

### Conflicts of Interest Policy

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#### Purpose

This Policy explains:

- what a conflict of interest is, and
- how to manage or avoid conflicts of interest.

This Policy applies to all Fair Work Ombudsman and Registered Organisations Commission Entity (the Entity) employees, managers and contractors unless stated otherwise.

## Why do we need to manage conflicts of interest?

The Entity is committed to undertaking its work in a fair and unbiased manner without the influence of improper considerations. This commitment is fundamental to the Entity's reputation as a high performing, capable and responsive Australian Public Service (APS) Entity.

Public confidence in the integrity of the APS is vital to the proper operation of government. This confidence may be jeopardised if the community perceives a conflict of interest.

The APS Code of Conduct requires employees to:

- behave honestly and with integrity in connection with APS employment
- 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
- not improperly use inside information or the employee's duties, status, power or authority to:
  - gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
  - cause, or to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

The *Public Governance, Performance and Accountability Act 2013* also requires officials of the Entity (including employees) to disclose any material personal interests that relate to the affairs of the Entity and to not improperly use their position to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or cause, or to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

## What's a conflict of interest?

A conflict of interest is where there is a conflict between your public duties and your private interests, that might influence (or be seen to influence) your work duties, responsibilities or decisions.

Conflicts can also arise where you seek to use your position (or be seen to use your position) to gain or seek to gain advantage for yourself or others or to cause detriment to the Entity, the Commonwealth or others. It can also include avoiding personal disadvantage.

The potential for a conflict to arise, or the perception of a conflict is just as serious and important as an actual conflict (even if there is no conflict) may be enough to undermine public confidence.

To assess whether you have a conflict of interest you need to consider:

- 1) Is there a conflict that might influence (or be seen to influence) my work duties, responsibilities or decisions?
- 2) Is the conflict because of my private interests?

### Is there a conflict?

Conflicts of interest may be:

- **Real** – you can be influenced by your private interests when doing your job.
- **Apparent** – you appear to be influenced by your private interests when doing your job.
- **Potential** – you may be influenced by your private interests when doing your job in the future.

## **Is the conflict because of my private interests?**

A private interest includes not only your own personal, material, professional or business interests, but also the personal, professional or business interests of individuals or groups you are, or may be associated with. This includes relatives, friends or even rivals.

When assessing whether a conflict involves your private interests, you should consider the following.

### ***Material interests***

Material interests are personal advantages or financial gain you might receive, such as job offers, hospitality, gifts, increase in land value, money and direct profit.

They can include:

- directorships,
- family businesses,
- shareholdings,
- real estate,
- debts,
- assets, or
- trusts that might conflict with your job responsibilities.

### ***Personal relationships***

You may have family or other personal relationships with people engaged in activities that could have an interest in issues you are dealing with. Examples could include media, lobbyists or people who have business dealings with the Entity bodies (FWO or the ROC).

Where these relationships exist it is important to be open about them and disclose any family or other personal relationships that could or could be seen to impact on your work responsibilities and the reputation of the FWO, ROC and the APS.

### ***Interests of immediate family members***

As part of their disclosure responsibilities, SES and the holders of nominated positions are required to declare any private interests or relationships of their immediate family (spouse/partner, children and dependants (including children or dependants of spouse/partner) that they are aware of, where circumstances arise in which they consider that these interests could (or could be seen to) influence the decisions they are making or the advice they are giving.

### ***Secondary employment and affiliations***

The following may give rise to conflicts of interest:

- secondary employment commitments,
- future employment prospects or plans,
- affiliations with for-profit and non-profit organisations, sporting bodies, clubs, associations, political, trade union or professional organisations, and
- other personal interests:

Unpaid or voluntary outside work can present the same potential for conflict of interest as paid outside employment, and should both be treated with the same level of importance. Future employment opportunities can also give rise to a conflict where the new employment is aligned with responsibilities or duties of the current APS role.

Even if you have approval to engage in outside work, the arrangement should be declared if it could, or could be seen to impact on your work responsibilities with the Entity. You can find more information about the Entity's requirements for secondary employment commitments in our [Outside Work Policy](#).

Entity employees must inform their manager as soon as they are offered employment where a conflict of interest could arise, outlining any relationship between the job offered and his or her duties in the Entity and describe any possible conflict of interest the offer raises.

## What are my responsibilities?

It is recognised that there will be times where a conflict of interest exists. What you do, or don't do, once you become aware of a conflict of interest is important.

