ACT Government

CONFLICT OF INTEREST POLICY

JUSTICE AND COMMUNITY SAFETY DIRECTORATE

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DEFINITION OF TERMS

Term	Definition
Employee	Includes all Justice and Community Safety (JACS) Directorate permanent, temporary, and casual staff employed in JACS under the *Public Sector Management Act 1994*. A number of employees are also subject to professional standards regarding professional and personal boundaries, breaches of which may also be notified to the relevant regulation agencies. Registrars and other staff who exercise quasi-judicial and procedural decisions in relation to matters before the courts and tribunal are exempted. Records of these persons who are exempted must be maintained and produced for audit purposes.
Conflict of Interest	Actual conflict of interest is where the improper influence is occurring or has occurred in the past. Perceived conflict of interest arises when it appears that an employee's interest could improperly influence the performance of their duties. Potential conflict of interest arises where a public official has interests that are of such a nature that a conflict of interest would arise if the staff were to become involved in official responsibilities in the future related to those interests. In some cases a potential or perceived conflict of interest may become an actual conflict. Where "conflict of interest" appears in this policy, it means actual, perceived, or potential conflict of interest, unless stated otherwise.
Pecuniary Interest	Pecuniary interest involves an actual or potential financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative or other associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits (such as concession, discounts, gifts, or hospitality) from a source.

1. PURPOSE

1.1 The purpose of this policy is to inform employees of their responsibilities in relation to the declaration of any conflict of interest, whether perceived, potential, or actual.

1.2 The impact of many affiliations, linkages and associations can be subjective. Therefore, an individual employee's own judgement is not to be relied on exclusively in determining a conflict of interest. What is important may not be what the employee thinks, but what a reasonable and independent observer would think or conclude knowing all the facts. Therefore, personal affiliations must be declared.

2. SCOPE

2.1 This policy specifically relates to affiliations that may be perceived, potential or actual, conflicts of interest. This policy applies to all JACS permanent, temporary or casual employees, ACT Public Services (ACTPS) recruitment panel members involved in a JACS recruitment process, and non ACTPS recruitment panel members. All employees and external panel members are required to act in accordance with this policy and notify their manager or recruitment chair of any affiliation that may be a perceived, potential, or actual conflict of interest in the workplace, using the relevant form.

2.2 For guidance on the management of conflicts of interest relating to procurement and contract management processes, refer to the JACS Procurement, Contract Management and Assurance Framework.

3. POLICY STATEMENT

3.1 JACS expects all employees to uphold the integrity of the ACTPS. To help achieve this, all employees are required to declare all actual, perceived, or potential conflicts of interest.

3.2 The objective of this policy is to ensure that the business of the Directorate is always conducted with integrity and professionalism, while maintaining a culture of trust and respect for all. It is to ensure there is no real or perceived unfair advantage given to an individual, or a group of people, due to a personal affiliation.

4. ROLES AND RESPONSIBILITIES

4.1 Section 9 of the *Public Sector Management Act 1994* (ACT) ('the PSM Act') states:

> Section 9 Public sector conduct
>
> *(1) A public servant must—*
>
> *(a) take all reasonable steps to avoid a conflict of interest; and*
>
> *(b) declare or manage a conflict of interest that cannot reasonably be avoided; and*
>
> *(c) when acting in connection with the public servant's job—*

(i) comply with laws applying in the Territory; and

(ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction; and

(iii) if dealing with a member of the public—make all reasonable efforts to help the person to understand the person's entitlements, and any requirement the person is obliged to meet, under a territory law; and

(iv) treat all people with courtesy and sensitivity to their rights and aspirations; and

(d) do the public servant's job with reasonable care and diligence, impartiality, and honesty.

Role	Responsibility
Employee	• Avoid placing themselves into situations of possible conflict of interest whether it be perceived, potential or actual. • Declare to their manager any affiliation that they encounter within their workplace or in the course of their duties, that may be a perceived, potential, or actual conflict of interest. • Complete the Declaration of Conflict of Interest Affiliation Form if a conflict of interest is declared, and then every 12 months thereafter, or when changing roles if the conflict still exists.
Manager/Delegate	• Ensuring their employees declare all conflicts of interest. • Ensuring that employee induction includes information about the need to declare any conflict of interest and the means by which this is done. • Contacting their Business Unit Head/Executive Group Manager (or equivalent) or People and Workplace Strategy (PWS) to discuss any conflict of interest declared to them by their employee or notification from another person of a perceived, potential, or actual conflict of interest due to an affiliation where the best course of action is unclear. • Discussing a potential conflict of interest with the employee if a concern is raised with them by another party due to a personal affiliation. • Providing a record of notification of conflicts of interest, which includes any actions taken to their Business Unit Head for secure and central storage by the Business Unit. • Managing the situation to ensure that both the employee and Directorate are not seen to be in a position of conflict of interest that has not been managed appropriately.

