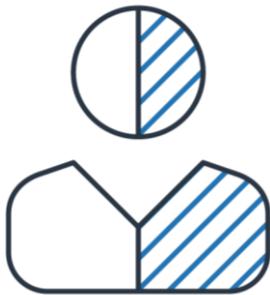




PREVENTION IN PRACTICE

Understanding Conflicts of Interest



This Prevention in Practice Guide presents good practice approaches to an effective conflict of interest management framework. This Guide is designed to assist agencies of all sizes to review, update and implement effective conflict of interest frameworks.

Effective management of conflicts of interest is one of the pillars of a healthy integrity framework. Within the public service, disclosure and management of conflicts of interest is essential to the public service being, and being seen to be, impartial.

It is important to realise that a conflict of interest in itself does not constitute corrupt conduct. However, many corruption cases involve an underlying or associated conflict of interest. Early identification and management of actual, perceived or potential conflicts of interest can prevent subsequent corrupt conduct. In the case of a perceived conflict of interest, even if the perception is inaccurate, it can still erode trust.

For these reasons, Commonwealth officials operate under various legislative obligations to disclose, avoid and manage conflicts of interest in their work. While the term is not defined further in Commonwealth legislation, a conflict of interest can be understood to arise when an individual's personal interests, affiliations or relationship prejudices impact, have the potential to impact, or could be perceived to impact, on their impartiality or result in an incompatibility with their official duties. This includes situations where a person has been offered a gift or benefit. Conflicts of interest can also arise for legal persons, including government agencies and non-Commonwealth third party organisations.¹

The Department of Finance [Guide on General duties of officials \(RMG203\)](#) provides that:

"A material personal interest is one that can give rise to a real or apparent conflict of interest that could affect the ability of an official to discharge their duties. Material personal interests could arise, for example, when:

- *a member of an accountable authority is also a director of an organisation that is seeking to provide services to the Commonwealth entity*
- *an official is on an employment selection panel that is interviewing a friend or family member for a position with the Commonwealth entity*
- *an official approving or recommending the approval of a grant is directly or indirectly involved with an organisation seeking the grant."*

¹ [ANAO Audit Insights: Management of Conflicts of Interest in Procurement Activity and Grants Programs](#) (29 June 2020).

CATEGORIES OF CONFLICT OF INTEREST

Actual	Perceived	Potential
<p>There is a direct conflict of interest. The individual or entity's personal interests or affiliations impact on their impartiality or result in an incompatibility with their official duties.</p> <p>For example, a person is a director of a company which has tendered for a procurement that the official is tasked with evaluating. The conflicting duties owed by the person to the company and their agency are incompatible and therefore represent an actual/real conflict of interest.</p>	<p>A reasonable person outside the organisation or process might draw the conclusion that there was a conflict of interest, even if there is in fact no actual or potential conflict of interest.</p> <p>For example, a person works for an agency responsible for issuing grants, although the person has no direct involvement in the grants process. The person's sibling applies for and wins a grant. A reasonable person may draw a conclusion that the person had given their sibling an advantage by providing inside knowledge or influencing the process. This is a perceived conflict of interest.</p>	<p>A conflict of interest that has not yet manifested, but may in future. The individual or entity's personal interests or affiliations may impact on their impartiality or result in an incompatibility with their official duties.</p> <p>For example, a person whose role is to assess visa applications has family members applying for a visa. If the person was asked to assess applications from their family, their duties to the agency and their familial obligations would be incompatible, representing a potential conflict of interest.</p>

In 2021, **18.7% of APS employees** who reported witnessing corruption said they had witnessed individuals acting (or failing to act) in the presence of an undisclosed conflict of interest.² Over the same period, **50 APS employees** were found to have breached the APS Code of Conduct requirement to disclose any material personal interests and take steps to avoid real or apparent conflicts of interest.³

Conflict of interest in corruption investigations (2020-21): In 2 agency investigations undertaken under the *Law Enforcement Integrity Commissioner Act 2006* in 2020-21, staff members failed to declare associations that gave rise to conflicts of interest or presented integrity risks, and disclosed official information to benefit the source of the conflict. Another investigation found that a staff member had failed to declare an association with a defendant to proceedings in which the staff member had appeared as a witness for the prosecution. In the course of a fourth investigation, it came to the agency's attention that a secondary employment approval had expired and the staff member had not sought to renew it. The investigation also found that the nature of the secondary employment created a conflict of interest and as a result, the secondary employment approval was suspended. (Source: [ACLEI Corruption Vulnerabilities Brief 2020/21](#))

² 2020 and 2021 APS Employee Census. Percentages are based on respondents who said they witnessed potential corruption.

³ [APSC State of the Service Report 2020-21, 'Reform in the shadow of COVID-19'](#).

What are the rules?



APS Code of Conduct: The [APS Code of Conduct](#) requires APS employees to 'take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment'.⁴ Many non-APS agencies have generally equivalent requirements under enabling legislation. Most agency policies set out that non-compliance with requirements to declare and manage conflicts of interest may be investigated as a suspected breach of the applicable Code of Conduct (Code).

PGPA Act and PGPA Rule: This requirement is consistent with the duty in the [PGPA Act](#) for officials to report material personal interests in relation to the affairs of the entity they work.⁵ The [PGPA Rule](#) details how and when different categories of official need to disclose material personal interests, and the circumstances when the duty to disclose does not apply.⁶ It also requires that conflict of interest policies are approved by the entity accountable authority.

Protective Security Policy Framework: The [Protective Security Policy Framework](#) (PSPF) provides agencies with guidance on performance management of individuals, and outlines that entities are encouraged to embed security considerations into their annual performance appraisals by **seeking confirmation from individuals that they have reported any real or perceived conflicts of interest.**⁷

Commonwealth Procurement and Grants Rules: The [Commonwealth Procurement Rules](#) (CPRs) require that officials undertaking procurement recognise and deal with 'actual, potential and perceived conflicts of interest.' The [Commonwealth Grants Rules and Guidelines](#) also contain provisions on conflict of interest, including that accountable authorities ensure that 'entity policy and management processes for conflict of interest are published to support probity and transparency'. They ask accountable authorities to put in place mechanisms to identify and manage potential conflicts of interest, including declaration and management procedures in all phases of grants administration, and maintain a register of staff and other party interests.

These standards, combined with those in any agency-specific legislation, provide the foundation upon which each Australian Government agency must tailor its own approach. For example, some agencies extend their conflict of interest frameworks to include potential conflicts of interest. Others reflect the APS Code of Conduct definition and limit the definition to actual/real and apparent/perceived conflicts of interest. Best practice would suggest adopting the broadest application and requiring identification, declaration and management of actual, perceived and potential conflicts of interest.

Many contractors are covered by the definition of 'officials' under the PGPA Act. However, individuals who perform work for the APS on a contractual basis are not APS employees under the [Public Service Act 1999](#) and are generally not covered by the Code. Agencies should consider including specific conflict declaration and conduct requirements in contracts (and/or in pre-employment suitability assessment processes as relevant), including requirements that are broadly equivalent to those of the Code, having regard to the nature of the work to be performed.⁸

⁴ Section 13(7) of the *Public Service Act*.

⁵ Section 29 of the PGPA Act.

⁶ Sections 12–16D of the PGPA Rule.

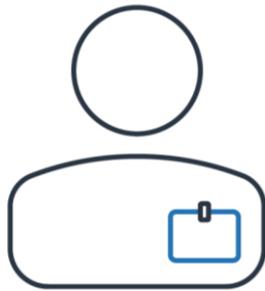
⁷ Section C.1.2 (in Policy 13) of the PSPF.

⁸ see *Handling Misconduct: a human resource manager's guide*, [paragraph 2.19](#)

Agency heads and Senior Executive Service employees are subject to a specific regime that requires them to submit, at least annually, a written declaration of their own and their immediate family's financial and other material personal interests.⁹

Establishing a conflict of interest policy framework

Who should be covered by a conflict of interest policy?



In addition to agency employees, conflict of interest policies and procedures should apply to all contractors, consultants, and outsourced service providers engaged by the agency, as well as statutory office holders and advisory or governing bodies associated with the agency.

While there is no specific requirement for agencies to publish their conflict of interest policy and management processes, publication can support probity and transparency and can assist agencies to make staff and third parties more aware of what situations may constitute conflicts of interest.¹⁰

What should be declared?



Conflict of interest policy frameworks are almost entirely dependent on employees identifying and self-declaring actual, perceived or potential conflicts.

However, staff cannot be expected to declare interests if they are not clearly informed of the kinds of interests that could present conflicts in the context of their employment.

Agencies should ensure that policies on conflict of interest declaration and management are integrated with policies and procedures for declaring and managing gifts and benefits and secondary employment/volunteering.

More mature frameworks could also incorporate proactive, risk-based conflict identification, for example through:

- Verifying declared interests (to identify instances of under-declaring).
- Reviewing declared interests during key activities, for example in recruitment, procurement and at the initiation of law enforcement action.
- Searching available data sources to identify undeclared interests.

