



# CONFLICT OF INTEREST

## *Conflict of Interest and Insider Trading Policy*

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## Introduction

It is the Department's policy to provide a reporting framework which enables employees to disclose, and take reasonable steps to avoid, any conflicts of interest in connection with their APS employment. The policy also provides guidance for all employees on how to recognise and avoid insider trading, which is prohibited by law. This policy applies to all employees covered by the Department of Innovation, Industry and Science current Enterprise Agreement.

## Principles

- An apparent or allegation of conflict of interest or insider trading can be damaging to individual employees and adversely affect the reputation of the Department and its ability to function effectively.
- Fostering an awareness of the circumstances leading to conflict of interest and insider trading is an important mechanism for avoiding such situations.
- Transparency through a continuous disclosure reporting framework is the most appropriate approach to handling these issues.
- The freedom of employees to invest and associate should not be unduly limited by their APS employment.
- The procedures should not unreasonably interfere with the privacy of employees or their families.
- If a conflict of interest becomes apparent the Department will seek to resolve this in a way which removes the conflict with minimal impact on the employee.
- In some circumstances it may be necessary to institute arrangements to protect both the employee and the Department. As a last resort, it may be necessary to reassign the employee.

## Background

In the course of their duties, many of our employees have access to commercial and other sensitive information which may either pose a conflict with their private interests, or create a perception that such a conflict exists.

The APS Code of Conduct (section 13(7) of the *Public Service Act 1999*) requires that APS employees disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment. It is also in the interests of all employees that the firms and people we do business with are confident that we act in accordance with the Code of Conduct and do not make improper use of information.

Insider trading would also breach the *Public Service Act 1999* requirement not to make improper use of inside information. Furthermore, insider trading is prohibited for all members of the community under the *Corporations Act 2001* and has criminal penalties.

There is also a more general obligation under the *Public Service Regulations 1999* on employees not to disclose any information about public business or anything of which the employee has official knowledge and, under the *Crimes Act 1914*, it is an offence for an employee to publish or communicate such information.

The Department also has obligations under the *Privacy Act 1988*. These include having a reasonable basis for requiring information and securing information to ensure privacy. Further information is available at <http://www.privacy.gov.au>.

## Conflict of Interest

### Definition

A conflict of interest is a circumstance which places an employee in a position where their personal interests (including those of their immediate family – to the extent known) could compromise their independence. Apparent (or perceived) conflicts of interest may be as important as actual conflicts.

### Recognising potential conflicts of interest

Employees should consider whether any of their private interests, such as personal relationships and financial interests (including those of their immediate family), could be affected by the decisions of the Department over which the employee has influence.

An employee who is unclear whether particular circumstances constitute (or may in the future constitute) an apparent conflict of interest should discuss the matter with their Manager, General Manager or Head of Division in a timely manner, to clarify matters and ensure appropriate procedures are followed. This is an important protection, both for the reputation of the Department and the employee, and would help to provide a response to any subsequent allegations of misconduct.

### Immediate family

For the purpose of this policy, an employee's immediate family is defined as the employee's spouse/partner and/or children. The obligation on employees to disclose the private interests of their immediate family is limited by the extent to which the employee can reasonably be expected to know such interests and the consent of the relevant family member(s) to disclose any personal information.

### Personal Relationships

Employees may have personal relationships (including family and friendships) with people who are engaged in activities that could have an interest in issues with which the employee deals or over which the employee has influence. Examples could include journalists, lobbyists (see below) or people who have business dealings with their agency. APS employees are, of course, perfectly entitled to have such relationships. However, in the interests of transparency, employees should disclose the names and activities of any persons who could be seen to impact upon the employee's responsibilities.

## Relationships with lobbyists

Employees need to be aware of and manage any real or apparent conflict of interest between their official duties and their relationships with lobbyists, including personal or social relationships with lobbyists.

The [Lobbying Code of Conduct](#) sets out the Government's policies for all APS employees in relation to contact with professional lobbyists and seeks to ensure that such contact is conducted in accordance with public expectations of transparency, integrity and honesty. All APS employees should familiarise themselves with the requirements of the [Lobbying Code of Conduct](#). Any lobbyist who acts on behalf of third-party clients for the purposes of lobbying Government representatives must be registered on the [Register of Lobbyists](#).

## Acceptance of gifts

Employees are expected to apply high standards of probity and ethical behaviour when accepting gifts or benefits (Accountable Authority Instructions 2.4 refer). Gifts or benefits should not be accepted by an employee or a member of their immediate family if acceptance could, in any way, be construed as an attempt to influence an administrative, regulatory or contractual decision, or create the appearance of a conflict of interest.

If an employee has any doubts about the propriety of accepting a gift or benefit, then the gift or benefit should not be accepted, or the matter raised with their Disclosure Officer for guidance.

## Insider Trading

### Definition

Insider trading is trading in shares or other financial products (including procuring or inducing another person to buy or sell such products) on the basis of inside information. Inside information is information which is not generally known and which, if it were generally known, could reasonably be expected to have a material effect on the value of the particular financial product. Insider trading is prohibited by the *Corporations Act 2001* and has criminal penalties. Insider trading would also breach the *Public Service Act 1999* requirement not to make improper use of inside information.

### Recognising 'insider trading' information

Employees should be aware that the information they access as part of their duties may be inside or commercially sensitive information. Employees must not trade in shares or other financial products, or induce others to do so, on the basis of such information. It is the responsibility of each employee to form a judgment as to whether the information they access in the course of their APS employment would be considered inside material information.

Key considerations include:

- Is the information publicly available?
- How was the information obtained – was it provided with a ‘commercial-in-confidence’ or ‘in-confidence’ classification?
- Do you believe knowing the information would be ‘getting in early’ ahead of the investment market more generally?
- Would you expect the information to have a material effect on the value of the particular financial product?

Employees in some areas may have access to material information relating to companies in sectors outside of the Industry and Science portfolio. It is important to note that the absence of direct policy or program responsibility would be no defence to an insider trading allegation.

## Management Framework

### Procedure for continuous disclosure of private interests

All employees are required to follow the department’s procedures for the continuous disclosure of private interests by completing annual declarations (compulsory) and subsequent declarations throughout the year (as required).

A self-assessment test for non-SES employees to assist in determining relevant private interests is provided below. This test can assist employees to determine their obligations with regard to the disclosure of private interests at any time of the year, not just for annual declarations.

### Making declarations

- Each year, SES employees are required to complete a Conflict of Interest Declaration form, located in ESS Aurion.
- Acting SES employees should complete a SES declaration form during their period of acting, in addition to any declarations they may have disclosed as non-SES employees.
- All non-SES employees should consider whether they have anything to disclose after watching the Awareness Tutorial located on the [Conflict of Interest](#) intranet page. Should employees need to disclose, they can do so by logging in to ESS Aurion and completing a Conflict of Interest declaration form.
- New employees must consider completing a declaration on commencement.
- Employees who have transferred between Divisions should consider whether they have anything to declare within 4 weeks of commencing in a new Division.

## Disclosure Officers

- Disclosure Officers for SES / Heads of Divisions is the relevant Deputy Secretary and the Secretary is the Disclosure Officer for the Deputy / Associate Secretaries.
- For all employees with a classification up to and including EL2, the Disclosure Officer will be the employee's General Manager.
- Managers are not Disclosure Officers but will assist with the assessment of disclosures where necessary.

## Storage and security of declarations

All declarations are stored electronically and are reported to the Disclosure Officer to ensure Conflicts of Interest (real or apparent) are appropriately managed.

## Managing conflicts of Interest

The Disclosure Officer is responsible for assessing declarations and determining whether a real or apparent conflict of interest exists and whether any such conflict is material or immaterial. Managers assist the Disclosure Officer by obtaining and providing relevant information. In the event that a real or potential conflict of interest is identified, the employee will be advised of any actions required to manage the conflict.

## Intention to trade in financial products relevant to the Division

It is also required that, before making any trades (either purchase or sale) of financial products related to the policy or operational responsibility of the employee's division, the employee should discuss the matter with the relevant General Manager. This includes trading by the employee and by the employee's immediate family (to the extent known by the employee). Employees are reminded that such proposed trading may give rise to potential conflicts of interest or insider trading and early discussion with the relevant General Manager is encouraged. Employees should note that any such discussion shall not be construed as the provision of investment advice or recommending one course of action over another. The purpose of the discussion will be to explore the principles of conflicts of interest and insider trading as they may apply to the proposed trade.

## After leaving the Department

On leaving the Department, all employees are reminded of their obligation to not disclose, or act upon, information gained as a result of their employment with the Department. The only exemption would be when such information is publicly available.

There are additional restrictions on post-separation employment by SES employees who leave the APS after 1 July 2008 whereby they shall not, for a 12 month period,

engage in lobbying government representatives on any matters on which they have had official dealings as public servants over their last 12 months of employment.

More information on post separation employment can be obtained from the Australian Public Service Commission website.

## Boards and Committees

Government boards and committees play an important strategic role in providing leadership, direction and accountability across the public sector.

There are many types of government boards and committees including:

- boards of public trading enterprises
- boards of statutory authorities
- policy coordination committees
- research committees
- tribunals
- registration boards
- appeal boards
- public trusts
- advisory committees.

The potential exists for conflicts of interest for duty in committees or boards established by the Department, particularly where a Minister appoints the chair and/or members and the committee or board can significantly influence decisions.

It is important for Divisions to establish procedures to alert committee members to the need to identify and avoid conflicts of interest. This may include committee members providing written declarations of interests that relate to activities of the committee, and making conflicts of interest a standing agenda item for committee meetings.

**This policy together with the existing processes in AusIndustry can be used as guides in developing appropriate arrangements for committees and boards.**