

Australian Capital Territory

Integrity Commission (Personal Interest) Guidelines 2020

Notifiable instrument NI2020–482

made under the

Integrity Commission Act 2018, section 50(4) (Personal interest guidelines)

1 Name of instrument

This instrument is the *Integrity Commission (Personal Interest) Guidelines 2020*.

2 Commencement

This instrument commences on the day after notification.

3 Commission's Guidelines

I make the Commission's Personal Interest Guidelines as set out at Schedule 1 to this instrument.

The Hon D A Cowdroy AO QC

Commissioner

10 August 2020

Schedule 1

Integrity Commission (Personal Interest) Guidelines 2020

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1. Introduction

- 1.1 The ACT Integrity Commission (the Commission) was created in response to an election commitment made by the 9th Legislative Assembly. On 31 October 2017, the Select Committee on an Independent Integrity Commission (Select Committee) released its report into their inquiry. The Select Committee recommended the ACT Government establish a standing ACT independent integrity body to investigate corruption in public administration and strengthen public confidence in government integrity.¹
- 1.2 The *Integrity Commission Act 2018* (the Act) was passed by the Legislative Assembly and came into operation on 1 July 2019.
- 1.3 The Act establishes the Commission and provides it with functions to:
- a) investigate conduct that is alleged to be corrupt conduct;
 - b) refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action;
 - c) prevent corruption, including by researching corrupt practices and mitigating the risks of corruption;
 - d) publish information about investigations conducted by the commission, including lessons learned;
 - e) provide education programs about the operation of this Act and the commission, including providing advice, training and education services to —
 - i. the Legislative Assembly and the public sector to increase capacity to prevent corrupt conduct;
 - ii. people who are required to report corrupt conduct under this Act;
 - iii. the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct;
 - f) foster public confidence in the Legislative Assembly and public sector.²
- 1.4 Staff of the Commission are employed under the *Public Sector Management Act 1994* and are considered public servants.³ Staff are also considered to be public sector members pursuant to s 150(1)(a)(ii) of the *Public Sector Management Act 1994* as they are employed by the Commissioner, who is a statutory office holder. Similarly, while the Commissioner is appointed under s 25 of the Act and the CEO is appointed under

¹ Explanatory Statement, Integrity Commission Bill 2018, p 3

² s 23(1), *Integrity Commission Act 2018*

³ s 48, *Integrity Commission Act 2018*

s 41 of the Act, they are both considered to be public sector members in accordance with s 150(1)(a)(i) of *Public Sector Management Act 1994*.

1.5 Public servants employed under the *Public Sector Management Act 1994* must, among other things:

- take all reasonable steps to avoid a conflict of interest and to declare or manage a conflict of interest that cannot reasonably be avoided⁴;
- demonstrate the public sector values of respect, integrity, collaboration and innovation when acting in connection with their job⁵;
- perform their duties in accordance with the best practice principle⁶.

1.6 In accordance with s 50(3)(b) of the Act, staff of the Commission are required to declare any personal interests the Commission considers relevant. The Commission must make personal interest guidelines about the personal interests the Commission considers relevant to declare under s 50(3)(b) of the Act.⁷

