

Australian Capital Territory

Integrity Commission Personal Interest Guidelines 2019*

Notifiable instrument NI2019–438

made under the

Integrity Commission Act 2018, section 251 (Inspector's Guidelines)

1 Name of instrument

This instrument is the *Integrity Commission Personal Interest Guidelines 2019*.

2 Commencement

This instrument commences on the day after notification.

3 Inspector's Guidelines

I make the Inspector's Guidelines as set out at schedule 1 to this instrument.

Michael Manthorpe

Inspector of the ACT Integrity Commission

1 July 2019

*Name amended under Legislation Act, s 60

Inspector of the ACT Integrity Commission

DECLARATION OF INTEREST GUIDELINES

JULY 2019

POLICY NO. 1 2019

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Introduction

The ACT Ombudsman function is delivered by the Office of the Commonwealth Ombudsman (the Office) under a service agreement between the ACT Government and Commonwealth Ombudsman.

Staff delivering ACT Ombudsman functions are therefore employed under the *Public Service Act 1999* and subject to the Australian Public Service (APS) Code of Conduct and Values. They must:

- take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their APS employment and disclose details of any material personal interest in connection with their APS employment¹
- behave honestly and with integrity in connection with APS employment²
- not make improper use of inside information or their duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for themselves or any other person.³

Conflicts of interest are not wrong in themselves. It is how they are managed that is important. All conflicts of interest must be disclosed and effectively managed.

Challenges and risks may arise in relation to potential conflicts of interest for staff working within the ACT jurisdiction in particular. This is because:

- the ACT is a geographically small jurisdiction in which personal connections are unavoidable, making the appropriate management of conflicts of interests, whether real, perceived or potential, especially important
- staff working within the ACT jurisdiction may have responsibilities in relation to the following, all of which form part of the ACT's integrity framework:
 - implementing the ACT Ombudsman's responsibilities as the Inspector of the Integrity Commission (the Inspector)
 - managing the ACT's Reportable Conduct Scheme
 - undertaking specific functions under the *Freedom of Information Act 2016* (ACT)
 - providing support to the ACT Judicial Council.

Staff working on the Inspector function, which is designed to strengthen public confidence in government integrity and oversight the ACT Integrity Commission, must be especially mindful of any personal interests that could, or could be seen to, influence their advice or decisions. The Inspector is able to ask such staff to declare personal interests considered relevant.⁴

Conflict of interest guidelines exist for the Office. They are designed to give specific guidance to staff of the Office about such matters, given the importance of maintaining the independence of the Office as an oversight agency.

These additional ACT Ombudsman *Declaration of Interest Guidelines* are, however, designed specifically for staff in the Office working on ACT-related matters – that is, staff who manage ACT Ombudsman functions covered under the service agreement with the ACT Government. This includes staff working on the Inspector function.

¹ See s 13(7) of the *Public Service Act 1999* (Cth).

² *Ibid* s 13(1).

³ *Ibid* s 13(10).

⁴ See s 251(3)(b) of the *Integrity Commission Act 2018* (ACT).

They mirror the conflict of interest guidelines for the Office, but:

- provide additional advice and/or ACT-specific examples where required
- impose additional requirements for staff to declare personal interests, to ensure that any potential conflicts of interest are managed effectively (noting that it will be more difficult for conflicts to be completely avoided in a small jurisdiction such as the ACT).

The purpose of such declarations is to ensure the transparency of any private interests or relationships of APS employees, which could or could be seen to influence the decisions the employees make or the advice they give. These could include personal interests and relationships that involve a real, or potential, conflict of interest in terms of the employee's responsibilities.

Completing a declaration of interest also gives employees the opportunity to consider whether any of their financial or personal interests might give rise to a real, or perceived, conflict with their duties, and take action to remove or minimise the potential for that to occur.

Important:

- These guidelines meet the requirement under the *Integrity Commission Act 2018* (the Act) for the ACT Ombudsman, as the Inspector, to publish personal interest guidelines which outline personal interests that Inspectorate staff are expected to declare.⁵
- As the implementation of the new Inspector function matures, more examples and further guidance for staff working on this function may be included in this document.

Conflicts of interest

A conflict of interest exists where it appears likely that an employee could be influenced or perceived to be influenced by their personal interests. Conflicts of interests may be real, apparent or potential:

- **Real** — where a direct conflict exists between current official duties and existing private interests
- **Apparent** — where it appears or could be perceived that private interests are improperly influencing the performance of official duties, whether or not that is actually the case
- **Potential** — where private interests are not, but could, come into direct conflict with official duties.

