

## CONFLICT OF INTEREST POLICY OVERVIEW

### INTRODUCTION

This policy describes the nature of a conflict of interest in the context of an employee's employment with the ACCC and the Australian Public Service.

It also directs certain action by employees and managers in relation to both real and potential conflicts of interest, as well as providing general guidelines to assist employees and managers in understanding their obligations relating to conflicts of interest.

### AUTHORITY

Section 10 of the *Public Service Act 1999* contains the APS Values. The Values are the principles for the professional conduct of APS employees, and prescribe that the APS:

- has the highest ethical standards
- performs its functions in an impartial and professional manner

The APS Values are enforceable through section 13 of the *Public Service Act 1999*; the APS Code of Conduct. The Code specifically addresses conflict of interest as it prescribes that an APS employee must:

- behave honestly and with integrity in the course of APS employment
- disclose, and take reasonable steps to avoid, any conflict of interest (real or potential) in connection with APS employment
- not make improper use of:
  - a. inside information; or
  - b. the employee's duties, status, power or authorityin order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

Section 17 of the *Public Service Act 1999* prescribes that any person exercising powers under the Act must do so without patronage or favouritism.

### FURTHER INFORMATION

The HRM section can assist supervisors and employees with enquiries about conflict of interest.

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## POLICY

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### INTRODUCTION

This section of the policy states the APS policy on conflict of interest, who it applies to and defines conflict of interest.

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### POLICY

In accordance with the APS Values and Codes of Conduct, all employees are required to take all reasonable steps to avoid any conflict of interest, and to disclose any conflict of interest – real or potential – in connection with APS employment.

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### APPLICATION

This policy applies to all ongoing and non-ongoing employees, including SES and all contractors who act on behalf of the ACCC.

#### **Commissioners**

Conflict of interest requirements for commissioners are detailed in a separate document, 'Conduct guidelines for commission members,' available on TRIM.

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### CONFLICT OF INTEREST - DEFINITIONS

A 'conflict of interest' occurs when an employee's personal, financial or other interests compromise, influence, or affect the performance of their official duties or their employment with the ACCC. A conflict of interest can be real or potential. It can also be either financial or non-financial in nature.

The following definitions apply to this policy:

- **Real conflict of interest**  
An employee's personal, financial or other interests compromise, influence, or affect the performance of their official duties or their employment with the ACCC.
- **Potential conflict of interest**  
Where there is a possibility of a conflict of interest occurring.
- **Personal interest**  
An interest that does not arise from the performance of an employee's official duties or employment with the ACCC or APS, and may include, but is not limited to, family members.
- **Non-financial conflict of interest**  
This is a conflict that occurs between an employee's personal interests and the performance of their duties or employment with the APS. It includes, but is not limited to, conflicts arising out of relationships based on common interests such as sporting, social, cultural or political activities as well as family, sexual or other relationships. Non-financial conflicts of interest may result in patronage, favouritism, cronyism or nepotism both within and outside the ACCC.
- **Financial interest**  
Includes all of the employee's financial affairs, including but not limited to any outside employment activity, directorships, shareholdings including the buying and selling of securities, real estate or trusts.

- **Financial conflict of interest**  
Where an employee's financial affairs conflict with their official duties or employment with the APS. It includes but is not limited to conflicts arising out of directorships, shareholdings including the buying and selling of securities, real estate or trusts, or the acceptance of outside employment or gifts.
- **Conflict of interest module**  
This module is an online self-assessment tool that assists an employee to determine whether a conflict of interest exists.

#### **HINT**

The key to determining conflict of interest situations is to assess whether it is likely to interfere or appear to interfere with the impartiality and highest ethical standards that are required of APS employees. The main issue to resolve is whether the trust placed in the employee by the ACCC and the public will be undermined by the situation.

#### **GIFTS**

As a general rule, gifts/hospitality should not be accepted. Where they either compromise, or could be perceived to compromise, your integrity and your ability to undertake your official duties in a professional and objective manner, they must not be accepted.

##### **Examples**

Small tokens of appreciation (eg. a bottle of wine, coffee mug, book, set of coasters) for speaking at an industry functions, or low value social/networking events (eg. cocktail party) offered by service providers or industry groups are not objectionable. Items of value that are personally directed - tickets to sports or arts events that are provided to you personally for use by you and your family, offers of travel and hotel/resort accommodation, personal invitations to dine - may not be accepted.

##### **Declaring**

Where gifts or hospitality are accepted they must be declared. Declaration may be made by means of an email form available on the intranet, which will be emailed to the General Manager, Corporate Branch. All declarations are placed on a register maintained by the General Manager.

[Intranet home](#) → [Corporate resources](#) → [Corporate governance](#) → Gifts and hospitality - declaration of acceptance

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## OBLIGATIONS

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### INTRODUCTION

This section of the document outlines the employee and manager obligations in relation to conflict of interest.

### EMPLOYEES' BASIC OBLIGATIONS

Employees are required to ensure that they understand their obligations to avoid conflicts of interest.

All employees must conduct their work in a manner free of bias that either favours or discriminates against parties.

Employees must complete the conflict of interest self-assessment module as detailed below.

Employees have a responsibility to notify managers about real or potential conflicts of interest.

When a situation arises which is, or has the potential to develop into a conflict of interest, employees must immediately:

- complete the conflict of interest module; and
- take all reasonable steps to avoid the situation.

