



Australian Government
Department of Health

Conflict of Interest Policy

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Purpose/Principles

An actual or apparent conflict of interest can undermine the credibility of a project, process or decision, which may in turn damage the reputation of both the department and Australian Public Service (APS). The department is committed to ensuring that all employees, contractors and consultants perform their duties in a fair and impartial way, and that the performance of those duties is not influenced by personal interests, private affiliations, or the likelihood of personal gain or loss.

This policy outlines the department's requirements and protocols relating to conflict of interest and aims to ensure that real or apparent conflicts of interest are identified, disclosed and managed in a transparent and accountable manner.

The policy is consistent with and should be read in conjunction with the:

- ethical framework for APS employees outlined in the [APS Values, Employment Principles](#) and the [Code of Conduct](#)
- Duties of Officials as specified in the [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act)
- relevant departmental Accountable Authority Instructions and Finance Business Rules.

Quick Guide

Section 10(2) of the [Public Service Act 1999](#) (PS Act) requires that the APS demonstrate leadership, be trustworthy, and act with integrity, in all that it does.

Sections 13(1), (4), (7), (10) and (11) of the [PS Act](#) place the following requirements on employees in connection to their employment with the department:

1. to behave honestly and with integrity
2. to comply with all applicable Australian laws
3. to take reasonable steps to avoid any conflict of interest (real or apparent)
4. to disclose details of any material personal interest
5. to not improperly use inside information or their duties, status, power or authority to gain, or seek to gain, a benefit or an advantage for themselves or any other person
6. to behave at all times in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the department and the APS.

Section 29 of the [PGPA Act](#) also imposes obligations on officials in the department to disclose details of any material personal interest that relates to the affairs of the department. An official will include an employee as well as a contractor or consultant engaged by the department to provide services to the department. Part 2-2, Division 2 of the [Public Governance, Performance and Accountability Rule 2014](#) set out further circumstances under which officials must disclose material personal interests.

Consultants and contractors must comply with any requirements regarding the declaration and management of conflicts of interest set out in their contract with the department.

Conflict of interest is not a 'one-off' issue and needs to be an ongoing consideration for employees. Employees need to regularly reassess their personal interests to determine whether any are 'material' (i.e. interests which could generate a real or apparent conflict of interest) with respect to their duties. Employees need to be aware of situations and activities which may pose greater risks for the creation of a conflict of interest.

All conflicts of interest must be identified, assessed, managed and documented, with any action taken and reasons for taking action recorded.

Conflict of interest situations should be monitored on an ongoing basis and must be reviewed whenever there is a change in an employee's personal circumstances and/or a change in work responsibilities.

Detailed Information

What is a conflict of interest?

A conflict of interest can be defined as '... a conflict between the public duties and personal interests of an employee that improperly influences the employee in the performance of his or her duties.'¹

"Personal interests" are matters connected to an individual's personal circumstances. They may cover financial (e.g. shareholdings, small business ownership, company directorships or partnerships) and non-financial private interests (e.g. personal or family relationships or associations), as well as the private, professional or business interests of individuals or groups with whom the person has a close association (e.g. spouse or partner, relatives or close friends).

Conflicts of interest may be real or apparent. A real conflict of interest occurs when there is an actual conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties. An apparent conflict of interest occurs where it appears that an employee's personal interests could improperly influence the performance of his or her duties, but this is not in fact the case.

A real or apparent conflict of interest for contractors and consultants is any matter, circumstance, interest or activity affecting them (including their personnel) which impairs their ability to provide services to the department fairly and independently, or could be perceived or appear to do so.

The personal interests of an employee's partner or spouse, family members or close personal friends can also present a real or apparent conflict of interest for an employee, when those interests may be furthered or advantage gained through departmental policies, activities or decisions which the employee has knowledge of, or has direct and substantive influence over.

Examples of situations in which the personal interests of a partner or spouse, family member or close personal friend can represent a real or apparent conflict of interest for an employee could include:

- The employee is assessing tenders from a company or organisation in which their partner or spouse, family member or close personal friend has an interest (e.g. is the business owner/partner or a company director).
- The employee is responsible for undertaking or determining regulatory activities which apply to a business or organisation in which their partner or spouse, family member or close personal friend has an interest.
- Two employees are in a close personal relationship or friendship, where one is able to advantage the other by influencing decisions or exercising delegations to favour them in workplace opportunities, or access to conditions, benefits or other entitlements.

The appearance of a conflict of interest is as important as any real conflict of interest. Both these situations have the potential to undermine the credibility of a project, process or decision. In situations of close personal relationships at work, real or perceived patronage or favouritism may impact on morale and productivity, as well as the credibility and professionalism of the individuals.

What needs to be disclosed?