It is your responsibility to appropriately declare and avoid any conflict of interest that cannot be managed.

You are responsible for:

- being aware of your obligation to avoid conflicts of interest wherever possible
- assessing whether your private interests conflict or potentially conflict with your job responsibilities
- formally disclosing any conflict of interest (real or apparent)
- managing any conflicts that can be effectively managed, and
- otherwise complying with this Policy.

Managers are responsible for:

- complying with this Policy in respect of their own conflicts of interest, and
- facilitating compliance with this policy by assisting members of their team to comply with this Policy by:
  - promoting, educating and ensuring compliance with this Policy
  - ensuring staff in their teams make appropriate declarations
  - discussing and documenting strategies that might be implemented to effectively manage disclosed conflicts, and
  - monitoring the work of their team for any potential conflicts of interest their staff might be exposed to.

## When do I need to declare an interest?

### ***Employees, contractors and Fair Work Inspectors***

*All employees and contractors are required to identify and manage conflicts of interests at all times, regardless of whether they are required to make a declaration.*

If you identify a real or apparent conflict of interest, you should declare it and discuss how the conflict might be managed with your manager. For this purpose you can use [Attachment 1 - Declaration of Conflict of Interest and Management Plan](#) or the electronic version of this form found at [FWOforms](#).

Fair Work Inspectors are also required to make an annual declaration in respect of conflicts of interest and their good character. See [Policy for Fair Work Inspector Appointments](#) for further information.

### **SES employees and nominated positions**

In accordance with [Section 13\(7\) of the Code of Conduct](#) contained in the *Public Service Act 1999* all SES employees (and those acting as SES for more than three months) are required to declare in writing, at least annually, their financial and other interests that could cause a real or apparent conflict of interest and those of their immediate family.

The Entity requires some employees at non-SES levels to regularly declare their personal interests, if their role requires them to be particularly transparent about their private interests. This will be reviewed annually by the FWO in consultation with the Governance and Information Management Team.

Declarations need to be revised and resubmitted whenever there is a change in personal circumstances and/or a change in work responsibilities that could involve a new or apparent conflict of interest.

These declarations should be made using [Attachment 2 - Declaration of Interests – SES and Nominated Positions](#) or the electronic version of this form may be found at [FWOforms](#).

### **What happens after a declaration is made?**

It is not enough to simply make a declaration of interests. If the declaration discloses a conflict (real or apparent), discussions must occur with your manager and arrangements should be developed to address this conflict. These arrangements should be recorded in a management plan.

### **What is a management plan?**

In order to develop a management plan to manage a conflict of interest, you can use [Attachment 3 - Guide to Rating Conflicts of Interest](#) to assess the severity of the conflict and [Attachment 4 - Strategies to Manage Conflicts of Interest](#) to identify what strategies might be appropriate to manage the conflict.

You should discuss the conflict and your proposed strategy to manage the conflict with your manager and develop a management plan. A template management plan is provided at [Attachment 1](#). The electronic version of this form may be found at [FWOforms](#).

Declarations and management plans should be provided to the Governance and Information Team (email [FWO Governance and Risk](#)) to be recorded on the central register.

### **What do I do if something changes?**

A declaration only remains relevant if it is regularly monitored and updated. You must notify your manager if something that might impact on the decisions you make or the advice you give changes. This includes changes to:

- your responsibilities
- the subjects you make decisions or give advice about, or
- your personal circumstances.

After notifying your manager of a change, you will both need to reassess the conflict of interest and update your management plan where applicable.

## How are declaration forms handled?

Declarations and management plans are stored on a centralised register and a copy is placed on your personnel file. These documents are securely retained and only accessed by authorised persons.

The Entity is responsible for ensuring declarations and management plans remain confidential.

Where a request to view a declaration is made, such as by a Parliamentary Committee, a court or a tribunal, or by a person making an application under the *Freedom of Information Act 1992*, the request will be dealt with according to the law.

The FWO's Privacy Policy details how you can access your personal information held by the FWO and how you can ask to have this information corrected (if it is incorrect). The Privacy Policy also explains how you can make a complaint about a breach of the Australian Privacy Principles and how the Entity handles such complaints.

## Examples

### Scenario 1

As a Fair Work Inspector, Sandra knows that the FWO has implemented a change to its policy which means that requests for assistance filed before a certain date will be treated differently to those received after the date. Information on this policy is not released publicly so there isn't a flood of requests before the changeover date.

