

Office of the Commonwealth Ombudsman

Conflict of Interest Guidelines

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Introduction

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 APS employment; and disclose details of material personal interest of the employee in connection with his/her APS employment [Section 13(7) *Public Service Act 1999*].

As well, an actual or apparent conflict of interest is a form of bias and can therefore breach one of the requirements of procedural fairness, affecting the lawfulness of any decision made.

Given the special role of the Ombudsman's Office in the administrative review system, any substantial claim that an employees acted improperly would be gravely embarrassing. The following guidelines are promulgated to provide employees with advice on their dealings with complainants, agencies and other stakeholders. Each case must, however, be considered on its merits.

Conflicts of interest

A conflict of interest exists when it appears likely that an employee could be influenced, or where it could be perceived that they are influenced, by a personal interest in carrying out their duty. Conflict 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.

Examples:

- An example of a real conflict of interest is where an employee deals with a complaint in which their spouse was the decision maker within the agency complained about.
- An apparent conflict of interest could be where an employee maintains strong social and personal relationships with the area within an agency they are investigating.
- Similarly, an employee who is in dispute with, or currently seeking assistance from an agency in his or her private capacity, should be cautious of involvement with complaints about that agency.
- Another instance of bias might arise where, say, an officer is known to hold views on a particular subject that could suggest he or she might not bring an open mind to the subject.

Avoiding conflicts of interest

While it is difficult to provide guidance on every possible scenario, it is important to recognise that the independence of the Office must be maintained to a high degree. In addition to s13(7), the APS Code of Conduct requires APS employees to:

- behave honestly and with integrity in connection with APS employment

- not improperly use inside information or the employee's duties, status, power or authority; in order to gain, or seek to gain, a benefit or advantage for the employee or any other person.

All employees must regularly assess whether they have a conflict of interest and take reasonable steps to avoid situations where their private financial or other interests (or those of immediate family members, such as spouses/partners or dependants) could or could be perceived to conflict with their official duties. They must 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.

Where an employee believes on reasonable grounds that a conflict exists, they should immediately report this to their supervisor. This also includes where the employee considers that a colleague may be compromised. If the matter remains unresolved after discussing it with their supervisor, it should be brought to the attention of the relevant Senior Assistant Ombudsman/Chief Operating Officer (SAO/COO).

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.

By its very nature, the Office's work requires us to develop professional, mature working relationships with officers 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 Departmental officers. However, the Office's independence must always be maintained.

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. If, as a supervisor, there is doubt, or the supervisor believes that there is a risk of controversy about the matter, they should report it to an SAO/COO, the Deputy Ombudsman or the Ombudsman, as appropriate.

One area that warrants specific comment is the risk of the perception of bias by making personal comments about complainants or other persons involved in investigations. It is important that employees do not make (or record) value judgements about the people we deal with. For example, a person is no less entitled to approach this Office if he/she has a criminal record or has been charged with an offence. They should be given the same level of courtesy and respect as any other complainant. Similarly those complainants who appear to have psychological problems are entitled to the same courtesy, respect and attention as those who do not. Indeed, their condition may make them less able to approach officials or to express themselves clearly, so that more time might be needed.

Managing conflicts of interest

While avoiding conflicts is generally preferable, 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.

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 Office and the nature and extent of 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 managed, including:

- altering the employee's duties so they are no longer performing the role which may potentially put them in a conflict situation
- allowing the employee to continue in the same role but for the Office to implement appropriate safeguards which address the real or apparent conflict of interest
- asking the employee to dispose of their financial interests.

If an employee's disclosure presents a real or apparent conflict of interest requiring the Office to develop a management strategy, or if the disclosure 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. Please refer to the Office's *Breaches of the Code of Conduct – Guidelines for Handling Suspected and Determined Breaches*.

Steps to be taken

Where there is likely to be a real or apparent conflict of interest, the employee should have no further dealings with the complaint and should record (in neutral terms) the reasons for this and arrange for it to be transferred to another employee via his/her supervisor.

