# Conflict of Interest Policy

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## References

### Internal References
- Declaration of Interests Form
- Federal Court of Australia Policy - Acceptance of Gifts
- Federal Court of Australia’s Enterprise Agreement 2011-14, Clause 82 (Employment outside the Court)
- Resource Management Instructions

### External References
- Australian Public Service Recruitment Guidelines
- Commonwealth Procurement Rules
- Public Governance, Performance and Accountability Act 2013 (Cth)
- Public Service Act 1999 (Cth) including
  - APS Values
  - APS Code of Conduct

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Conflict of Interest Policy

Summary

This policy sets out for the staff assisting the Tribunal –

• what is a real or apparent conflict of interest (a conflict of interest)
• what are their responsibilities to identify a conflict of interest
• some examples where a conflict of interest may arise
• the annual obligation to complete a Declaration of Interests Form, and
• the obligation of supervisors of staff members who raise a concern about a conflict of interest.

1. Introduction

All staff assisting the National Native Title Tribunal (Tribunal) must disclose and take reasonable steps to avoid any conflict of interest, whether real or apparent.

This is a requirement of the Australian Public Service (APS) Code of Conduct. An employee who fails to properly disclose and take reasonable steps to avoid any conflict of interest may breach the APS Code of Conduct.

This policy provides guidance on what constitutes a conflict of interest and a framework for resolving situations where a real or apparent conflict of interest exists.

2. What is a real conflict of interest?

A real conflict of interest will arise when a staff member finds themselves in a situation where they are able to influence the performance of duties (e.g. employment decisions, awarding of tenders, administrative decisions etc.) in a way that could benefit that staff member or others with whom that staff member has a connection, such as his or her family, friends or associates.

An example is where a staff member’s sister is a director of the family company in which the staff member also has an interest. That company is tendering for a contract to provide services to the Tribunal, and the staff member is on the team evaluating the tenders.

Sometimes a real conflict of interest is described as an ‘actual’ conflict of interest.

3. What is an apparent conflict of interest?

An apparent conflict of interest exists in situations where it might seem that a particular staff member is in a position to influence the performance of duties in a way that could benefit him or herself or others with whom the staff member has a connection, such as his or her family, friends or associates.

An example is where a staff member plays on the same sporting team as a party to a future
act mediation that the staff member is involved in. Despite playing on the same team the two have no personal relationship, although it might seem that they do. Sometimes an apparent conflict of interest is described as a ‘perceived’ conflict of interest.

4. **What is a potential conflict of interest?**

Where the risk of a real or an apparent conflict of interest exists, this constitutes a potential conflict of interest.

5. **Identifying conflicts of interest**

In many instances only the staff member involved will be aware that a real or apparent conflict of interest exists or that the potential for such a conflict exists.

It is therefore the staff member’s responsibility to identify those situations and to take the appropriate action in accordance with this Policy.

6. **Staff member conflicts of interest and the Public Service Act 1999**

The APS Code of Conduct in s. 13(7) of the *Public Service Act 1999* (Cth) (PSA) applies to all staff members and states that:

> An APS employee must disclose, and take reasonable steps to avoid, *any conflict or interest (real or apparent)* in connection with APS employment. (emphasis added)

Therefore, the requirements under the PSA are clear. All staff members must:

- disclose all real and apparent conflicts of interest; and
- take reasonable steps to avoid real or apparent conflicts of interest.

7. **Some situations where conflicts of interest may arise**

**Financial Interests**

Relevant ‘financial interests’ may include such things as directorships of companies, share holdings or interests in real estate or trusts where the holding of that interest has the potential to conflict with an employee’s official duties.

An example is where a staff member holds shares in a mining company that is a party to a right to negotiate application. The staff member provides assistance to the Member making the determination, but does not give advice or make any relevant decisions. The staff member must disclose this as an apparent conflict of interest.

**Personal, Cultural and Other Interests**

‘Personal, cultural and other interests’ includes such things as memberships of sporting or cultural bodies, social or cultural activities as well as family, or other personal relationships.

In carrying out their duties, staff members should not allow themselves to be improperly
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influenced by such relationships.

An example is where a staff member is a member of a native title claim group and is asked, as the Registrar’s delegate, to consider the claim for registration. The staff member must disclose this real conflict of interest.

Procurement of Goods & Services

Procurement decisions are made in accordance with the Public Governance, Performance and Accountability Act 2013 (Cth), the Commonwealth Procurement Rules and the Federal Court of Australia’s Resource Management Instructions.

Staff members must ensure that all dealings in the procurement process are efficient, effective, economical and ethical and must not allow their conduct to arouse any suspicion of a conflict between their official duty and their private interests.

Dealings with suppliers should at all times be open, honest, fair and even-handed and an staff member’s behaviour in an official capacity should not be, and should not give the impression that it is, influenced in any way to show favour or disfavour to any person or organisation.

Staff members should be particularly careful regarding the receipt of gifts, and must comply with the Court’s Policy on Acceptance of Gifts.

A situation where a conflict might arise is where a staff member is offered a gift or reward by a supplier with a contract that is up for renewal, or by a potential supplier, of goods or services to the Tribunal.

Selection and Recruitment

Selection and recruitment decisions are made in accordance with the Australian Public Service Recruitment Guidelines. Members of selection panels and recruitment delegates will often know one or more applicants.

A situation where a conflict might arise is where a member of a selection panel for a particular position is nominated as a referee by an applicant for that position. In such a case, should the applicant be short-listed for interview, he or she must obtain a written referee report from the relevant selection panel member prior to the selection panel conducting interviews for the position.

