



**ACT Health**

# Conflict of Interest

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# 1. Purpose

This procedure supports the management of potential, perceived or actual conflicts of interest in accordance with the *ACT Public Sector Management (PSM) Act 1994*, the *PSM Standards 2016*, ACT Public Service (ACTPS) Code of Conduct, ACTPS Conflict of Interest (COI) Policy, ACTPS Integrity Framework and Integrity Governance Policy.

Under the ACT PSM Act 1994, the ACTPS Integrity Framework and Integrity Governance Policy, ACT Public Sector employees (including contractors and consultants) are required to take all reasonable steps to avoid a conflict of interest and declare those that cannot be reasonably avoided.

# 2. Scope

This procedure applies to all ACT Health Directorate (ACTHD) staff, whether they are permanent, temporary, casual, contractors or volunteers.

In relation to contract staff, it applies to their conduct at any time in which they are receiving payment for work done within ACTHD, or where they are acting in an official capacity on behalf of ACTHD.

It also applies where public officials face a *conflict of duty* – that is, where they have roles in more than one organisation, which may have competing objectives.

In addition to this procedure, conflict of interest declarations are also embedded as part of the [recruitment](#) and [procurement](#) processes, guidance for which can be found in the relevant instructional material on the ACTHD Policy Register.

## Definition

The *ACTPS COI Policy* states that “a conflict of interest arises when an employee’s private interests or connection may lead to improperly influencing the performance of the employee’s official duties and responsibilities”.

Private interests are not limited to financial or pecuniary (money/trade based) interests, or those interests that generate a direct personal benefit to you. You may be involved in an otherwise legitimate activity, be personally affiliated or associated to a group or business, or have family or cultural interests, but if those interests could reasonably be expected to improperly influence you performing your duties, a conflict of interest may be involved. The ACTPS COI Policy differentiates these two aspects using the terms “pecuniary financial” or “non-pecuniary”.

Conflicts of interest can be considered as either actual, perceived/apparent or potential:

- Actual – where improper influence is occurring or has happened in the past.

- Perceived/apparent – where it appears to a reasonable person that an employee’s private interests could improperly influence their duties irrespective of whether this is in fact the case.
- Potential – where a public official has private interests that are of such a nature that a conflict of interest would arise if the employee were to become involved in official responsibilities or duties in the future, related to those interests.

## 2.1 Roles and Responsibilities

**All staff have an ongoing responsibility to identify, declare and manage conflicts of interest, to ensure duties are performed in a fair and unbiased way and not make decisions affected by self-interest or personal gain.**

Position	Responsibility
Director-General	<ul style="list-style-type: none"> <li>• Ensure adequate conflict of interest risk management processes exist.</li> <li>• Appoint a Senior Executive Responsible for Business Integrity and Risk (SERBIR).</li> </ul>
Senior Executive Responsible for Business Integrity and Risk (SERBIR)	<ul style="list-style-type: none"> <li>• Implementing this procedure.</li> <li>• Providing advice on conflict of interest management.</li> </ul>
Senior Executives	<ul style="list-style-type: none"> <li>• Modelling the highest standards of ethical behaviour as leaders of the directorate.</li> <li>• Ensure effective management of Conflicts of Interest within their Division/Branch.</li> </ul>
Senior Directors/Directors/Managers	<ul style="list-style-type: none"> <li>• Informing staff, contractors and volunteers under their management of their responsibilities under this procedure</li> <li>• Discuss with their EBM/EGM any conflict of interest relating to a member of their team (whether perceived, potential or actual).</li> <li>• Discuss management of any potential conflicts of interest with members of their team.</li> <li>• Manage situations relating to conflicts of interest.</li> <li>• Review conflict of interest declarations as necessary to ensure action to manage conflict remains appropriate.</li> </ul>

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All staff and contractors

- Adhering to the ACT Health Directorate Values and the ACTPS Code of Conduct.
- Regularly consider the relationship between their private interests and public duties in order to identify any potential, perceived/apparent or actual conflict of interest in line with this procedure.
- Seek advice from their supervisor or the SERBIR when unsure.