Role	Responsibility
	• Treating the declaration in accordance with the *Information Privacy Act 2014* (ACT) ('the Privacy Act').
Business Unit and Corporate Heads	• Providing guidance regarding recordkeeping of notification of conflicts of interest. • Ensuring that records of notification of a conflict of interest are maintained appropriately and held securely, and information disclosed is kept confidential but accessible by those responsible for managing the conflict. • Contacting PWS to discuss declared conflicts of interest that require further clarification. • Treating the declaration in accordance with the Privacy Act.
PWS	• Reviewing and updating this policy. • Ensuring that employee induction includes information about the need to declare any conflict of interest and the means by which this is done. • Providing information to Business Unit Heads, managers, delegates, and staff of their obligations where a conflict of interest situation may arise or has been declared. • Treating the declaration in accordance with the Privacy Act.

5. DETAILS OF THIS POLICY

5.1 The ACTPS Integrity Policy states that a 'conflict of interest' occurs when "an employee's private interests improperly influence the performance of the employee's official duties and responsibilities". Private interests can include the interests of your immediate family and friends but in some cases colleagues (current or former).

5.2 Conflicts of interest can be divided into:

- Actual - where the improper influence is occurring or has occurred in the past,
- Perceived or apparent - where it appears that an employee's interest could improperly influence the performance of their duties; and
- Potential - where an employee has interests that are of such a nature that a conflict of interest would arise if the staff were to become involved in official responsibilities in the future related to those interests.

5.3 It is not necessary for the employee to receive a financial gain for a conflict of interest to be present. For example, conflicts can arise when dealing with issues where the employee has affiliations or obligations to groups outside work, such as political, trade union, professional, community, ethnic, or religious groups.

5.4 Information regarding conflicts of interest as part of ensuring probity when conducting procurement activities can be found in the Conflict of Interest – Procurement Better Practice Guide: PBY-01-202206.

5.5 The Whole of Government ACTPS Conflict of Interest Policy and Tools can be found on the ACTPS Employment Portal.

PERSONAL AFFILIATIONS

5.5.1 A personal affiliation is one in which there is a connection between employees or an employee and a client/service or other stakeholder and is not limited to where a pecuniary interest exists. Personal affiliations may include, but are not limited to:

- an otherwise legitimate private activity, personal affiliations or associations, and family interests which could reasonably be considered likely to improperly influence the employee's performance of their duties;
- affiliations with family members, including wife, husband, former wife or husband, intimate partner/s, former intimate partner/s, parent, step-parent, foster parents, foster children, foster siblings, sibling-by-birth, step-sibling, daughter, step-daughter, son, step-son, grandparent, step-grandparent, aunt-by-birth, uncle-by-birth and cousin-by-birth;
- affiliations between a family member and a client;
- personal/external links between a friend and a client;
- an external organisation that undertakes work duties in an area you work in or that your position has oversight of;
- friendships with personal links outside of the workplace (may include social connections with clubs, religious groups, sporting teams);
- work associates with whom you socialise;
- affiliations where one person is financially linked with or dependent on the other;
- affiliations with a history of conflict between parties, and
- incidental contacts with a client such as at a social function.

IDENTIFYING A CONFLICT OF INTEREST

5.5.2 Some examples of matters that would be conflicts of interest if you are involved in any decision or action about them are:

- taking part in assessing a tender application where you have, or have had, an affiliation with a person, or organisation that has submitted a tender application,
- involvement in the development of policy which would have a direct impact on yourself or your family's activities such as a family business, personal involvement with affiliations or groups,
- your spouse or a friend is an applicant for a job with your Business Unit, and you are on the selection panel or the delegate,

- personal affiliation with a reporting staff, peer, supervisor, or higher authority in the operational chain of command (e.g. becoming responsible for supervision of family members, working in the same business unit/section),
- any decision-making process (e.g. exercising a delegation) where an affiliation with affected parties (including their referee or business employer) exists,
- you (or a relative, or an associate) hold shares or have a position in a company bidding for government work, or
- you use government property or equipment, information, your position, or government affiliation to pursue personal interests or the interests of another organisation.