Both section 13(7) of the [PS Act](#) and section 29 of the [PGPA Act](#) require employees to disclose 'material' personal interests relating to their employment with the department. To be 'material', the employee's personal interest must be such that a reasonable person would draw a connection between the interest and the employee's duties (i.e. there needs to be a real or reasonable possibility of conflict with the employee's duties and not simply a remote or theoretical possibility of a conflict occurring).

There is no standard list of items which must be disclosed. Employees need to consider their personal circumstances and disclose those personal interests or relationships which would reasonably be considered as 'material'. Relevant factors in determining what needs to be disclosed include:

- the department's functions and responsibilities and its particular probity concerns
- the employee's specific role and responsibilities.

Personal interests which could be 'material' and which may need to be disclosed are not limited to financial interests and could include:

- small business ownership
- company directorships or partnerships
- shareholdings
- trusts or nominee companies
- previous employment for employees undertaking specific roles (e.g. regulatory, investigative or compliance)
- real estate investments
- gifts and benefits
- participation on boards or committees
- memberships or affiliations with associations, community groups and other organisations (either past or present)
- paid, unpaid or voluntary outside employment
- personal and family relationships or associations (either past or present)
- hostile relationships with other persons or organisations.

Employees must inform their manager and complete a Declaration of Interests Form (where a specific declaration is not otherwise available for a particular business process) as soon as possible after they have determined that they have a personal interest or relationship which does or could be perceived to interfere with the proper performance of their duties. The employee and manager must then document and undertake whatever action is required to appropriately manage the conflict.

Employees must also disclose any known personal interests, relationships or associations of their partner or spouse, immediate family members, close personal friends or associates, which could reasonably be considered as influencing, or could be seen to influence, the decisions they are taking or the advice they are giving. The obligation on employees to declare another individual's private personal interests, relationships or associations is limited by the extent to which the employee could be reasonably expected to be aware of those interests and the consent of the relevant individual to disclose their personal information.

A close personal friend is someone with whom the employee has social contact on a regular and sustained basis, noting this contact may or may not have occurred over or for a long period of time.

Associates or associations relate to past or present interactions or affiliations the employee, their partner, immediate family members, close personal friends may have with people in clubs, societies and other organisations. This can also include identifiable links with people and/or groups via electronic media such as Facebook, Twitter or LinkedIn.

When can a conflict of interest occur?

A conflict of interest resulting from the interaction of an individual's personal interests, relationships or associations (either past or present) with their duties can occur in a wide range of circumstances during the course of their APS career. Without limiting the situations and circumstances where a conflict of interest may arise, the following are some of the more common situations in which employees will need to be aware of real or apparent conflicts of interest.

On engagement with the department

On joining the department all employees sign a Code of Conduct and Ethical Guidelines Declaration in which they agree to:

- Uphold the [APS Values](#) and [APS Employment Principles](#) and abide by the APS [Code of Conduct](#).
- Abide by the departmental policies and procedures on Conflict of Interest (including any additional locally applied requirements).
- Identify and disclose details of any 'material' personal interest they may have in connection with their APS employment.

Should a new employee suspect they are, may be reasonably perceived to be, or may reasonably foresee being in a conflict of interest situation, they must immediately notify their manager. For example, if a new employee performs any paid or unpaid work in their private time, they must complete and submit a Notification of Outside Employment for consideration by their Section Head. Further information can be found in the department's Outside Employment Policy.

New employees must report to their manager any workplace relationships that may be considered a conflict of interest, for example where they will be managed by or will manage a relative or someone with whom they have a close personal relationship.

When working in the department and APS

Working relationships in the department

It is acceptable that employees may have a partner or other family member working in the department. It is not acceptable for anyone to have managerial responsibility for a partner or family member. Any relationship or association (either past or present) which involves, or gives the appearance of involving partiality, preferential treatment or improper use of status or position is inappropriate in the workplace. Employees must declare a relationship or association that may be considered a conflict of interest in the workplace to their manager.

Specific arrangements to manage the issue may be agreed between a more senior manager and the respective managers of the employees concerned. If the employees remain in the same workplace, perceptions in the workplace need to be managed by ensuring there is a definite separation between the concerned employees whilst they are carrying out their roles and responsibilities.

Despite the sensitivities involved, it is important other employees in the workplace feel able to raise any concerns with their manager about their perceptions of conflict of interest. If an employee considers that the good management of the department is being adversely affected by a personal relationship or association within the workplace they should raise their concerns with a manager more senior than either person involved.

Personal relationships and associations will be formed among employees in the workplace, and such relationships are essentially private. However, these relationships and associations may raise the same ethical considerations for the department as established family relationships, and the guidance set out above applies.

Participating in recruitment and selection processes

It is not unusual for members of selection panels to know one or more applicants for a position. The following information outlines departmental requirements for managing conflicts of interest during recruitment and selection processes, and applies equally to the recruitment of ongoing and non-ongoing (including casual) employees.