These categories will vary depending on the nature of the agency's functions and the skills, experience and backgrounds of its staff.

Conflict of interest policies should clearly identify the kinds of interests, duties, assets, associations or circumstances that employees are required to disclose, to ensure timely, accurate and complete declarations.

⁹ [Section 5](#) of the APS Values and Code of Conduct in Practice

¹⁰ [ANAO Audit Insights: Management of Conflicts of Interest in Procurement Activity and Grants Programs](#) (29 June 2020).

CATEGORIES OF DECLARABLE INTERESTS

Associations	Assets	Circumstances
Foreign nationals outside of official duties	Significant liabilities or debts	Being charged with or convicted of a criminal offence
Public figures (e.g. politicians, journalists, lobbyists or celebrities)	Financial and economic interests such as shares, assets, real estate, trust funds, self-managed super funds, health or other insurance arrangements, or debts Changes in these interests	Health or medical circumstances (including drug or alcohol dependency) Changes in these circumstances
Clients, contractors, suppliers or licensees of the agency	Gifts, benefits or hospitality	Secondary / outside employment (including volunteer work)
Intimate or family relationships with current agency employees	Interests in a family or other private business	Future employment prospects or plans (i.e. post separation employment)
Former agency employees	Pre-registration for IPO	Paid work or directorship or similar office outside of the agency
Members of criminal entities or groups who support extreme/radical views	Significant financial or economic interests in an entity that has dealings with the agency	Unpaid work outside of the agency
Members of Parliament, personnel of media organisations and lobbyists	Short-term credit arrangements	Duties owed in other contexts – for example, duties owed as a director of a company or not for profit organisation
Connections to businesses involved in activities such as prostitution, gambling, service of alcohol and provision of private security	Buying or selling of shares; holding shares in a company	
Affiliations with for-profit and not-for-profit organisations, sporting bodies, social or cultural groups, clubs and associations		
Affiliations with political, trade union, or professional organisations		

Declaring conflicts of interest

When to require declarations?

Commonwealth agencies have varying approaches to the timing of employee declarations. The *Public Service Act 1999*, and specifically the Code of Conduct (s. 13(7)), requires employees to avoid conflicts of interests and to declare material personal interests. It is the agency, through policies/procedures about declarations of assets; approval for gifts/benefits/hospitality; agreement to secondary employment, that determines the specific requirements that an employee must comply with.

In addition, some agencies require declarations to be made before commencement, within a specific period after commencement (e.g. one month), and/or annually. To ensure that this policy is upheld, some agencies link annual declarations with the performance management process and require declarations to be completed even where no conflicts have been identified.

It is important that declarations be completed before a person or entity commences employment, to ensure actual or potential conflicts will not impact on their suitability to perform the relevant role, and/or to ensure conflicts can otherwise be identified and mitigated. Please note, this does not over-ride agency's responsibilities under anti-discrimination law and the *Public Service Act 1999*, with regard to the upholding of fair and merit-based employment decisions, free from discrimination.¹¹ Declarations should indicate whether or not an actual, perceived or potential conflict of interest exists, be completed in full and authenticated.¹²

Agencies also require periodic or circumstance-specific declarations. Some of the circumstances in which circumstantial declarations are required include when:

- awarding grants
- entering into partnership arrangements
- appointing individuals to decision-making arrangements (e.g. panel/board/committee)
- trading financial products
- dealing with an agency's assets
- buying, selling or holding shares in an entity under assessment by the agency
- holding shares equivalent to more than 5% of the employee's total assets or more than 5% of a listed company's market capitalisation (or both)
- undertaking procurement or procurement decisions
- undertaking recruitment and selection processes
- holding relevant meetings where decisions are taken or where advice on the activities of the agency is provided to decision makers, such as Audit Committee meetings (in which case, agendas and documents should be provided in advance with an invitation to participants to identify conflicts, and conflicts and measures taken to resolve them are recorded in the minutes).

Agencies should implement an appropriate process to update disclosures, including when individuals change roles, locations or are assigned to special projects or taskforces. Cessation processes (e.g. exit interviews) also provide an opportunity to obtain important

¹¹ See s 351 *Fair Work Act 2009*; s 10A *Public Service Act 1999*.

¹² [ANAO Audit Insights: Management of Conflicts of Interest in Procurement Activity and Grants Programs](#) (29 June 2020).

information about conflicts of interest that could have affected the exercise of an employee's official duties.

