiding and managing conflicts of interest

It is critical that Office employees do not allow their interests to influence the decisions they make, the actions they take or the advice they provide in the course of their official duties.

Avoiding conflicts is generally preferable, but in practice there may be some situations in which conflicts of interest cannot be wholly avoided and need to be managed in a way which will withstand external scrutiny.

Employees must:

- take reasonable steps to **avoid** situations where their private financial or other interests (or those of immediate family members, such as spouses/partners or dependents) could, or could be perceived to, conflict with their official duties.
- regularly **assess** whether a conflict or potential conflict of interest has arisen
- **discuss immediately** with their supervisor if they identify a conflict or potential conflict, or if a conflict is claimed by a complainant or agency – see *Declare – talk to your supervisor below*
- **determine** any arrangements that need to be put in place to manage the situation – see *Steps to be taken below*
- **formally declare** any actual or potential perceived conflicts of interest in relation to themselves or their work colleagues and use the arrangements that have been put in place to manage the situation – see *What do I need to declare below*
- **review** their personal circumstances and complete a declaration as required.

There may also be occasions where complainants (or for that matter agencies), might accuse the Office of a conflict of interest. While there may be no grounds for such a perception, it is nevertheless important to consult with the supervisor to determine whether any steps should be taken to deal with the perception.

Note:

By its very nature, the Office's work requires us to develop professional, mature working relationships with staff of other agencies. This may include face-to-face meetings, regular telephone contact and informal discussions. It would be incorrect to suggest that employees must remain at arms-length from staff of other agencies. The Office's independence must, however, always be maintained.

Employees who have significant ties to other agencies or organisations we oversight should make an appropriate declaration. The two main areas which would determine whether ties to other agencies or organisations are significant would be:

- The nature of the ties. The potential for perceived partiality is dependent on the role performed by the person in the other agency and the role now being performed by them in the Ombudsman's office. For example, administrative functions in either agency could be excluded, or where the person does not perform a review role relevant to the other agency.
- The currency of those ties. Ties covering the previous 12 months should be documented. Where an officer has held a position in an agency and retains an employment relationship with that agency, through secondment or other arrangement, that relationship should be documented.

Where a potential perceived lack of impartiality is identified the employee, in conjunction with their supervisor and SAO, must ensure that a document is prepared that outlines how the perceived lack of impartiality is to be managed through escalation/delegation/transfers.

Declare – talk to your supervisor

Where an employee identifies a conflict or potential conflict of interest has arisen their first step is to discuss the matter with their supervisor. This is because:

- it is always better to disclose and discuss a possible conflict of interest rather than conceal the matter
- there are a number of strategies that can be adopted to help manage conflicts of interest effectively and transparently

Up front frank conversations about such matters will assist the Office to identify possible issues **before** they occur.

Supervisors are expected to give guidance to the employees they supervise and should be prepared to listen and consider any possible conflict of interest or bias issues raised. Supervisors should escalate potential conflicts of interest to their SAO.

If an employee is in any doubt about whether there is a real or apparent conflict of interest, then they should err in favour of reporting it to a supervisor.

Note: If an employee's disclosure (or failure to disclose) raises concerns about a potential breach of the APS Code of Conduct, the matter should be brought to the attention of the relevant SAO/COO and HR. Please refer to the Office's [Determining Code of Conduct Breaches and Sanctions](#).

Steps to be taken

Where a potential conflict is discussed with your supervisor, but it is agreed there is no actual or perceived conflict at this time, this decision should be recorded in writing and reviewed if the situation changes (for example, the Office takes on a new function and there is now required interaction with the agency where the spouse of an employee of our Office works).

The action taken to manage a real or apparent conflict of interest will be determined according to the specific circumstances of the individual case, including the role and responsibilities the employee performs for the Office and the nature and extent of the conflict.