Members of selection panels or decision-makers in an employment process must declare any past or present relationship or association with an applicant, particularly one from outside of the department, which would or may be reasonably seen to create a conflict of interest (e.g. the applicant is a relative, close personal friend or associate). The employee must declare the relationship to the Chair (or, if they are the Chair, their manager), the other panel members and relevant delegate as soon as they become aware of the potential conflict.

As an additional precautionary measure, Chairs should ask panel members to declare any past or present relationship, friendship or association they may have with an applicant during initial discussions. Panel members must declare any past or present professional and/or personal relationship or association with an applicant to ensure the integrity of the recruitment process.

Depending on the situation, a decision may then be needed as to an appropriate management strategy. This could range from the relevant panel member withdrawing from the process entirely, to them not participating in deliberations regarding that particular candidate. Any declared conflict of interest and agreed management strategy must be documented and filed with the process documentation.

If a selection panel member is a nominated referee for a candidate, the reference must be provided in advance of the panel's deliberation about the candidate. Following this, the relevant panel member should not participate in deliberations regarding that particular candidate, or if necessary, withdraw from participation in the selection process.

While it is the responsibility of both the applicant and referee to declare any past or present relationship or association between the two which could be reasonably considered to represent a

conflict, the selection panel should also confirm the relationship between an applicant and their referees where this has not been clearly identified or where a panel member may be aware of a past or present relationship or association which has not been declared.

Participating in procurement processes

Procurement encompasses the whole process of acquiring goods and services, including, but not limited to:

- property, plant and equipment
- hiring and leasing arrangements
- engaging consultants and contractors.

The purchase and disposal of goods and services across the public sector, including managing tenders and contracts, is considered an area of high risk for conflict of interest situations. Employees should strive to avoid situations in which there may be actual, potential or perceived conflicts of interest, including not allowing themselves to be improperly influenced by family, personal or business relationships and associations, whether past or present.

The department requires all tender evaluation team members, including those from outside the department, to disclose any conflict of interest, unauthorised contact with any respondent/tenderer or their employees or any breach to the chair of the tender evaluation team or probity adviser. Tender evaluation team members also need to be mindful of the confidentiality of information with which they are dealing and are all required to complete and sign a [Conflict of Interest Disclosure and Confidentiality Statement](#).

Employees should reference Accountable Authority Instruction (AAI) 3.1: Procurement in conjunction with Finance Business (FBR) 3.1 Procurement, which details the department's key policies regarding procurement.

Contractors/consultants involved in the development of requirements for a procurement exercise must declare any potential conflict of interest and that they (or their organisation) will not bid for the subsequent contract or provide services to assist the subsequent contractor/grantee. Such provisions should be in their contract.

In managing and monitoring any 'specified personnel' under a contract, it is also essential that declarations be obtained for any additional or replacement personnel who subsequently provide services.

When states co-fund programs, State Government officials are often involved at all levels of the process. If there is a potential for a conflict of interest (real or apparent) it is appropriate to have them sign a [Conflict of Interest Disclosure and Confidentiality Statement](#), subject to any relevant State and Territory law governing the employment obligations of those officials on such matters.

Stakeholder representatives (such as community organisations or peak bodies) are often used to assist in the design/approval of specifications, or to assist in the evaluation or approval of the successful tenderer/grantee. In all cases, the steering group or advisory committee responsible for the particular project must have a mechanism in place to ensure that all members sign a [Conflict of Interest Disclosure and Confidentiality Statement](#) on joining.

Grant selection

The allocation of public funds for various purposes must be a transparent process, free from personal bias, obligation, allegiance or favouritism. Due to the need for specific subject knowledge and expertise to assess the merits of submissions, it is not uncommon for individual grant assessment committees, to contain at least one member with material personal interests or associations (either past or present) in the field competing for grants.

Where such material interests exist, or are perceived to exist, the chair of the grant assessment committee (in consultation with a probity adviser and/or Legal and Assurance Division) will discuss the conflict of interest with the particular committee member(s) and assess if the committee member can still take part in the assessment process.

All grant assessment committee members, including those from outside the department, must complete and sign a Conflict of Interest Declaration.

Additional information regarding the identification and management of conflict of interest within the area of grants assessment and management can be found in the Grants Management Toolkit.

Undertaking regulatory or compliance functions

The department undertakes a regulatory role (e.g. inspections, investigations and other compliance activities) across a range of health, sport and aged care related functions. There are heightened ethical and reputational risks for the department and employees undertaking these duties. As a result, conflict of interest risks for employees who are involved in the development and enforcement of regulations must be identified and effectively managed to ensure those employees make decisions and recommendations which are transparent, impartial and free of bias. This may require the development and application of additional local requirements regarding disclosure and management of conflicts of interests.

As an example, the nature of activities undertaken by employees within the Regulatory Practice Education and Compliance Branch (RPE&CB) requires a more rigorous approach to the prevention of fraud and corruption than is established in the department's Conflict of Interest Policy and the Commonwealth Protective Security Policy Framework (PSPF). RPE&CB is not only obligated to report certain matters under this policy and the PSPF, but is also subject to additional locally applied reporting requirements aimed at addressing the particular ethical and reputational risks associated with these functions.