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### EMPLOYEES' SPECIFIC OBLIGATIONS

To avoid situations of conflict of interest, ACCC employees must:

- only seek official information needed for the performance of their duties
- disclose and document in advance for the delegate any current or prior personal relationships with prospective providers when involved in a procurement process
- disclose and document in advance for the delegate any current or prior personal relationships with applicant(s) for a position in recruitment processes when participating in a staff selection process
- have written approval from the ACCC prior to undertaking any paid or unpaid outside employment
- ensure that any private political or lobbying activities are not presented as, or could be seen as, representing the ACCC
- not use information obtained in the course of official duties to gain an advantage for themselves or for any other person e.g. using information to buy or sell shares
- not accept gifts or hospitality (other than of a trivial nature), or prizes from clients, suppliers or contractors for any activities related to their employment
- not obtain a personal benefit from frequent flyer points accrued while travelling on official business
- not use ACCC business cards, passes, letterhead or status as an employee of the ACCC to gain a benefit in their private dealings.

If an employee anticipates that a situation of conflict of interest may potentially arise, the employee should disclose the potential conflict of interest with their manager, and take all reasonable steps to avoid the situation of conflict.

## **MANAGERS' OBLIGATIONS**

Managers have a responsibility to ensure that employees are aware of their obligations to avoid situations which may give rise to a conflict of interest.

Managers have a further responsibility to decide whether:

- there is, or could be, a conflict of interest
- to direct the employee to divest themselves of the interest
- to change the employee's duties or to transfer the employee to another position where there is no conflict
- to allow the employee to continue their duties

Upon receiving the disclosure of a personal or financial interest by an employee, or a report of a conflict of interest, the manager must:

- determine if there is a real or potential conflict of interest and the extent of that conflict
- direct the employee as to the management of the potential conflict or the resolution of the actual conflict
- maintain a record of the direction given
- monitor the management or resolution of the conflict.

Where a breach of the Code of Conduct is suspected, the procedure for managing alleged breaches of the Code of Conduct must be followed.

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## CONSEQUENCES

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### INTRODUCTION

This section of the policy details the possible consequences of failure to observe obligations in relation to conflict of interest.

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### CONSEQUENCES

A conflict of interest may significantly damage the reputation of the ACCC and the APS. Consequently, the ACCC attaches particular importance to the avoidance and proper resolution of conflict of interest situations.

As noted above, the rules requiring ACCC employees to disclose situations of conflict of interest have their basis in the APS Code of Conduct. Accordingly, the failure on the part of an ACCC employee to adhere to the rules surrounding situations of conflict of interest can result in a breach of the APS Code of Conduct.

Accordingly, failure to observe requirements relating to conflict of interest may result in action being taken under the ACCC Procedures for Determining Breaches of the Code of Conduct. If a breach of the Code of Conduct is found, section 15 of the Public Service Act provides that the sanctions which may be imposed are:

- a reprimand
- deductions from salary, by way of fine
- reduction in salary
- re-assignment of duties
- reduction in classification
- termination of employment.

Depending on the nature of the conflict of interest, prosecution under the *Crimes Act 1914* could also occur with appropriate penalties being imposed by a court.

## DOCUMENTED ACTIVITIES

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### INTRODUCTION

There are two main documented activities associated with conflict of interest:

- self assessment
  - recording the outcome of a process to determine whether a conflict exists.
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### CONFLICT OF INTEREST SELF ASSESSMENT MODULE POLICY

All employees must complete the ACCC conflict of interest self-assessment module.

#### When to complete the module

An employee must complete the self-assessment:

- within 1 month of commencing work at the ACCC
  - during the month of July each year
  - when his/her duties change (eg transfer to another branch) or
  - when her/his financial or personal situation changes in a way that may be relevant to the issues of real or potential conflict of interest.
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### OBJECTIVES OF THE MODULE

The objectives of the conflict of interest self-assessment module are:

- raise the employees awareness of potential conflicts between private interests and official duties
  - prepare the employee to make judgements regarding conflicting interests
  - provide some protection for the employee against allegations of misconduct
  - respect individual privacy.
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### WHERE TO FIND THE MODULE

The conflict of interest self-assessment module is available on the intranet:

[Intranet home](#) → [Corporate resources](#) → [Corporate governance](#) → Conflict of interest self-assessment module

## PROCESS

The process is detailed below:

Stage	Action
1	Follow the steps on the intranet to undertake the module on the intranet.
2	Complete the self-assessment module.
3	Print the receipt and give it to your manager.
4	Manager signs receipt and forwards to the HRM section.

## OUTCOME OF A PROCESS TO DETERMINE WHETHER A CONFLICT EXISTS

When a manager is determining whether a conflict or potential conflict of interest exists, records must be kept of all decisions made in respect of that determination.

Where a matter is not managed as a suspected breach of the Code of Conduct, disclosures and reports of suspected conflicts of interest are to be made in writing and kept on the employee's personal file.

Where a matter is managed as a suspected breach of the Code of Conduct, all the records relating to the conflict of interest are to form part of the confidential conflict of interest file. Any actions arising from the Code of Conduct procedure will be placed on the employee's personal file.

## CONFLICT OF INTEREST THAT HAS THE POTENTIAL TO AFFECT THE REPUTATION OF THE ACCC

When a conflict of interest has been identified that has the potential to affect the reputation of the ACCC, the following actions will take place.

1. The conflict of interest must be brought to the attention of the General Manager Corporate Services
2. The GM Corporate will consider any issues relating to the APS Code of Conduct and any other ACCC HR policies
3. The GM Corporate will brief the Chief Executive Officer on the incident.
4. The CEO will consider appropriate actions which may include a staff message, a media release, staff counselling or disciplinary action.
5. The CEO will brief the Chairman on the incident and the proposed action.
6. The GM Corporate will assess any changes that may be required to ACCC HR policies and promulgate any that may be required.
7. An appropriate staff message will advise staff of any changes.