Agencies should also consider whether post-separation employment could raise conflict of interest concerns. For example, misuse of official information to advance private business interests, both during an employee's tenure and post-separation.¹³ Agencies should advise employees that applying for a job in an entity that is tendering for procured services or applying for a grant from a program in which they are involved, is a conflict that should be declared.¹⁴

Consider cooling-off periods

Agency heads may put in place broad policy guidelines which include, for example, suggested periods of time that an employee should wait after leaving the APS before they work in business areas that have direct contact with their former agency. Some agencies, such as the Department of Defence, have developed common understandings of ethical behaviour with relevant industry associations to help promote the acceptance of agency guidelines. These arrangements are not enforceable, and depend on the goodwill of parties and their perceptions of mutual benefit.

(Source: [APS Values and Code of Conduct in Practice](#), para. 5.10.11)

In some of the corruption issues brought to ACLEI's attention, declarations have been either incomplete or after-the-fact, with employees using declaration processes to conceal or attempt to exonerate misconduct. It is therefore important to verify and/or investigate declarations against other available information, to ensure there is not underlying or associated misconduct or associations and potential conflicts that have not been declared or that have been under-declared.

Who should receive declarations and how?



Agencies have varying approaches to requirements to report and record declarations. Some agencies take a cascading approach requiring a self-assessment of conflicts, followed by initial disclosures to supervisors or managers, and subsequent submission of a conflict declaration form and/or management plan to a central integrity unit responsible for monitoring and recording this information.

Agencies should provide a form or template that lists and requires declarations against the types of conflict that are most likely to arise in the context of the agency's activities.¹⁵ Agencies often have separate forms to declare assets/associations/outside employment/gifts, benefits and hospitality. As noted above, it is important to ensure consistency between these various declaration frameworks, or consider integrating them into a single system.

Some agencies require all declarations to be recorded electronically through a dedicated system, although it appears that there are no common systems used across different agencies. Ideally, agencies should have an electronic system for declaring conflicts of

¹³ [Corruption Prevention Advisory: Post Separation Employment](#) (Crime and Corruption Commission Queensland, December 2021).

¹⁴ Ibid.

¹⁵ Ibid.

interest and recording conflict management plans. One of the advantages of this approach is that it enables the agency to analyse and share data, as appropriate.¹⁶

Best practice suggests that both the immediate manager and centralised agency integrity unit should be involved in and aware of conflict management plans. Conflict declarations and management plans should be centrally recorded in an appropriate electronic system.

Managing conflicts of interest

Most agencies require supervisors or managers to develop, implement and monitor conflict of interest management plans (conflict management plans) to address declared conflicts of interest. Agencies should provide alternative management options when agency heads, senior executives or managers themselves identify an actual, perceived or potential conflict of interest.

It is good practice to consult or inform, as appropriate, senior executive staff about conflict management plans applying to staff within their areas of responsibility and ensure that these are documented and centrally recorded (e.g. on the same system as the initial conflict declaration). Agencies should stipulate a reasonable timeframe for developing, agreeing and recording the conflict management plan. For example, one agency requires that declarations are actioned by the delegate within a two-week period.

Managing conflicts of interest is an exercise in risk mitigation. As such, the actions taken should be directly proportionate to the risk the conflict presents. Some approaches to conflict mitigation include:

- Recording and centrally registering all declared conflicts and conflict management plans
- Including provisions in requests for tender and contracts with successful tenderers to restrict the employment of current and/or former government employees who managed the tender process
- Separating the employee from an activity or process, or preventing the employee from being assigned tasks, projects or processes where there is an actual, perceived or potential conflict
- Independent monitoring or oversight of the employee's work
- Transferring the employee to an alternate role that is unconnected with the conflict
- Removing the employee from relevant decision making
- Engaging a non-conflicted third party to advise on or participate in the affected activity or process
- Engaging a peer or subject-matter expert to review the work of the conflicted employee
- Limiting the employee's access to electronic and physical records, systems and information relevant to the conflict
- Requiring the employee to relinquish or divest the interests which are the cause of the conflict
- Referring or escalating the management of the conflict to another area of the agency (e.g. integrity unit, senior executive, human resources)

¹⁶ [Managing corruption risks associated with conflicts of interest in the Victorian public sector](#), Independent Broad-based Anti-Corruption Commission, October 2019.



In determining the appropriate mitigations, managers must consider not only the impact of the conflict, but also the business impact of the mitigation. For example, there may be circumstances when resource constraints or other priorities limit the ability for a conflict situation to be entirely avoided. In these circumstances, it is particularly important for managers to record the rationale behind the conflict management plan ultimately agreed upon, and ensure that it has been approved by a more senior delegate.