Working with lobbyists

Lobbyists can help individuals and organisations communicate their views on matters of public interest to the Government and, in doing so, improve outcomes for the individual and the community as a whole.

In dealing with lobbyists, employees must be aware of, and manage any real or apparent conflict of interest between their official duties and their relationships with lobbyists, including personal or social relationships with lobbyists.

The [Lobbying Code of Conduct](#) sets out the Government's policies for all APS employees related to contact with professional lobbyists and seeks to ensure that such contact is conducted in accordance with public expectations of transparency, integrity and honesty. It aims to ensure that

government representatives who deal with lobbyists can identify the interests the lobbyist represents in order to make appropriate judgements regarding their motives.

All APS employees should familiarise themselves with the requirements of the [Lobbying Code of Conduct](#). Any lobbyist who acts on behalf of third-party clients for the purposes of lobbying Government representatives must be registered on the [Register of Lobbyists](#).

Compliance with the Lobbying Code of Conduct means that:

1. public servants can only deal with registered lobbyists (see the [checklist](#) for Government Representatives), and
2. lobbyists are obligated to inform public servants of the third party interests they represent and the issues that the third party wishes the lobbyist to raise.

Employees who become aware of any breaches of the Lobbying Code of Conduct must report the breach to their relevant Deputy Secretary, through their Branch Head and First Assistant Secretary. In accordance with the [Lobbying Code of Conduct](#), the department will then report the breach to:

The Secretary
Department of Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Working with persons or entities undertaking activities for a foreign principal

Persons or entities who have arrangements with, and undertake certain activities on behalf of a foreign principal (including foreign principals who lobby APS employees in order to influence a government process or decision) may need to register under the Government's [Foreign Influence Transparency Scheme](#). The scheme does not prohibit people or entities from undertaking activities on behalf of a foreign principal but is designed to provide the public and decision-makers with visibility of the nature, level and extent of foreign influence on Australia's government and political processes. Comprehensive information about the scheme is available on the Attorney-General's Department (AGD) transparency [web page](#).

Whether a person or entity needs to register depends on who the foreign principal is, the nature of activities undertaken and in certain cases, whether the person has held a senior public position in Australia. A foreign principal includes a foreign government or political identity. Activities covered by the scheme include parliamentary lobbying, general political lobbying, communications activity and disbursement activities (refer AGD [factsheet on Registrable activities](#)).

Departmental employees need to understand who may be lobbying them, and if they consider that a person or entity may need to register under the scheme, ensure that the person or entity is aware of their obligations by directing them to the AGD website. Although it is the responsibility of the person undertaking the activities to determine whether they are required to register, [AGD](#) can be contacted for advice if it appears a person or entity is deliberately avoiding registration obligations.

Departmental employees undertaking registrable activities on behalf of a foreign principal are exempt from registration requirements (refer AGD [factsheet on Exemptions from Registration](#)), providing they are acting within the scope of their duties and the identity of the foreign principal is apparent or disclosed.

There are additional obligations under the scheme for those who have held senior positions in Australia within the last 15 years. They include those who have been: a member of federal Parliament; employed under the Members of Parliament (Staff) Act 1984; an agency/deputy head or equivalent; or an Ambassador or High Commissioner. Further information about this aspect of the scheme is provided in the Managing Conflicts of Interest when Ceasing APS Employment Policy and a factsheet on the AGD website – "[Former Cabinet Ministers and recent designated position holders](#)".

Interaction between Lobbying Code Conduct and Foreign Influence Transparency Scheme

Under certain circumstances persons or entities may need to register under both the Lobbying Code of Conduct/Register of Lobbyists, and the Foreign Influence Transparency Scheme. Although the intent of both the Register of Lobbyists and the Foreign Influence Transparency Scheme is to provide transparency, they are directed against slightly different issues as outlined in the preceding information.

Receiving gifts or benefits

In the course of their employment departmental employees may be offered gifts or benefits, including but not limited to hospitality, entertainment, sponsored travel, awards and prizes. There are limited situations in which an employee can accept a gift or benefit and these are outlined in the department's Gifts and Benefits Policy. (refer "Inconsequential Gifts or Benefits"). If any other gift or benefit not deemed as inconsequential is received, the employee must declare it by completing a Gifts and Benefits Declaration form.

Real or apparent conflicts of interest are more likely to occur when a gift or benefit is offered to an employee in a decision making role, and the person or organisation offering the gift:

- may benefit from a pending or active departmental process
- is in an existing or potential contractual relationship with the department
- receives, or is seeking, Commonwealth assistance, or
- has a primary purpose of lobbying Ministers, Members of Parliament, departments or agencies.

Further information can be found in the Gifts and Benefits Policy.