The employee should refrain from making comments or joining in conversations about the case with those who continue to deal with it. In cases where there might be an appearance of a conflict, but the employee is confident that he/she would bring an open mind to the matter, the best course would be to discuss the matter with their supervisor so that they may consider what action (if any) should be taken. A note should be made of this discussion and one of the following Forms should be completed:

- Conflict of Interest – Disclosure Form – **Attachment A**, or
- Declaration of Personal Financial and Other Interests - **Attachment B**.

Further information on which is the appropriate form for individual circumstances is included under the Section below titled Do I need to complete the Conflict of Interest/Declaration of Interests Form.

The role of supervisors in this area is critical and can be difficult. Supervisors should provide an example and give frank guidance to the employees they supervise; they should be prepared to listen and to consider any possible conflict of interest or bias issues raised. But more than that, they should, where possible, anticipate possible issues and address them.

Access to records

Employees should be aware that computer audit trails are able to detect access and/or attempts to access all electronic records maintained on our complaint management system. Employees must not access complaint details without a bona fide reason to do so. Employees who become aware that a person named in a complaint is known to them (for example, as a relative, friend, or neighbour) should bring this to the attention of their supervisor. The supervisor is to take appropriate action to prevent any inappropriate access occurring.

Do I need to complete the Conflict of Interest/Declaration of interests Form?

For non-SES employees, general real/apparent/potential conflicts of interest that exist or arise in the course of employment should be disclosed/declared and addressed through the completion of the Conflict of Interest – Disclosure Form at **Attachment A**. They must do so 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 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 (at **Attachment B**) 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 at Attachment B as opposed to the Form at Attachment A – (see Section below titled Interest Declarations for Immediate Family Members).

What type of interests need to be disclosed?

Employees who are required to complete the Declaration of Personal Financial and Other Interests only need 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 real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, relationships with lobbyists, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships, but **only** those that could, or could be seen to, affect official responsibilities with the Office.

Ties to other agencies where these have the perception of creating a conflict of interest

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 SAO responsible for the employee must ensure that a document is prepared that outlines how the perceived lack of impartiality is to be managed through escalation/delegation/transfers. The Conflict of Interest – Disclosure Form at Attachment A should be used to document these circumstances and then be forwarded to HR for filing on the employees Personnel file.

Non-delegable functions

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. Consideration of the potential for perceived lack of impartiality should be documented, especially at the following points:

- The decision whether to proceed or not to proceed with an investigation, inspection or public submission.
- Details of decision over the scope and boundaries of any investigation, inspections or submissions.
- Clearance and prioritisation of findings of an investigation or inspections.
- Clearance of any recommendations or suggestions arising out of investigation, inspections or submission.

Interest declarations for immediate family members

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.

Where an employee is obliged to disclose information about private, financial or other interests of an immediate family member, the individual must ask that family member to sign a declaration of consent indicating that they consent to the declaration of such information (the declaration of consent in Attachment B.)

If the immediate family member refuses to provide consent or is unable to do so, the non-SES 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.



Sensitive: Personal
(When completed)

Conflict of Interest – Disclosure Form

Employee’s Surname:	
Given Name/s:	
Position:	
Branch and Location:	
Director’s Name:	

Describe the private interests that have the potential to impact on your ability to carry out, or be seen to carry out, your official duties impartially and in the public interest.

(Describe your private interests and/or associations)

Describe the expected roles/duties you are required to perform.

(Describe the duties you are currently required to perform)

The conflict of interest has been identified as: (Please select one of the following)

A real conflict of interest

Pecuniary interest

An apparent/perceived conflict of interest

Non-pecuniary interest

A potential conflict of interest

Employee Declaration

I declare that the above details of my private interests are correct to the best of my knowledge and am aware of my responsibilities to take reasonable steps to avoid any real or apparent conflict of interest in connection with my public service employment and to advise my manager of any relevant changes in my personal circumstances.