Sandra's cousin has recently been underpaid by her employer. Sandra's cousin is considering making a complaint to the FWO. Sandra's cousin asks her for advice.

Considerations:

- Sandra is experiencing conflicting loyalties to her employer and to her family.
- Sandra is aware of the restrictions placed on her by the APS Code of Conduct in using inside information for her own benefit or for the benefit of anyone else.
- It may be appropriate for Sandra to give general information about requesting assistance from the FWO.
- It may be inappropriate for Sandra to provide specific information about making the complaint that is not publicly available.

*Outcome:* Sandra decides to only give her cousin the publicly available information on requesting assistance from the FWO.

### Scenario 2

The following week Sandra approached her manager because she became aware that her good friend Sally from the Young Workers Team is handling her cousin's complaint.

Considerations:

- Provided that Sandra is not involved in any decision making processes, any real or apparent conflict of interest is likely to be appropriately managed by removing herself from discussions concerning the matter or otherwise influencing the outcome of the investigation.

*Outcome:* Sandra and her manager discuss the situation and complete a Declaration of Conflict of Interest and implement a management plan where Sandra ensures that she will not discuss her cousin's application with Sally or participate in any discussions or decision making about the progress of her cousin's application. Sandra also agrees to not access her cousin's application or to speak to her about it.

### **Scenario 3**

A few months later, Sandra receives a call from her cousin to tell her that she has been fired from her job and has an unfair dismissal conciliation conference scheduled for next week. Sandra's cousin asks her if she could come on the day and help her at the conciliation conference at the Fair Work Commission.

Considerations:

- Even if Sandra tells the Fair Work Commissioner and her cousin's old employer that she is not there to represent her cousin as a Fair Work Inspector, it is possible that both the Fair Work Commissioner and the employer could perceive Sandra to be acting in that capacity and as a representative of the FWO.

*Outcome:* Sandra discusses the issue with her Manager and decides to decline her cousin's request.

### **Scenario 4**

David is involved in assessing a tender involving an upgrade to a FWO IT system. David has to register all the tenders the day after the request for tender closes. David recognises that his brother-in-law's company has submitted a tender. David doesn't get on with his brother-in-law and had no prior knowledge that he was planning to tender for the work.

Considerations:

- Even though David does not get on well with his brother in law, a conflict of interest could still arise.
- There are others in the IT Team who can assist with the tender process and it is not too late for David to be removed from involvement in assessing the tenders as the process is yet to commence.

*Outcome:* The following day David discusses the issue with the project manager who says that David should not continue to work on the tender process. There are others in the team that can assist with the tender process.

Note: If the tender was of a large scale and included a Probity Advisor, the Probity Advisor would also need to be informed of the issue.

### **Further Information**

[Conflicts of interest intranet page](#)

[Confidential advice can be sought from the APSC Ethics Advisory Service](#)

[APS Values and Code of Conduct in practice](#)

[Lobbying Code of Conduct](#)

[Public Service Act 1999](#)

## Attachment 1 - Declaration of Conflict of Interest and Management Plan

This Declaration of Conflict and Management Plan records:

- a declaration of a real or apparent conflict of interest; and
- the management plan that has been agreed to in order to effectively manage an identified conflict of interest.

Management Plans should be emailed to [FWO Governance and Risk](#).

Individuals and their managers should regularly review their management plan and make necessary revisions.

Individual's Full Name	
Classification/Position Title	
Organisational Unit	
Matter under consideration and why it could be a conflict of interest (or potential) with your role at FWO	
Expected roles/duties to be performed by the employee in dealing with the matter	
Private interests identified which have the potential to impact on the individual's ability to carry out, or be seen to carry out, their duties impartially and in the public interest	

The conflict of interest has been identified as (tick those boxes that apply)	Real: <input type="checkbox"/> Apparent: <input type="checkbox"/> Potential: <input type="checkbox"/> Financial: <input type="checkbox"/> Non-financial: <input type="checkbox"/>
Action to be taken to resolve or manage the conflict of interest	

Signature of individual: .....

Full Name: .....

Date: .....

Signature of Supervisor/Manager: .....

Full Name: .....

Date: .....