Offering gifts and benefits

Employees should ensure their decisions are transparent and their intent is clear when offering gifts and benefits, including official hospitality, to people or representatives of organisations, such as members of an international delegation.

Employees must not enter into an arrangement to provide official hospitality unless they have the delegated power to enter into such an arrangement. In the majority of cases for the department,

official hospitality will be provided in relation to the ordinary services and functions of government, and entered into under section 23 of the [PGPA Act](#). In limited cases, officials may need to be delegated powers under section 32B of the [Financial Framework \(Supplementary Powers\) Act](#) or other specific legislation to enter an arrangement for the purposes of providing official hospitality.

When offering gifts and benefits, including official hospitality, employees must comply with the [PGPA Act](#), Section 7: *Using Commonwealth resources* and the relevant departmental Accountable Authority Instructions, Finance Business Rules and policies.

Outside employment

It is important for employees to recognise that concurrent employment (paid or unpaid) with the APS and a non-APS organisation or agency may give rise to a real or apparent conflict of interest. This is particularly the case when the outside employment is in an area related to the employee's official departmental duties. Depending on the circumstances, the public's confidence in the integrity of the department's administration and the employee's ability to perform their public duties efficiently may be adversely affected.

Whilst undertaking outside employment is not prohibited, an employee must complete and submit a Notification of Outside Employment form to their Section Head or, in the case of EL2 and equivalent employees, their Branch Head. The Section Head must then assess the employee's notification and determine whether an actual or apparent conflict of interest exists.

Further information can be found in the Outside Employment Policy.

Participation on committees

The department has a large number of committees. Some comprise a chair and/or members appointed by the Minister. The way in which conflict of interest should be managed for committees will vary depending on:

- the nature of the committee,
- the method by which the members have been selected or appointed, and
- the extent to which the committee influences decision making, rather than receiving information or providing general advice.

The following model should be applied when the committee is formal, and has significant influence on decision making. This model can be modified as necessary to suit the circumstances of each particular committee, and any specific legislative requirements on the handling of conflict of interest issues (e.g. requirements contained in the [National Health and Medical Research Council Act 1982](#)).

If the appointment is made by the Government, within a month of being appointed, the chair of the committee must give to the Minister, and members of a committee must give to the chair, a written declaration of interests the member has that may relate to any activity of the committee. Chairs of other committees where members are appointed by the department should provide similar information to the Secretary.

In any situation that gives rise to a real or apparent conflict of interest, the member should immediately declare that conflict of interest to the chair of the relevant committee and seek the chair's agreement to retain their position.

In assessing the appropriate response if a conflict of interest has arisen, the chair of the committee should consider both the real or apparent conflict. The department should also be notified of the real or apparent conflict of interest.

If the appearance of conflict may undermine or lead to questions about the credibility of the committee of particular project, the chair should take appropriate action to avoid or minimise that impact. Ideally the person involved should step down from any involvement with that committee or particular project. This, for example, could entail not attending meetings when the committee considers the matter or not taking part in any discussion of the committee in relation to the matter.

If this is not possible because that person is the most suitable, or the only person with the required expertise, the chair should consider ways in which any actual or perceived bias can be overcome (e.g. seeking references, declaring the potential interest in documentation relating to the project). Where relevant, the public consultation process may also minimise the impact of any actual or perceived bias.

At key points in a committee's life, secretariats should provide a declaration form for completion by individual nominees or nominating organisations, including:

- when advising of acceptance of their nomination to the committee (i.e. during committee establishment)
- when new committee members are nominated/appointed (e.g. as part of a letter of appointment)
- if current committee members have a conflict of interest arise during the lifetime of their appointment
- for annual declaration of interests by current committee members.

Committee secretariats must also:

- record any member's disclosure of conflict of interest at a committee meeting in the minutes of that meeting
- record a member's disclosure made to the chair outside meeting times in the minutes of the next committee meeting
- keep copies of any declarations of interest on file.

Conflict of interest should be a standing agenda item for all committee meetings and any supporting committees. The chair should invite members to declare or discuss any relevant matter at the commencement of each meeting or as appropriate.

Each committee's approach to conflict of interest should be reviewed regularly to ensure that it maintains currency with legal and departmental requirements.

Other committees and negotiations

From time to time the department will create time-limited committees, or negotiate with external parties in order to reach agreements. For participants in such committees or negotiations, there remain personal obligations for all involved individuals to recognise and manage any conflict of interest or the appearance of such conflict.

Notwithstanding the personal obligation of each participant, departmental employees must:

- raise and document the real or apparent conflict of interest
- determine how the department should respond to any such conflicts
- report to the Minister or Secretary as appropriate.

Managers in all forums are expected to remain alert to the possibility of a conflict of interest arising, and to raise it with the committee or other relevant body if deemed necessary. However, the actual method of dealing with a conflict of interest needs to fit the situation.

The above principles apply equally to internal committees in the department where there are no or few external members. However due to the nature of the committee and the issues discussed, conflicts of interest may arise less frequently.

Regardless of the situation, it is essential that:

- any conflict of interest disclosed during a committee meeting is recorded in the minutes
- a conflict of interest disclosed to the chair outside meeting times is recorded in the minutes of the next committee meeting
- copies of any declarations of interest are kept on file.

If minutes are not generally kept of a committee's proceedings, then the chair of the committee is responsible for documenting in a file note the declaration and subsequent decision on resolving the conflict.

Conflict of duty

Departmental employees serving on the Boards of Commonwealth entities may at times have real or apparent conflicts of duty.

While there is no prohibition of departmental employees serving on the Boards of portfolio entities, addressing perceptions of conflicts of duty and/or interest will go toward ensuring that such activities are transparent.

It is possible for a conflict of duty to lead to a conflict of interest. For example, a conflict of duty may arise where an employee is involved in purchasing services from an entity, and that employee also sits on the Board of the entity. A conflict of interest may follow in this situation if the employee's performance is in part measured by the successful outcome of that purchasing arrangement.

Certain conventions exist in relation to resolving a conflict of duty (e.g. the employee does not participate in certain discussions and decisions or where an employee, who is a Board member by virtue of their position within the department, resigns when they no longer occupy that position).

If a conflict of duty arises, it is considered as a form of conflict of interest and should be treated as a conflict of interest would be treated.

Insider trading

Insider trading is the trading of securities or a wider set of financial products (as defined in s.1042A of the [Corporations Act 2001](#)) while in possession of information which is not generally available; and if it were, would be likely to have a material effect on the price or value of the security. Insider trading is prohibited under the [Corporations Act 2001](#) and has significant criminal penalties. Insider trading by an employee would also be a breach of the APS Code of Conduct requirements to:

- Behave honestly and with integrity in connection with their APS employment
- Comply with all applicable Australian laws when acting in connection with their APS employment
- Not improperly use inside information to gain, or seek to gain, a benefit or an advantage for the employee or any other person
- Behave at all times in a way that upholds the [APS Values](#) and [APS Employment Principles](#); and the integrity and good reputation of the department and the APS.

Employees should be aware that any information they access as a result of their employment with the department may potentially be considered as 'inside' or commercially sensitive information and, as such, they must not trade in shares or other financial products or induce others to do so on the basis of that information. Employees must make an assessment of whether any information they have access to in the course of the duties would be considered to be inside information for this purpose, with key considerations being that:

- the information is not 'generally available' (as defined in s.1042C of the [Corporations Act 2001](#)), and
- if it was generally available, a reasonable person would expect it to have a 'material effect' (as defined in s.1042D of the [Corporations Act 2001](#)) on the price or value of financial products.

[When leaving the department and APS](#)

The department's Managing Conflicts of Interest When Ceasing APS Employment Policy provides information about managing conflict of interest and other issues arising out of post-separation employment.

[Process for registering or disclosing interests](#)

Non-SES employees

Disclosure is a confidential procedure to protect both the employee and the department from unfair or improper allegations of conflict of interest. It requires an employee who suspects they might be or reasonably perceived to be in a conflict of interest situation to complete the Declaration of Interests Form for consideration and management by an appropriate decision maker. Depending on the circumstances, this might be the employee's manager, Section Head, immediate supervisor, committee chair or delegate.

The employee may be asked to provide additional information to determine if a conflict of interest actually exists. Once the relevant decision maker reaches a decision, the employee is advised if a conflict of interest exists and if so, is given directions as to how to resolve the conflict of interest.

Should an employee disagree with the decision, they can escalate their case to someone higher in their line of supervision or contact the [Workplace Behaviour, Performance and Conditions Section](#) in People Services Branch.

Contractors and consultants

Contractors and consultants must notify the relevant departmental contact officer or contract manager of any real or apparent conflicts of interest in accordance with their contractual obligations.

SES and equivalent employees

In addition to the general obligations applicable to all departmental employees regarding conflict of interest, Government policy requires SES and equivalent employees to provide a written statement, on at least an annual basis, of their own and their immediate family's financial and other material personal interests. Departmental SES and equivalent employees will make their declarations by completing an [online form](#) provided for this purpose.

SES and equivalent employees are required to discuss any relevant financial and other material personal interests identified in their declaration and an appropriate proposed management strategy with their immediate supervisor.

[Applying Additional Local Requirements](#)

A Branch Head or Division Head may apply additional requirements (where they do not conflict with the provisions of this policy, associated rules and legislation) for disclosing and managing conflicts of interest to individual employees or groups of employees undertaking particular functions which present greater ethical and reputational risks to the department and employee (e.g. regulatory administration and application and complex compliance actions). Any additional requirements should be appropriately documented and communicated to employees.

[Privacy](#)

The department collects personal information regarding employee's personal interests under the authority of the [PS Act](#) and [PGPA Act](#). Declaring a material conflict of interest is a requirement under this legislation.

The information is collected by the department for the purposes of documenting any real or apparent conflicts of interest and to record an employee's acknowledgement of their obligations under the above legislation. This assists the department to manage any conflicts of interest which may arise in regard to an employee's duties with the department.

Documentation relating to conflicts of interest, such as Declaration of Interests Forms provided by employees or strategies put in place to mitigate and manage conflicts, is to be managed in accordance with the [Privacy Act 1988](#) and the [Department of Health Australian Privacy Policy](#).

Any relevant documentation is to be forwarded to [Workplace Behaviour, Performance & Conditions Section](#) in People Services Branch for retention in accordance with the requirements of the [Archives Act 1983](#). However, alternative retention processes can be applied in the following circumstances:

- When a disclosure is made for the purpose of a certain decision or as part of a specific business process (e.g. a procurement or recruitment process) it is appropriate to include a copy in the file relating to the decision.
- When a disclosure is made as a result of additional local requirements and procedures the documentation may be stored locally, noting the requirements of the [Archives Act 1983](#) regarding appropriate retention of those documents still apply.

If a disclosure contains the personal information of an immediate family member it will generally be necessary for the employee to obtain the family member's consent for the collection of this information, consistent with the requirements of the Australian Privacy Principles contained in the [Privacy Act 1988](#). If consent is not given, or can't be sought, then the employee should discuss with their manager, in general terms, their understanding of the conflict of interest. The manager can then decide what action may need to be taken.

Information relating to conflicts of interest which is sensitive and/or Commercial-In-Confidence must only be used for the purposes of recording, reviewing, and managing conflict of interest issues and not for any other purpose. Access to such documents must be controlled and only granted to employees with a genuine need to know, in connection with reviewing conflict of interest issues.

Employees can refer to the [Department of Health Australian Privacy Policy](#) for information on how to access, complain or request an amendment of their personal information.

[Managing conflict of interests](#)

Conflict of interest is not always avoidable – it is how it is managed that is critical. 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 that the employee performs for the department and the nature and extent of the conflict.

[Requirements for managers](#)

If a manager receives a disclosure either in writing/and or orally from an employee, or if they have identified a conflict of interest in regard to one of the employees, the manager must:

- ensure the disclosure is managed in accordance with the [Privacy Act 1988](#)
- identify risks to the department associated with the declaration of a material personal interest and develop and maintain a written plan which clearly specifies responsibilities for managing the risks identified and action to be taken to manage those risks

- document the disclosure including any actions already taken to mitigate any real or apparent conflicts, and ensure the disclosure is retained in accordance with the [Archives Act 1983](#)
- monitor the disclosure to ensure it remains current, for example through internal controls
- review the effectiveness of any actions taken to manage and identify conflict of interest on a regular basis and implement required changes arising from such reviews
- bring any serious real or apparent conflicts of interest to the attention of their Section Head or immediate supervisor as appropriate.

Assessing the materiality of a conflict of interest

Factors that may need to be weighed in assessing the materiality of the conflict of interest include:

- the type or extent of the employee's personal interest, real or apparent
- the nature or significance of the particular decision or activity being carried out by the agency
- the extent to which the employee's personal interest could affect, or be affected by, the agency's decision or activity
- the nature or extent of the employee's current or intended involvement in the agency's decision or activity.

Mitigating the conflict

Without limiting the types of action which could be taken there are a number of ways in which conflicts of interest may be mitigated, including:

- restricting the involvement of the employee in the matter and/or restricting access to information relating to the conflict of interest
- engaging an independent third party to participate in, oversee, or review the integrity of the decision-making process
- asking the employee to relinquish their personal or private interests e.g. disposing of the employee's shares, or membership of a club or association
- altering the employee's duties so they are no longer performing the role which puts them in a conflict situation
- the employee resigning if the conflict cannot be resolved in any other way, particularly if conflicting private interests cannot be relinquished.

Whatever the outcome, the manager must document the identification of the conflict, the decision taken and the reasons for the decision, even if there is a decision for no change.

Compliance

Failure to comply with the requirements of this and other departmental policies relating to conflict of interest may lead to disciplinary action under the [APS Code of Conduct](#). A range of sanctions may be imposed on an employee found to have breached the [APS Code of Conduct](#), up to and including termination of their employment.

In addition, the acceptance or solicitation of any benefit, in circumstances within the definition of a bribe, can be both a breach of the [PGPA Act](#) and an offence under the [Criminal Code Act 1995](#).

Failure by contractors or consultants to comply with the terms of the contract relating to conflict of interest may lead to action under the relevant clauses of that contract, up to and including the contract's termination.

Further assistance

For any queries regarding the operation of this policy please contact HR Help on (02) 6289 8888. The department's Call Centre will either answer your query directly or refer your question to the appropriate area in People Services.