Signature:

Date:

Action by Director

Describe the action proposed to mitigate the real or perceived conflict which has been disclosed and the reasons for the decisions:

The above action has been discussed with the employee and is appropriate to resolve the real or apparent conflict of interest disclosed above.

Signature of
Director:

Date:

Employee
Endorsement:

Date:

When this form is finalised it should be scanned and forwarded to
human.resources@ombudsman.gov.au for retention on the employee's personnel file.

DECLARATION OF PERSONAL FINANCIAL AND OTHER INTERESTS

This declaration of financial and other personal interests is to be completed annually by:

- all SES employees
- all employees acting as SES for longer than three months; and
- any other employees to whom the Ombudsman considers the declarations policy should apply because of their responsibilities or the nature of their work.

This declaration is to be forwarded on completion to the Ombudsman:

I, _____ declare as follows:

(First name/s)

(Surname)

- I am aware of my responsibilities under the APS Code of Conduct to:
 - behave honestly and with integrity
 - to take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment
 - disclose details of any material personal interest in connection with APS employment; and
 - not make improper use of (a) inside information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person.
- I have read and understood:
 - the APS-wide guidelines covering declarations of personal interests set out in *APS Values and Code of Conduct in Practice*; and
 - any other policies and guidelines on declarations of personal interests that the Office of the Commonwealth Ombudsman may have put in placethat require me to declare any private interests or relationships which could or could be seen to influence the decisions I am taking or the advice I am giving.
- The attached list at **Annex A** of my private interests and relationships has been prepared on the basis of:
 - the particular roles and responsibilities of the Office of the Commonwealth Ombudsman; and
 - my APS roles and responsibilities.

- I undertake to immediately inform the Ombudsman of any changes to my responsibilities or to the issue or subjects on which I am required to make decisions or give advice; and my personal circumstances that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.
- I undertake to declare any material personal interests of my immediate family that I am aware of, should circumstances arise in which I consider that they could or could be seen to influence the decisions I am taking or the advice I am giving. I understand that this would require the consent of the family member to the collection by the Office of the Commonwealth Ombudsman of personal information and a declaration that he/she is aware of the purpose for which the personal information has been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

I have declared my material personal interests at **Annex A**

or

I have no material personal interests to declare

I have arranged for **Annex B and Annex B(i)** to be completed by my immediate family who I believe have material personal interests to declare

or

I have no material personal interests in respect of my immediate family to declare

Signature:

Name: _____

Date: ____/____/____

For completion by the Ombudsman

Declaration noted: ____/____/____

Action required: No Yes

Signature:

Declaration of Material Personal Interests

Please list any material interests which could or could be seen to influence the decisions you are taking or the advice you are giving.

The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

Signature:

Name: _____

Date: ____/____/____

**Declaration of Consent by Immediate Family Member to the Disclosure of their
Personal Financial and other Interests**

This declaration is to be completed by your immediate family member/s should circumstances arise in which you consider that the personal financial and other interests of the family member/s could or could be seen to influence the decisions you are taking or the advice you are giving.

I am aware that my information has been collected for the purpose of identifying personal and other interests that could or could be seen to influence the decisions that the employee covered by the declarations policy is taking or the advice he/she is giving. I am aware of the Privacy Principles set out in the *Privacy Act 1988* which authorise the collection and the third parties to whom my personal information may be disclosed. *I consent to the collection of my personal information by the Office of the Commonwealth Ombudsman.*

The attached list at **Annex B(i)** of my private interests and relationships has been prepared on that basis.

Signature:

Name: _____

Relationship to Employee: _____

Date: / /

Declaration of Personal Financial and other Interests of Immediate Family Members

Please list any material personal interests you have which could influence, or could reasonably be seen to influence, the decisions that the employee covered by this declaration takes or the advice he/she gives.

The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon the responsibilities of the employee covered by the declaration policy.

Signature:

Name: _____

Date: ____/____/____