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 Freedom of Information Act  
 by the Fair Work Ombudsman

## Attachment 2 - Declaration of Interests – SES and Nominated Positions

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

- all Senior Executive Service (**SES**) employees
- all employees acting as SES for longer than three months, and
- any other employee the Fair Work Ombudsman (FWO) considers appropriate because of their responsibilities or the nature of their work.

Upon completion, please email this declaration form to [FWO Governance and Risk](#).

<b>Employee's full name</b>	
<b>Classification/Position Title</b>	

I declare that:

1. I am aware of my responsibilities under the [Australian Public Service \(APS\) Code of Conduct](#) to:
  - a) behave honestly and with integrity in connection with my APS employment,
  - b) disclose details of any material personal interest in connection with my APS employment,
  - c) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with my APS employment,
  - d) not improperly use inside information or the employee's duties, status, power or authority to:
    - gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
    - cause, or to seek to cause, detriment to the Entity, the Commonwealth or any other person.
2. I have read and understood:
  - a) the [APS-wide guidelines covering declarations of personal interests](#), and
  - b) the FWO's Conflict of Interest Policy.
3. The list at **Annexure A** of my private interests and relationships and those of my family members (spouse/partner, children and dependants (including children or dependants of spouse/partner)) has been prepared on the basis of:
  - a) the particular roles and responsibilities of the Entity, and
  - b) my particular APS roles and responsibilities.

I undertake to immediately inform the Entity of any changes to:

- my responsibilities or to the issue or subjects on which I am required to make decisions or give advice, and/or
  - my personal circumstances;
- that could affect the contents of this declaration and to provide an amended declaration/s.

I undertake to declare any private interests or relationships of my family members (spouse/partner, children and dependants (including children or dependants of spouse/partner)) 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/s to the collection by the Entity 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.

Employee signature: .....

Full name: .....

Date: .....

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Freedom of Information Act  
by the Fair Work Ombudsman

## Declaration of Consent by Family Member/s

In order to meet the requirements of the *Privacy Act 1988*, the Fair Work Ombudsman and Registered Organisations Commission Entity (**Entity**) requires the express consent of family members (spouse/partner, children and dependants (including children or dependants of spouse/partner)) to the disclosure of their interests by the employee. This consent should be provided by completing and signing the Declaration below. If the relevant family member is under the age of 18, the parent or legal guardian of the family member can provide the required consent on his or her behalf.

If consent is not given, the employee should discuss the actual or potential sensitivity of the relevant interest in general terms without mentioning the family member's name. The Entity can then decide what action may need to be taken.

### Declaration

This declaration is to be completed by or on behalf of each family member of an employee if the employee believes that the personal, financial or other interests of the family member could or could be seen to influence the employee's decisions or advice.

Full Name: \_\_\_\_\_

Employee's name: \_\_\_\_\_

Relationship to Employee: \_\_\_\_\_

I am aware that personal information has been collected for the purpose of identifying interests that could be seen to influence the decisions or advice of the employee covered by the Conflicts of Interest policy. I consent to the collection of my personal information by the Entity for this purpose and understand that my personal information will only be used for the purpose of verifying the interests stated or a related purpose, and only in accordance with the Entity's obligations under the Privacy Act 1988.

The attached list at **Annexure A** of private interests and relationships has been prepared on that basis.

Signature:.....

Name:.....

Date: .....

## ANNEXURE A

### 1) Personal/social relationships

I, and/or members of my family have the following relationships which could or could be seen to influence the decisions I am making or the advice I am giving:

Person and position	Nature of relationship

### 2) Shareholdings

I, and/or members of my family own the following shareholdings:

Owner	Company

### 3) Trusts/nominees companies

I, and/or members of my family hold a beneficial interest in the following family or business trusts or nominee companies:

Beneficiary	Trust/ nominee company	Nature of interest	Activities of trust

I, and/or members of my family are trustees of the following family or business trusts:

Trustee	Trust	Beneficiaries	Activities of trust

### 4) Directorship in companies (whether public or private)

I, and/or members of my family hold the following directorships, whether remunerated or not:

Director	Company	Private public	or	Activities of company

### 5) Partnerships etc.

I, and/or members of my family are members of the following partnership(s):

Person holding interest	Partnership nature/purpose of operations

### 6) Other

Please list any private interests or relationships of you or your immediate family 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, other significant sources of income, significant liabilities, gifts\*, private business, employment, voluntary arrangements that could or could be seen to impact upon your responsibilities.