Conflicts of interest can be pecuniary (financial) or non-pecuniary in nature. Some examples of non-pecuniary conflicts of interest include:

- personal relationships
- family relationships
- sporting or cultural relationships
- any tendency toward favour or prejudice, such as animosity toward a person or group.

⁵ Ibid s 251.

Examples of conflicts of interest

- An employee deals with a complaint in which their spouse was the decision-maker within the agency complained about.
- An employee maintains strong social and personal relationships with the area within an agency they are investigating.
- An employee who is in dispute with, or currently seeking assistance from an agency in their private capacity, is involved in the management of complaints about that agency.
- The Office seeks to procure the services of a local business and a relative of the business owner is involved in the procurement process.
- An officer is known (for example, through their public comments on social media) to hold views on a particular subject that could suggest they might not bring an open mind to the matter.
- An officer has a second job (either paid or voluntary) in an area related to a current complaint investigation, which suggests they might not bring an open mind to the matter.
- An officer received gifts from an ACT government agency or community stakeholder group.
- An officer accesses Resolve records regarding a complainant personally known to them or a matter of personal interest to them.
- A person dealing with a public official deliberately cultivates a private connection with the public official (such as a friendship, secondary employment or the offer of future employment), in an attempt to influence the public official.

Avoiding and managing conflicts of interest

It is critical that Office employees working on ACT matters do not allow their interests to influence the decisions they make, the actions they take or the advice they give in the course of their official duties.

Avoiding conflicts is generally preferable, but in practice there may be some situations in which conflicts of interest cannot be entirely avoided and so need to be managed in a way which will withstand external scrutiny.

Employees must:

- take reasonable steps to avoid situations where their private financial or other interests (or those of immediate family members, such as their partner or dependents) could, or could be perceived to, conflict with their official duties. For example, not accessing relevant complaint details in Resolve without a bona fide reason to do so.
- regularly assess whether a conflict or potential conflict of interest has arisen
- immediately speak to their supervisor if they identify a conflict or potential conflict, or if a conflict is claimed by a complainant or agency
- determine any arrangements that need to be put in place to manage the situation
- formally declare any actual or potential perceived conflicts of interest in relation to themselves or their work colleagues, and use the arrangements that have been put in place to manage the situation.

Note:

By its very nature, the work of the Office requires employees to develop professional and mature working relationships with officers in other agencies. This may include face-to-face meetings, regular telephone contact and informal discussions. It would be incorrect to suggest that employees must avoid staff from other agencies. The Office's independence must, however, always be maintained.

Finding the balance – keep talking to your supervisor

When an Officer identifies that a conflict or potential conflict of interest has arisen, the first step is to discuss the matter with their supervisor. This is because:

- It is always better to disclose and discuss a possible conflict of interest rather than conceal the matter.
- There are a number of strategies that can be adopted to manage conflicts of interest effectively and transparently.

Frank conversations about such matters will help the Office to identify possible issues before they occur.

Supervisors are expected to give guidance to the employees they supervise, and should be prepared to listen and consider any possible conflict of interest or bias issues raised. Supervisors should escalate matters where required.

If an employee's disclosure raises concerns about a potential breach of the APS Code of Conduct, the matter should be brought to the attention of the relevant Senior Assistant Ombudsman (SAO)/Chief Operating Officer (COO) or Human Resources.

Next steps

When a potential conflict is discussed with your supervisor, but it is agreed that there is no actual or perceived conflict at this time, the decision should be recorded in writing and reviewed if the situation changes (for example, if the ACT Ombudsman takes on a new function requiring interaction with an agency where the spouse of an employee works).

The action taken to manage a real, or apparent, conflict of interest will be determined according to the specific circumstances of the case, such as the role and responsibilities the employee performs for the Office and the nature and extent of the conflict.

Actions that officers and their supervisors should consider taking include:

- ceasing any further dealings by the employee with the complaint or matter. The complaint or matter should then be referred to another employee through a supervisor, with the reasons for this recorded (in neutral terms)
- ceasing the employee's participation in any conversation about the case with those who continue to deal with it
- altering the employee's duties where possible, so they are no longer performing the role which may potentially put them in a conflict situation. If functions may not be delegated (or escalated), the potential for partiality must also be noted in the relevant documents, such as draft investigation reports.
- allowing the employee to continue in the same role, with the Office implementing appropriate safeguards that address the real or apparent conflict of interest, such as:
 - additional clearance of recommendations arising out of an investigation
 - involvement of a third party to oversee the process.
- asking the employee to dispose of their financial interests.