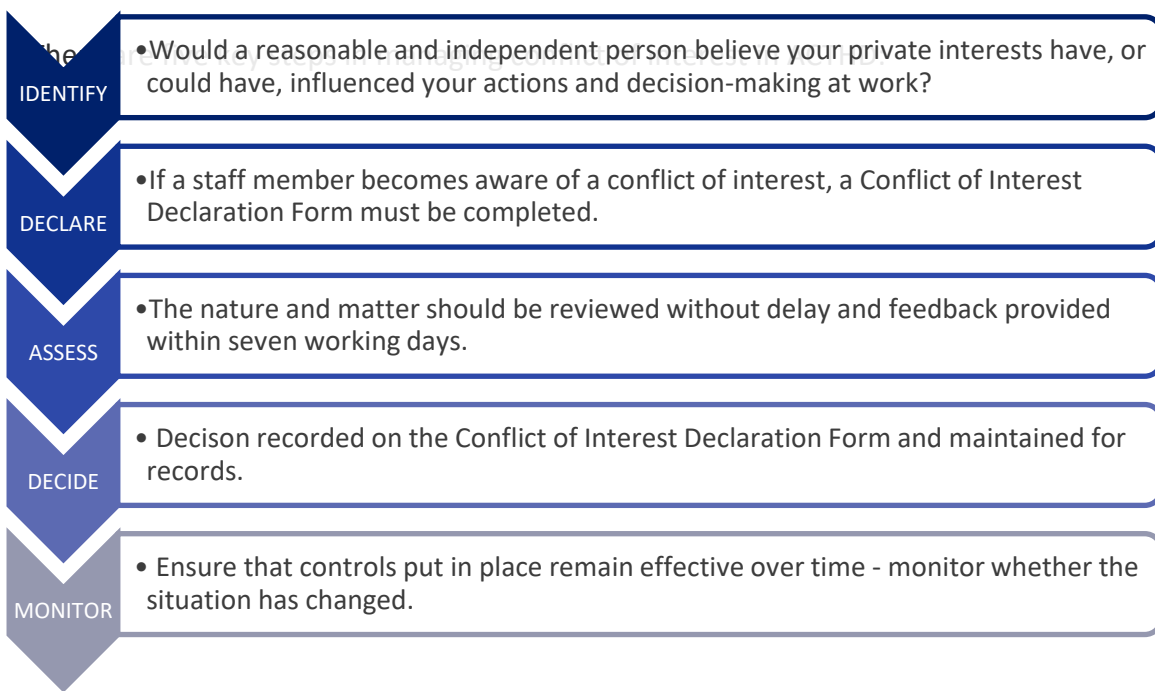
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Governance and Risk Branch

- Assist the SERBIR to fulfil their responsibilities.
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The ACTPS COI Policy provides information on the responsibilities of employees, managers, executive and Senior Executive Responsible for Business Integrity Risk (SERBIR).

### 3. Procedure



#### 3.1 Step One: Identify

The impact of many relationships, linkages and associations can be subjective. Therefore, you should not rely on your own judgement alone when determining a conflict of interest. Consider what a reasonable and independent observer (i.e. a member of the public) would think or conclude knowing all the facts.

The test for a possible conflict of interest is whether a reasonable and independent person would believe your private interests have, or could have, influenced your actions and decision-making at work.

If you have any doubt as to whether a perceived or actual conflict of interest exists, you should discuss it with your supervisor or the SERBIR.

Additionally, if you consider a colleague, contractor or supplier has a potential conflict of interest that has not been disclosed, you should discuss the matter with your supervisor or with the SERBIR and further information is available in the ACTPS COI Policy Tool 1 (Examples and Definitions) and 2 (Information Sheet)

### - QUESTIONS TO CONSIDER -

Is there a relative, friend or associate who stands to gain or lose in any way from the decision or action I make in the course of my work?

Have I made any promises or commitments in relation to the matter?

Have I received a benefit or service from someone who stands to gain or lose from a decision on the matter?

Am I, or do I have an affiliation to individuals who are, a member of an association, club or organisation who stand to gain or lose from the matter?

Could there be a benefit to me in the future that could cast doubt on my objectivity?

If I participated in a decision-making process, would I be happy for my colleagues and the public to be aware of my association or connection to it?

Would a fair and reasonable person perceive that I was influenced by personal interests?

**If the answer to any of these questions is 'yes' then you should make a declaration.**

## 3.2 Step Two: Declare

You have an obligation to report possible conflicts of interest that have the potential to bring the Directorate into disrepute. Whenever you become aware of a conflict of interest (whether financial, non-financial, perceived or actual), a [Conflict of Interest Declaration Form](#) should be completed by you and your supervisor.

### 3.2.1 Delayed Declaration

In circumstances where making an initial written declaration is not possible, for example in an emergency, your immediate supervisor must be verbally informed. The declaration form must be completed as soon as possible after the event. Until the declaration has been assessed, you should exercise caution and not participate in decision-making relating to the potential conflict.

## - QUESTIONS TO CONSIDER –

What is the nature of the relationship that could give rise to the conflict?

Has enough information been provided to make a determination?

Could the persons involvement in this matter cast doubt on their integrity now or in the future?

Could the persons involvement damage the reputation of ACTHD or the ACT Government?

What is the best option to mitigate or minimise the risk?

Should additional advice be sought from the SERBIR or the ACT Government Solicitor?