⁴ s 9(1)(a) and (b), *Public Sector Management Act 1994*

⁵ s 7, *Public Sector Management Act 1994*

⁶ s 8(2), *Public Sector Management Act 1994*

⁷ s 50(4), *Integrity Commission Act 2018*

2. Personal Interests

- 2.1 Commission staff are required to be beyond reproach in the performance of their official duties. Challenges and risks may arise in relation to potential conflicts of interest for staff working within the Commission in particular. This is because:
- a) the ACT is a geographically small jurisdiction in which personal connections are unavoidable, making the appropriate management of conflicts of interests, whether actual, perceived or potential, particularly important;
 - b) staff working within the Commission, which is designed to strengthen public confidence in government integrity, must be particularly mindful of any personal interests that could or could be seen to influence their advice or decisions;
 - c) the public must have confidence in the Commission's ability to investigate corrupt conduct, free from any actual or perceived conflict of interest.
- 2.2 The Act draws a distinction between a 'conflict of interest' and 'personal interests'. The Act requires certain actions in relation to conflicts of interest for the Commissioner⁸ but does not specifically refer to conflicts of interest for Commission staff. Instead, the Act specifies that individuals may be required to declare personal interests the Commission considers relevant, in order to determine if they are suitable to be a staff member of the Commission⁹.
- 2.3 A personal interests declaration is a proactive measure that enables the Commission to identify and assess the risk posed by any potential conflicts of interest, and make an informed decision with respect to an individual's suitability to be employed as a Commission staff member.
- 2.4 For the purpose of these Guidelines, the Commission has determined that a personal interest is relevant if a reasonable person could perceive there to be an actual, potential or apparent conflict of interest between a staff member's pecuniary and non-pecuniary personal interest(s) and their official duties or the functions of the Commission.
- 2.5 A relevant personal interest also includes the pecuniary and non-pecuniary personal interests of the staff member's immediate family members.
- 2.6 Personal interests may be financial or may include links staff have with social, political, religious, cultural, sporting or professional groups, or those of a family member, friend

⁸ ss 30, 31 and 32 of the *Integrity Commission Act 2018*

⁹ s 50(3)(b), *Integrity Commission Act 2018*

or other associate. Enmity as well as friendship is a personal interest that can give rise to a conflict of interest.

- 2.7 The Commission has established and maintains a conflict of interest register for the Commissioner in compliance with ss 31 and 32 of the Act. The Commission also has a Conflict of Interest Policy that applies to all Commission staff.
- 2.8 A personal interest can give rise to a conflict of interest. For this reason, the Commission's Conflict of Interest Policy becomes relevant where a member of staff finds that a personal interest is in conflict with their duties and responsibilities as staff members of the Commission.
- 2.9 The Conflict of Interest Policy requires staff to disclose relevant personal interests and potential conflicts of interest to the Commission as soon as is reasonably practicable and provides a framework for the effective management of reported conflicts of interest. This policy also requires declared conflicts of interest for all staff to be entered on the Conflicts of Interest Register. The Conflict of Interest policy enables the Commission to manage operational and reputational risk to the Commission on an ongoing basis.
- 2.10 These Personal Interest Guidelines are designed specifically for Commission staff and meet the requirements of the Act¹⁰.

¹⁰ s 50(4), *Integrity Commission Act 2018*

3. Personal Interests required to be declared

- 3.1 In accordance with s 50(3)(b) of the Act, the Commission requires staff to provide information about private, financial and other interests that could, or could be seen to, influence the decisions or actions they take, or the advice they provide in the course of their official duties. That is, personal interests must be disclosed so as to safeguard against conflicts of interest that impact upon the ability of a staff member to perform their duties free of outside influence.
- 3.2 Relevant personal interests that may need to be disclosed to the Commission include, but are not limited to:
- a) real estate investments;
 - b) shareholdings;
 - c) trusts or nominee companies;
 - d) company directorships or partnerships;
 - e) other significant sources of income;
 - f) any significant liabilities;
 - g) private business interests;
 - h) secondary employment and voluntary work;
 - i) social, personal and professional relationships;
 - j) membership of, or engagement with any social, cultural, political or religious groups;
 - k) memberships and associations with certain clubs or organisations;
 - l) employment history;
 - m) any other matter(s) which could reasonably be perceived to be, or create, an actual, potential, or apparent conflict of interest between the employee's personal interests and their official duties and the functions of the Commission.

4. Breach of the Guidelines

- 4.1 The Senior Director - Legal in consultation with the Chief Executive Officer is responsible for ensuring alleged breaches of the Commission's Personal Interest Guidelines and Conflict of Interest Policy are given proper consideration and investigation (where appropriate).
- 4.2 Breaches of the Commission's Personal Interest Guidelines and Conflict of Interest Policy may result in action being taken against the staff member. Depending on the nature of the breach, it could result in staff members being counselled, disciplined or even dismissed.
- 4.3 If staff or the Executive suspect in good faith that a staff member or Commission officer has breached of the Commission's Personal Interest Guidelines and Conflict of Interest Policy by failing to declare a conflict of interest, they should make their concerns known to the Senior Director - Legal. The complaint may constitute a public interest disclosure.