The supervisor must document their consideration of the potential for a perceived conflict of interest and any arrangements put in place to manage this.

What do I need to declare?

Employees working on ACT matters (like other employees in the Office) must provide information about private, financial and other interests that could, or could be seen to, influence their decisions or actions, or the advice they give in the course of their official duties.

In the context of the ACT specifically, this includes:

- relevant financial or economic interests, such as real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income or assets, significant liabilities, secondary employment, or a family or private business
- relevant personal relationships, such as significant relationships with MLAs, staffers or lobbyists, significant relationships with ACT Government agency employees, ACT Policing, or complainants
- work history or community affiliations within the last five years or for more than 12 months, such as employment (including volunteer work) with ACT Government agencies, ACT Policing, stakeholder groups or advocacy units included in the ACT Engagement plan
- gifts received as an Ombudsman employee from an ACT Government agency, ACT residents or stakeholder groups.

If staff are unsure about whether a declaration is appropriate, they should discuss it with their supervisor. The intention is to disclose possible conflicts arising from specific work duties so they can be managed (if necessary), as opposed to preventing staff from working in a specific area because of a relevant relationship or affiliation.

How do I make a declaration?

All staff will have completed a conflict of interest form when these guidelines came into effect or upon beginning employment with the Office. All SES employees (including employees acting as SES for three months or more) and non-SES employees in identified positions must also make an annual declaration of private, financial and other interests.

In addition to these arrangements, where an employee:

- commences in a position that involves working on ACT matters
- commences working on the Inspector function, or
- becomes aware of a potential non-disclosed conflict

this should be discussed with their supervisor as discussed above.

The ACT Ombudsman declaration of interests form (**Attachment A**) should be used to document the circumstances and any management arrangements in place and then forwarded to HR for inclusion in the employee's personnel file. This should be done no later than 14 days after becoming aware of a real, apparent or potential conflict of interest.

Note regarding the interests of an immediate family member:

- Where an employee is obliged to disclose information about the private, financial or other interests of an immediate family member, the employee must ask that family member to sign a declaration of consent (**Attachment B**) indicating that they consent to the disclosure of such information.
- If the family member refuses or is unable to provide consent, the employee (if non-SES) must discuss the real or apparent conflict of interest, in general terms, with the relevant SAO/COO. SES employees must discuss the issue with the Deputy Ombudsman, who will decide what further action should be taken.

Attachment A—Declaration form

Sensitive: Personal *(When completed.)*

ACT Ombudsman Declaration of Interests Form

Employee's Surname:	
Given Name(s):	
Position:	
Branch and Location:	
Director's Name:	

Describe the private interests that have the potential to impact on your ability to carry out, or be seen to carry out, your official duties impartially and in the public interest.

Describe the expected roles/duties you are required to perform.

The conflict of interest has been identified as:

- A real conflict of interest.
- An apparent/perceived conflict of interest.
- A potential conflict of interest.
- Pecuniary interest.
- Non-pecuniary interest.

Employee Declaration

I declare that the above details of my private interests are correct to the best of my knowledge and am aware of my responsibilities to take reasonable steps to avoid any real or apparent conflict of interest in connection with my public service employment and to advise my manager of any relevant changes in my personal circumstances.

Signature:

Date:

Action by Director

Describe the action proposed to mitigate the real or perceived conflict which has been disclosed and the reasons for the decisions:

The above action has been discussed with the employee and is appropriate to resolve the real or apparent conflict of interest disclosed above.

Signature of
Director:

Date:

Employee
Endorsement:

Date:

When this form is finalised it should be scanned and forwarded to human.resources@ombudsman.gov.au for retention on the employee's personnel file.

Attachment B—Declaration of consent

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

This declaration is to be completed by your immediate family member(s), should circumstances arise in which you consider that the personal financial and other interests of the family member(s) could or could be seen to influence the decisions you make or the advice you give.

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 made or the advice given by the employee covered by the declarations policy.

I am aware of the Privacy Principles set out in the *Privacy Act 1988*, which authorise the collection of information and the third parties to whom my personal information may be disclosed. I consent to the collection of my personal information by the Office of the Commonwealth Ombudsman.

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

Signature:

Name: _____

Relationship to Employee: _____