Performance of Outside Work

A staff member who performs work outside the Tribunal, whether in a paid or unpaid capacity, may put themselves in a situation of a real or apparent conflict of interest.

A situation where a conflict might arise is where a staff member undertakes voluntary work for an organisation that represents a party to a right to negotiate application. Accordingly, clause 82 of the Federal Court of Australia’s Enterprise Agreement 2011-14 requires any employee who wishes to engage in outside work to advise the Federal Court Registrar.
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8. Managing conflict of interest situations

Staff member’s Responsibility

In addition to requiring disclosure by a staff member when they become aware of a real or apparent conflict of interest, a Declaration of Interests Form —see Attachment (a Declaration) must be completed annually by all staff members. All new staff members must complete a Declaration on commencement.

In their Declarations staff members must set out any private interests or any relationships which could, or could be seen to, influence the decisions they are taking, or the advice they are giving. The Declarations must include information about any such private interests, or any such relationships, of which the staff member is aware.

A staff member must update their Declaration whenever there are changes in personal circumstances, employment responsibilities or to the issue/subjects on which they are required to make decisions or give advice, and those changes result in the staff member having private interests or relationships which could, or could be seen to, influence the decisions they are taking or the advice they are giving.

All Declarations, including updated Declarations, are kept on the Tribunal’s confidential Register of Declarations of Interests maintained by the Manager HR on behalf of the Tribunal Registrar.

Important:

• when annual or updated Declarations of interest disclose any new conflicts of interest (real or apparent), the staff member must also provide a copy of the Declaration to their supervisor or manager.

• in any event, if at any time a staff member has concerns about whether or not a real or apparent conflict of interest exists in any particular situation, he or she should discuss those concerns promptly with his or her supervisor or manager.

Supervisor’s Responsibility

Where a staff member raises concerns about a possible conflict of interest (real or apparent) or discloses that he or she may have a conflict of interest, including in the Declaration, it is the responsibility of the staff member’s supervisor or manager to:

• decide whether there is, or could be, a conflict of interest;

• having determined that there is, or could be, a conflict of interest, discuss with the staff member (and, if appropriate, with their supervisor or manager the steps which will be taken to avoid that conflict. Options to be considered include:
  o the staff member divesting him or herself of the interest, where this is possible, and the staff member is willing to do so;
  o the staff member’s duties being rearranged or a permanent or temporary transfer being made to an equivalent position not involved with the conflict;
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- putting in place additional processes to ensure the impartiality of the staff member in the performance of his or her duties; and
- any other action considered appropriate in the particular circumstances.

- inform the Tribunal Registrar in writing of the steps to be taken to avoid the conflict, which will be noted along with the staff member’s declaration on the confidential Register of Conflicts of Interests.
Declaration of Interests template

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

- all APS employees;
- all employees acting as APS for longer than three months;
- any other agency employees to whom the agency head considers the declarations policy should apply because of their responsibilities or the nature of their work.

This declaration is to be forwarded on completion to the head of your agency.

Name_______________________________________________
Position Title _________________________________________
Office/Section/Area____________________________________
City__________________________________________________

I declare that:

- I am aware of my responsibilities under the APS Code of Conduct to behave honestly and with integrity, to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment and not make improper use of (a) inside information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;

- I have read and understood:
  - the APS–wide guidelines covering declarations of personal interests set out in *APS Values and Code of Conduct in Practice*;
  - any other policies and guidelines on declarations of personal interests that my agency may have put in place;

that require me to declare any private interests or relationships which could or could be seen to influence the decisions I am taking or the advice I am giving;

- The attached list at **Annex A** of my private interests and relationships has been prepared on the basis of:
  - the particular roles and responsibilities of my agency;
  - my particular APS roles and responsibilities.
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I undertake to immediately inform the head of my agency of any changes to:

- my responsibilities or to the issue or subjects on which I am required to make decisions or give advice;
- and
- my personal circumstances

that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.

I undertake to declare any private interests or relationships of my immediate family 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 to the collection by my agency 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, and consents.

Signature:

Name:

Date:
Declaration of consent by immediate family member to the disclosure of their personal financial and other interests

This declaration is to be completed by the immediate family member/s of the employee should circumstances arise in which the employee considers that the personal financial and other interests of the family member/s could or could be seen to influence the decisions they are taking or the advice they are giving.

Name_______________________________________________________

Relationship to Employee_______________________________________

I am aware that my information has been collected for the purpose of identifying personal and other interests that could or could be seen to influence the decisions that the employee covered by the declarations policy is taking or the advice he/she is giving. I am aware of the Privacy Principles set out in the Privacy Act 1988 which authorise the collection and the third parties to whom my personal information may be disclosed. I consent to the collection of my personal information by (the relevant agency).

The attached list at Annex B of my private interests and relationships has been prepared on that basis.

Signature:

Name:

Date:
Annex A

Declaration of personal financial and other interests

Please list any private interests or relationships 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, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

All Declarations must be signed by the staff member.

Where a staff member has no private interests or relationships to declare, in addition to his or her signature, he or she may simply endorse the Declaration with the words ‘Nothing to declare’

Signature:

Name:

Date:
Annex B

Declaration of personal financial and other interests of immediate family members

Please list any private interests or relationships which could or could be seen to influence the decisions that the employee covered by the declaration policy is taking or the advice he/she is giving.

The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

*Where a staff member has no private interests or relationships to declare, in addition to his or her signature, he or she may simply endorse the Declaration with the words ‘Nothing to declare’*

Signature:

Name:

Date: