



Managing conflicts of interest Tip sheet

This advice is for HR practitioners and managers who are managing conflicts of interest, or who are considering a misconduct investigation in cases where there is a possible conflict of interest.

Why is managing conflicts of interest important?

Avoiding and properly managing conflicts of interest are essential to public confidence in the integrity of the APS and confidence in the integrity of individual employees. Conflicts of interest are a critical integrity risk.

What is a conflict of interest?

A conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.

What conflicts of interest do we see in our review work?

The Merit Protection Commissioner commonly sees conflicts of interest in areas of public service which contain heightened risks, as follows:

- **Recruitment** – employment decisions that give the appearance of nepotism or patronage
- **Procurement** – procurement decisions where there is a perception of favouritism
- **Servicing of clients** – situations where it appears that some clients may be getting a better level of service because of their relationship with a public servant.



- **Outside employment** – where the outside employment may compromise perceptions of the employee's impartiality or otherwise create a risk to the agency's reputation.

These conflicts of interest raise issues of equity – the requirement that the APS treat all members of community equitably, giving fair access to opportunities for employment, for government business and to services from the APS.

Observations from our review work on managing conflicts of interest

Some agency conflict of interest policies take a compliance approach to conflict of interest. That is, the policy sets out what a conflict of interest is, and requires the employee to make a formal declaration when a conflict of interest arises, but is silent on the actions that should be taken to avoid or appropriately manage a conflict of interest.

Merely declaring a conflict of interest may not be sufficient. A consideration of the risks posed by the conflict of interest and how those risks should be managed is the necessary next step.

We have also observed cases, as shown in the examples below, where employees are declaring a conflict of interest, in accordance with agency policies, to managers who are similarly conflicted. These managers are not in a position to give disinterested advice about avoiding or managing the conflict of interest. Again, some policies are unfortunately silent on what action is required in these types of scenarios.

Scenario 1: An employee urgently needs additional staff in their team and advises their manager that a member of their family is available for employment. The manager also has a family member who is available. The employee assesses the manager's family member for suitability and the manager assesses the employee's family member. Both family members are engaged to fill positions in the employee's team.

Scenario 2: An employee serves the family member of their manager when the family member comes to the office as a client. To do this the employee has to access the family member's details on the agency database. The agency's policy requires the employee to get the manager's approval before accessing the records of family members of colleagues.

Lessons learned

Advice to give to employees

Employees are often not the best judge of whether they have a conflict of interest and whether it is a conflict that must be avoided or can be managed. People with conflicts of interest may rationalise their behaviour. For example, in Scenario 1, an employee might consider that engaging family members was in the interests of the agency because it resulted in staff being identified quickly to meet a business need. They may see a convergence between the agency's interests and their personal interest. In addition, employees see themselves as ethical and upright and may be confident that their personal interest will not improperly influence their judgement. The test is not whether the employee considers they have a conflict of interest but whether a reasonable observer would consider it likely that the employee's judgement would be affected by their personal interest.

In cases of an actual conflict of interest, making a declaration is not sufficient. In some cases, employees may need to remove themselves from the situation to avoid the conflict of interest. This may mean they play no role in decision-making. It could also mean that they have to divest themselves of the private interest if they wish to remain in their current role and/or with their current agency.

Employees will need to get competent, impartial advice about their obligations from someone they can trust to be discrete and professional. Managers may not be best placed to provide this advice. Some agencies have fraud and integrity units that can provide advice. In other agencies, the People Services or Human Resources team may be the appropriate area to provide advice.

If an employee comes to you for advice, and you need further assistance, you can contact the APSC's Ethics Advisory Service:

The Ethics Advisory Service can be contacted on (02) 6202 3737 or by email ethics@apsc.gov.au

Changes you can make

In order to educate and advise employees in your agency, you may wish to identify conflict of interest scenarios that represent a risk to your agency's business and reputation. You could consider whether your agency's policies provide sufficient guidance on avoiding or appropriately managing these conflicts of interest. If not, it might be time for a policy refresh. You may also wish to consider having a central HR or integrity team evaluate declarations of key high risk conflicts of interest to ensure that the employee, and their manager, gets appropriate advice on the steps that need to be taken to avoid or manage the conflict of interest.

Some conflicts of interest raise very sensitive issues. This includes relationships in the workplace. Agencies need to create a climate of trust so that employees are confident their declarations are handled sensitively and professionally, including ensuring that those considering declarations of conflicts of interest have mature judgement.

It may be helpful to provide contact details of the HR or integrity team who handle conflicts of interest so that employees know who they can approach for confidential advice.

Further information

You can contact the Merit Protection Commissioner's review enquiry service if you have a question or need assistance, on 02 8239 5330 or by email to review@mpc.gov.au.

The following resources may also assist:

- Australian Public Service Commission, APS Values and Code of Conduct in practice, May 2018, <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice>
- Commonwealth Ombudsman, Conflict of Interest Guidelines, September 2017 https://www.ombudsman.gov.au/_data/assets/pdf_file/0030/29919/Conflict-of-Interest-Guidelines-September-2017.pdf
- NSW Independent Commission Against Corruption (ICAC), Managing Conflicts of Interest in the NSW Public Sector, April 2019, <https://www.icac.nsw.gov.au/prevention/basic-standards/conflicts-ofinterest>