Additionally, it is important to note the interplay between different types of risks and the usefulness in considering disclosure based on personal interests, rather than specific conflicts of interest. This is because, disclosure of personal interests can provide greater transparency and enables agencies to get a thorough picture of any actual, perceived and/potential conflicts. This is integral for agencies to be able to effectively and proactively manage risks holistically.¹⁷

Consequences for failing to declare or manage conflicts



Most agency policies set out that non-compliance with requirements to declare *and manage* conflicts of interest may be investigated as a suspected breach of the applicable Code.

Sanctions resulting from a breach of the Code can include reprimands, salary deductions, reassignment of duties, reduction in classification and termination of employment or engagement.

It is important for agencies to be aware of relevant conflict of interest management obligations (including consequences of disclosure) in the PGPA Act and PGPA Rule, in addition to, (and where relevant), their own legislation, for statutory agencies.¹⁸

Further, agency processes relating to complaints about undeclared or mismanaged conflicts of interest and/or how employees can make reports of breaches, should be captured within internal policies and procedures. Where applicable, third party reporting of conflict of interest breaches (and/or undeclared, mismanaged conflicts) could also constitute a protected disclosure under the *Public Interest Disclosure Act 2013* (Cth).¹⁹

Agencies should also consider the impact of undeclared/unmanaged conflicts on decisions or actions taken by the person. For example, should decisions be remade or tainted contracts re-evaluated? Consideration should also be given to excluding those who benefited from the conflict (whether individuals or entities) from future processes, as appropriate.

As noted above, in 2020-21 50 APS employees were found to have breached the APS Code of Conduct requirement to declare material personal interests and avoid real or apparent conflicts of interest. Agencies should consider sharing relevant findings and penalties applied on Code investigations relating to conflict of interest with other agencies pursuant to Part VIID of the *Crimes Act 1914* (Cth), to ensure consistency of approaches.²⁰

¹⁷ See also NSW ICAC (2019) 'Managing conflicts of interest in the NSW public sector' 13-18.

¹⁸ s 29 PGPA Act; Sections 12-16D of the PGPA Rule.

¹⁹ See also [NSW ICAC \(2019\) 'Managing conflicts of interest in the NSW public sector', 28.](#)

²⁰ For more information, see Attorney General's Department, [Collecting, using and disclosing personal information for an integrity purpose: Guidance on Part VIID of the Crimes Act 1914 \(Cth\).](#)

Culture and training

Staff at all levels should be encouraged to have safe conversations about their own conflicts of interest and feel secure enough to speak out about conflicts they suspect.

Agencies should provide clear and consistent guidance to employees on how to identify, declare and manage conflicts of interest. Agency executives and management should regularly communicate about the conflict of interest framework and how it is implemented. It is also important to communicate the outcomes of breaching these procedures to agency staff to illustrate the risks and consequences for failure to declare and manage conflicts of interest.

It is essential that staff responsible for implementing the agency conflict of interest framework are appropriately trained and supported to manage conflict declarations and escalate, as necessary. Agencies may also consider including conflict of interest management in performance management processes for managerial staff.

Regular awareness-raising and formal training on the conflict of interest framework should be accompanied by probity awareness declarations, which require individuals to acknowledge the receipt of the training and agreement to abide by and implement conflict procedures. These can be useful in subsequent investigations.

Analysis, reporting and review

A centralised register of interests and conflict management plans can help promote consistency and ensure conflicts are managed efficiently. Centralised, electronic registers of declarations and management plans facilitate analysis of:

- types of declared interests
- frequency, timeliness and completeness of declarations
- types of mitigations applied, their potential effectiveness/impact and inconsistencies
- source of declarations (e.g. specific teams/ business areas)
- declaration gaps.

This analysis can be used to inform the agency's executive on the effectiveness of the existing framework, identify areas for improvement, and highlight opportunities for general or targeted training.

With due consideration for the relevant sensitivities, the analysis can also be shared with staff to demonstrate transparency in how the agency responds to conflicts of interest.

Agencies should regularly review the implementation of their conflict management frameworks to ensure their ongoing relevance.

Conflict of interest policy reviews should include:

- completeness and accuracy of disclosures and registers, including whether management plans need to be revised in light of changes of circumstance
- updated risk assessments (e.g. taking into account increased working from home arrangements and the rapid introduction of new technologies)
- internal reporting of suspected conflict of interest and associated fraud, corrupt conduct or misconduct
- outcomes of agency investigations into suspected fraud, corrupt conduct or misconduct associated with declared or undeclared conflicts of interest.

Staff should be involved in the review of the framework—their experience as users of systems and processes can contribute to the improvement of existing mechanisms.²¹

²¹ OECD, [Guidelines on Managing Conflict of Interest in the Public Service](#) (2003).