Responsibilities

Employee:

Responsibilities include:

- ensuring awareness and compliance with this and other relevant department policies and procedures (including locally applied requirements and procedures), as well as legislation applicable to conflict of interest provisions
- taking reasonable steps to avoid any conflict of interest, real or apparent
- promptly disclosing details of any material personal interest that might affect, or might be perceived to affect, their employment with the department
- reviewing the interaction between their duties and responsibilities and their private and personal interests on a regular basis to ensure they do not conflict
- ensuring new or changed duties and responsibilities, organisational relationships and/or responsibilities, or private or personal interest situations are dealt with in accordance with this policy
- notifying a new manager and/or Section Head of any disclosed conflicts of interest and actions taken to manage the conflict when changing work areas or acquiring a new manager and/or Section Head
- in addition to the general obligations applicable to all departmental employees regarding conflict of interest, SES and equivalent employees are required to provide a written statement, on at least an annual basis, of their own and their immediate family's financial and other material personal interests using an online form provided for this purpose.

Contractor/Consultant

Responsibilities include:

- ensuring awareness of and compliance with:
 - relevant contractual obligations regarding the disclosure and management of conflicts of interest
 - this and other relevant department policies, procedures (including locally applied requirements and procedures) and legislation.
- taking reasonable steps to avoid any conflict of interest, real or apparent

- promptly disclosing details of any material personal interest as required by the terms of the contract.

Manager

Responsibilities include:

- ensuring awareness and compliance with this and other relevant department policies and procedures (including locally applied requirements and procedures), as well as any other legislation applicable to conflict of interest provisions
- ensuring employees are aware of their obligation to declare any real or apparent conflict of interest and the procedures for reporting conflict of interest
- reviewing disclosures and documenting initial assessment and comments for consideration
- requesting additional information from the employee if required
- discussing resolutions with the employee
- maintaining a record of declared conflicts of interest and the actions taken to manage them
- maintaining and retaining all documentation in accordance with departmental Conflict of Interest policies and procedures (including locally applied requirements and procedures), the [Privacy Act 1988](#), the [Archives Act 1983](#) and the department's Records Management Policies.

Delegations

Information on delegations covered by this policy can be located in the HR Delegations Schedules and the Financial Delegations Schedules.

Legislation

- [Archives Act 1983](#)
- [Corporations Act 2001](#)
- [Crimes Act 1914](#)
- [Criminal Code Act 1995](#)
- [Privacy Act 1988](#)
- [Public Service Act 1999](#) and [Public Service Regulations 1999](#) – [APS Code of Conduct](#), [APS Values](#) and [APS Employment Principles](#)
- [Public Governance, Performance and Accountability Act 2013](#) – General Duties of Officials

Related Topics, References and Forms

- Accountable Authority Instructions
 - AAI 1.6 Disclosure of interest
- Australian Public Service Commission's publication, [APS Values and Code of Conduct in practice](#) – 5 Managing Conflict of Interest
- Conflict of Interest Declaration – for members of grant assessment committees
- [Conflict of Interest Disclosure and Confidentiality Statement](#) – for tender evaluation panel members

- Code of Conduct and Ethical Guidelines Declaration – pre-employment
- Declaration of Interests Form – form to declare interests for situations in which an alternative declaration form, specific to a business process, is not otherwise provided.
- Deed of Undertaking in Relation to Confidential Information and Conflict of Interest – for completion by committee members upon their appointment
- Finance Business Rules
- Gifts and Benefits Policy
- Gifts and Benefits Declaration form
- [Lobbying Code of Conduct](#) and [Register of Lobbyists](#)
- [Foreign Influence Transparency Scheme](#)
- Managing Conflicts of Interest When Ceasing APS Employment Policy
- Notification of Outside Employment
- Outside Employment Policy
- Social Media Guidelines

Version Control

Version Number	Date of issue	Author(s)	Brief description of change
Version: 0.1	16/06/2017	Employee Relations Section	Initial draft policy distributed to stakeholders for comment
Version: 0.2	15/08/2017	Workforce Strategy and Policy Section	Updated draft to reflect other stakeholder's comments, link to other relevant information and include new content on insider trading.
Version: 1.0	08/01/2018	Workforce Strategy and Policy Section	Draft policy approved.
Version: 1.1	05/04/2018	Workforce Strategy and Policy Section	Updated to clarify personal relationships in the workplace; and new links to Lobbyist information requests by PMC 28 March 2018.
Version: 1.2	02/11/2018	Workforce Strategy and Policy Section	Updated to reflect changes clarifying coverage of contractors and consultants and feedback from business areas and IAC. Inclusion of provision regarding local arrangements in addition to policy requirements.
Version: 1.3	27 March 2019	Workforce Strategy and Policy Section	Updated to reflect additional content post introduction of Foreign Influence Transparency Scheme

¹(This definition is based on Australian Public Service Commission (APSC), [Australian Public Service \(APS\) Values and Code of Conduct in practice – Section 5: Conflict of Interest](#), as published on the APSC website.)