Interest/relationship	Nature of interest/relationship

\* Note that the Accountable Authority Instructions issued under the *Public Governance, Performance and Accountability Act 2013* govern gifts received during the course of your work and require the approval of the relevant delegate and recoding on the Gifts Register.

See also Practical Guide 8 – Gifts and Sponsorship.

### Attachment 3 - Guide to Rating Conflicts of Interests

The Table below provides a guide to assess the severity of conflict of interests so they can be appropriately managed.

The examples provided in the Table below are by not exhaustive and are simply provided to illustrate some of the conflicts that might arise within the Entity.

Please also refer to the [Outside Work Policy](#) in respect of conflicts that might arise due to secondary employment or other voluntary commitments.

Rating	Description	Example
Significant-High	Conflict is grounds for the individual to not have any connection with a matter under consideration where any real or apparent conflict of interest exists.	<ul style="list-style-type: none"> <li>— Has a direct financial interest or personal interest with a company being investigated (for example is related to a director of the company).</li> <li>— Has a personal material interest with a company who is tendering for work with the Entity.</li> <li>— Stands to benefit in any material way in the exercise of their duties.</li> <li>— A Fair Work Inspector working for a private investigation firm.</li> </ul>
Medium	Conflict is not so material that the Entity should be deprived of the particular employee's expertise or knowledge on a subject provided appropriate management strategy is implemented.	<ul style="list-style-type: none"> <li>— Was an employee of a company more than five years ago.</li> </ul>
Low	Conflict not so material that individual's ability to give full and unbiased consideration to the matter at hand is affected. Nevertheless, this level of conflict must be advised so that appropriate management strategies can be implemented.	<ul style="list-style-type: none"> <li>— Is an acquaintance of an employee of a company the subject of an investigation they are working on.</li> </ul>

## Attachment 4 – Strategies to Manage Conflicts of Interest

The following Table contains a number of management strategies which can be used for real or apparent conflict of interests.

Strategy	When most suitable
<p><b>Register</b> - registering the existence of an real , apparent or potential conflict of interest.</p> <p>Ensures managers are aware of conflict so that effective supervision can be carried out.</p> <p>Provides transparency for affected persons.</p>	<p>All conflicts of interests should be registered regardless of what additional management strategies are implemented. <a href="#">Attachment 1</a> can be used for this purpose.</p> <p>For low conflicts of interests where recording the conflict of interest is sufficient to maintain transparency.</p>
<p><b>Restrict</b> - restrictions are placed on your involvement in the matter to oversee part or all of the process that deals with the matter. For example:</p> <ul style="list-style-type: none"> <li>• removal from any role in critical decision making,</li> <li>• refraining from engaging in debate about the issue,</li> <li>• abstaining from voting,</li> <li>• having restricted access to relevant information and documents.</li> </ul> <p>It is important that affected parties know what management strategy has been adopted to maintain transparency in decision making.</p>	<p>Individual can be effectively separated from the activity or process giving rise to the conflict.</p> <p>The conflict of interest is not likely to arise frequently.</p> <p>Low or Moderate level conflicts.</p>
<p><b>Recruit</b> - recruit a disinterested third party to oversee or review part or all of the process that deals with the matter.</p>	<p>It is not feasible or desirable to remove the individual from the decision making process. For example, where there is an apparent conflict of interest that has only been identified near the completion of the process or after the making of a decision.</p> <p>Moderate level conflicts.</p>
<p><b>Remove</b> - the individual is completely removed from the matter. Examples might include:</p> <ul style="list-style-type: none"> <li>• transferring to another project,</li> <li>• transferring to another organisation,</li> <li>• duties being reallocated to another officer.</li> </ul> <p>This management strategy should be developed in conjunction with the employee. In some circumstances you will need to obtain advice from the People Branch.</p>	<p>For ongoing significant or high conflicts of interest where restriction or recruitment of others is not feasible or appropriate and the individual is not prepared or able to relinquish their private interest.</p>

<p><b>Relinquish</b> - the individual relinquishes the private interest that creates the conflict.</p>	<p>Where the individual would rather relinquish their private interests than alter their work responsibilities.</p>
<p><b>Resign</b> - the individual resigns from their employment.</p> <p>Any action under this strategy should involve the People Branch and be in accordance with the Entity's employment policies and procedures.</p>	<p>Where the individual prefers this course as a matter of personal principle.</p>

<b>Document particulars</b>	
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Approver	Michelle Carey, Executive Director Finance, Assurance and Business Services A/g

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