### 3.2.2 Benefits of declaring

Conflicts of interest can arise because family and friends are part of our community, and therefore it means conflicts are sometimes inevitable and unavoidable. Declaring a potential or actual conflict of interest enables it to be managed and supports transparency and accountability. Not declaring a conflict of interest could amount to inappropriate behaviour and compromise your integrity and that of the directorate.

## 3.3 Step Three: Assess

When you disclose a potential conflict of interest, your supervisor will assess and discuss with you the nature of the conflict and how best to minimise the conflict and mitigate risk. The management of the conflict may include the following options:

- assign another colleague with making the decision and finalising matters instead of you;
- include an independent person from another directorate in the decision-making process;
- assign other work to you if it relates to the project or larger piece of work; and/or
- consult with the SERBIR to determine additional or alternative options.

Once a declaration is made to your supervisor, the nature and matter should be reviewed without delay and feedback provided to you within seven working days.

## 3.4 Step Four: Decide

Choosing the right option to deal with a conflict of interest will depend upon the circumstances of the matter and an objective assessment of it.

Where the disclosure is of financial interest, it is best that you are removed from the considerations or discussions associated with the matter.

Where the conflict is for non-financial interests, there is a broader range of options which include:

- **register** the details of the actual, potential or perceived conflict of interest by using the [Conflict of Interest Declaration Form](#) and any other appropriate administrative form (e.g. recorded in the minutes of a meeting);
- **restrict** the employee's involvement in the public duty subject to the conflict;
- **recruit** a disinterested third-party to oversee part or all of the public duty;
- **remove** the employee from all responsibilities in relation to the public duty;
- the employee **relinquishes** the private interest;
- the employee **resigns** their public office temporarily or permanently.

While it is your responsibility to take appropriate action to resolve an identified conflict of interest in the public interest, your supervisor plays a critical role in determining how best to minimise conflict and mitigate the risk.

In some circumstances, however, supervisors may consider it necessary to direct you to take action you do not wish to take to mitigate a conflict of interest.

In such circumstances, your supervisor's direction may be a lawful and reasonable direction which you must follow or face disciplinary action. If you feel that your supervisor's direction is unreasonable or otherwise flawed, you can both discuss the matter with the SERBIR.

The final course of action determined must be recorded on the Conflict of Interest Declaration Form which your supervisor should then use to monitor the conflict. A copy of the form must be maintained for records.

Guidance material to assist you in making the decision, see the ACTPS COI Policy Tool 1 (Examples and Definition), 2 (Information Sheet) and 3 (Checklist). The checklist will ensure you have considered all necessary matters and completed all actions.

### 3.5 Step Five: Monitor

Where a conflict of interest is not time-bound, it is important to regularly review the situation. It is the responsibility of you and your supervisor to consult with each other to ascertain whether the controls put in place remain appropriate or whether the situation has changed.

Any agreed changes should be documented on a new Conflict of Interest Declaration Form.

## 4. Records Management

Records must be managed in accordance with the *Territory Records Act 2002* and ACTHD policy and procedures.



It is both your and your supervisor’s responsibility to ensure that conflict of interest declarations and other documentation related to managing the matter are stored appropriately.

In all cases, records need to be kept on disclosures including how the matter was considered and what action was taken to manage the conflict. Given that conflict of interest declarations may contain personal, sensitive and confidential information, associated documentation will need to be carefully managed, with business units also needing to consider information privacy issues.

These records must be kept in such a manner that they are auditable and/or comply with the relevant legal framework (e.g. under the *Health Records (Privacy and Access) Act 1997*) and professional standards regarding professional boundaries, breaches of which may be notified to the relevant regulation agencies (e.g. AHPRA).

Records should be kept securely in locked filing cabinets or offices or limited to access to those with a need to know in any Electronic Document and Records Management System.

## 5. References and Related Documents

### Legislation

- *Public Sector Management Act 1994*
- *Public Sector Management Standards 2016*
- *Public Interest Disclosure Act 2012*

### Supporting Documents

- ACTPS Code of Conduct
- ACTPS Conflict of Interest Policy (No:10/2021)
- ACTPS Integrity Framework
- ACTPS Integrity Governance Policy
- ACTPS Decision Makers Handbook
- ACTHD Fraud and Corruption Control Plan
- ACTPS Conflict of Interest Tool 1 – Examples and Definition
- ACTPS Conflict of Interest Tool 2 – Information Sheet
- ACTPS Conflict of Interest Tool 3 - Checklist

## 6. Version Control

Version	Date	Comments
1.0	September 2020	Final approved document
1.1	June 2021	Included references to ACTPS Conflict of Interest Policy and ACTPS COI Tools

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1.2

May 2021

Updated references relating to ACTPS Integrity Framework

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