5.5.3 The test for a possible conflict of interest is whether a reasonable or independent person would believe that the personal interest(s) of the employee, has or could have, influence over their work-related actions and decisions.

6. ACTIONS

6.1 Business Units should identify preventative measures that deal with emergent conflict situations and enable staff to foresee potential conflicts, for example:

- provide meeting agendas in advance and record in meeting proceedings any conflicts that arise and the measures taken to resolve them,
- recusal – establish clear rules and efficient procedures (e.g. a register of interests for registrars and other staff who exercise quasi-judicial and procedural decisions in relation to matters before the courts and tribunal) to ensure that ad hoc conflicts of interests are made transparent so that decision-making is not compromised.

6.2 Actions will vary according to the nature and circumstances of the potential conflict and the context within which it has arisen. Options may include, but are not limited to:

- the employee with the conflict of interest may be removed from the process which resulted in the conflict,
- the employee may decline to be involved in a process such as approving leave or actions that involves a person with whom they have a close personal affiliation, and
- employees between whom there is a close personal affiliation may be moved to different work areas.

6.3 If there is a situation which results in a conflict of interest and the employee does not disclose or avoid the conflict, it may result in disciplinary action. Any such action will be undertaken in line with the relevant Enterprise Agreements or legislation.

7. RECRUITMENT

7.1 All recruitment panel members (Chairperson or panel members) must ensure that all actual, perceived and potential conflicts of interest are declared prior to the commencement of short-listing.

Role	Responsibility
Employee	• Members of a recruitment panel for all advertised positions in the Directorate must complete the Recruitment Selection Committee Conflict of Interest/Declaration of Impartiality Form following review of the names of the applicants but prior to shortlisting. Selection Committee members must disclose any knowledge of, or relationship that they have with candidates that could be perceived as having an influence on their selection decision in order for the delegate to determine how the conflict is to be managed. This declaration includes if they have no known actual or potential conflicts of interest and should be sent to the panel Chair.
Panel Chair	• Must ensure all panel members have completed the relevant Conflict of Interest Declaration Form. Any non-ACTPS panel members (as approved by the Chief Human Resources Officer) must complete the Recruitment Selection Committee Conflict of Interest Form/Declaration of Impartiality Form for Non-ACT Public Service Panel Members. • Following review of the completed Conflict of Interest forms, the panel Chair will refer all (including their own) Recruitment Selection Committee Conflict of Interest/Declaration of Impartiality Forms to the recruitment delegate for review and management. The information provided to the Recruitment Delegate should not include the list of applicants, only information provided within the forms. • No screening or shortlisting of candidates should be undertaken until the recruitment delegate has advised of their decision.
Recruitment Delegate	• Review and decide what, if any, action is necessary including possibly changing membership of the panel. It is important for all panel members to participate fully in the recruitment process, and as such it is not appropriate for a conflict to be managed by a panel member not participating in decisions regarding any applicants. • Upon review of the information provided in the Conflict of Interest forms, the Recruitment Delegate identifies their own actual, potential or perceived conflict of interest, they should nominate another Recruitment Delegate to oversee the recruitment process.

8. RECORD KEEPING

8.1 In all cases, records need to be kept of disclosures, including how the matter was considered and what action was taken to manage the conflict. Unless there is a dedicated form relevant to the particular process being undertaken (such as for

recruitment as explained in section 7 above), this should be done by completing the Declaration of Conflict of Interest Affiliation Advice Form.

8.2 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.

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

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

9. ENQUIRIES

Enquiries about this Policy can be directed to:

Justice and Community Safety, People and Workplace Strategy

Email: JACS.People-WorkplaceStrategy@act.gov.au

Post: GPO Box 158, Canberra ACT 2601

DETAILS

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Document/Legislation References:	*Public Sector Management Act 1994* *ACT Government Procurement Act 2001* *ACT Human Rights Act 2004* *ACT Information Privacy Act 2014* Enterprise agreements covering JACS staff ACT Public Service Code of Conduct ACT Public Service Integrity Governance Policy *Domestic Relationships Act 1994* *JACS Declaration of Conflict of Interest Affiliation Advice Form* *JACS Second Jobs Policy* ACT Government Conflict of Interest Policy

AMENDMENT HISTORY

Version	Issue Date	Amendment Details	Author
1.0	March 2015	Draft	People and Workplace Strategy
2.0	June 2016	Final	People and Workplace Strategy
3.0	30 April 2020	Minor Review	People and Workplace Strategy

Version	Issue Date	Amendment Details	Author
3.5	9 September 2022	Review	People and Workplace Strategy