Action that the staff member and their supervisor should consider taking include:

- ceasing any further dealings by the employee with the complaint or matter
 - the complaint or matter should then be referred to another employee via a supervisor with the reasons for this recorded (in neutral terms).
- ceasing participation of the employee in any conversation about the case with those who continue to deal with it
- where possible, altering the employee's duties so they are no longer performing the role which may potentially put them in a conflict situation
 - where functions may not be delegated (or escalated), the potential for partiality must also be noted on the relevant papers, such as draft investigation reports and clearance/review documentation retained in files.
- allowing the employee to continue in the same role, with the Office implementing appropriate safeguards that address the real or apparent conflict of interest, such as:
 - additional clearance of recommendations arising out of an investigation
 - involvement of a disinterested third party to oversee the process
- asking the employee to dispose of their financial interests

The supervisor must document their consideration of the potential for a perceived conflict of interest and any arrangement put in place to manage this.

What do I need to declare?

Employees are required to provide information about private, financial and other interests that could, or could be seen to, influence the decisions or actions they take, or the advice they provide in the course of their official duties.

The types of interests that may need to be disclosed include

- relevant **financial or economic** interests – for example, real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income or assets, significant liabilities, private business, secondary employment or a family/private business

- relevant **personal** relationships – for example, significant relationships with government agency employees, or complainants
- **work history and/or community affiliations** – for example, employment or ties (including volunteer work) with government agencies or stakeholder groups/advocacy units within the last 5 years or for more than 12 months
- **gifts, benefits and hospitality** received from a government agency, complainants or stakeholder groups as an Ombudsman employee should be recorded on the [gifts, benefits and hospitality register](#).

If an employee is unsure as to whether a declaration is appropriate, they should discuss it with their supervisor – noting the intention here is to disclose possible conflicts arising from specific work duties so they can be managed if necessary, as opposed to preventing employees from working in a particular area.

How do I make a declaration?

All employees complete an acknowledgement of their responsibilities under these Guidelines upon commencing employment with the Office. Any conflicts of interest that exist or arise in the course of employment should be declared and addressed through the completion of the [Conflict of Interest – Disclosure Form](#). Employees must complete a declaration no later than 14 days after becoming aware of a real, apparent or potential conflict of interest.

All SES employees (including employees acting as SES for three months or more) and key non-SES employees in identified positions must make an **annual declaration** of private, financial and other interests. They must make a declaration by completing a [Declaration of Personal Financial and Other Interests](#) and submitting it to the Ombudsman. Employees in this category must also complete a new Declaration where there is:

- a change in their responsibilities or a change in the issue or subjects on which they are required to make decisions or give advice, and/or
- there is a change in their personal circumstances that could impact upon the decisions they are taking or the advice they are giving.

Human Resources will forward an email seeking the annual declaration from all SES (and relevant non SES) employees.

In some circumstances; it may be more appropriate for non-SES employees who need to declare any private, financial or other interests of their immediate family (including spouses/partners and children) to complete the [Declaration of Personal Financial and Other Interests](#) (see Section below titled *Interest Declarations for Immediate Family Members*).

Note regarding the interests of an immediate family member:

Employees **must** declare any private, financial, or other interests of their immediate family (including spouses/partners and children) that they are aware of that **could, or could be seen to, influence** the decisions or actions they take or the advice they provide in the course of their official duties. The employee must ask the family member to sign a declaration of consent indicating that they consent to the declaration of such information ([Declaration of Personal Financial and Other Interests](#)).

If the immediate family member refuses to provide consent or is unable to do so, the employee must discuss the real or apparent conflict of interest, in general terms, with the relevant SAO/COO.

SES employees must discuss the issue with the Deputy Ombudsman who will decide what further action should be taken

Further resources

Further information such as the Office's social media policy, accepting gifts, ([gifts, benefits and hospitality policy](#)) and the Ombudsman's [financial instructions](#) are available on the Your Everyday Needs section of our Intranet. Employees are strongly encouraged to review those policies in conjunction with the conflict of interest guidelines.