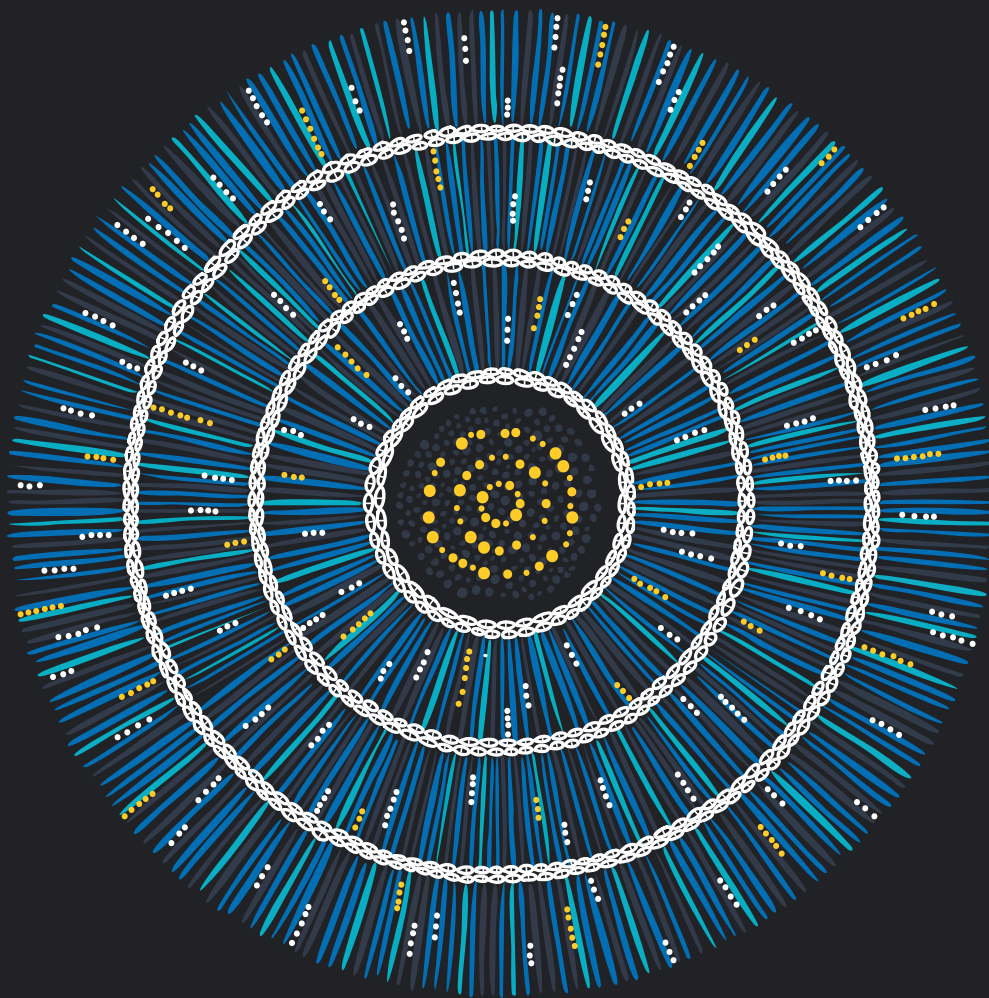




National Anti-Corruption Commission

Conflicts of interest and corrupt conduct

A guide for public officials



In the spirit of reconciliation, the National Anti-Corruption Commission acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

This artwork tells the story of the National Anti-Corruption Commission's mission to enhance integrity within the Commonwealth public sector.

It is made up of many multicoloured strokes, depicting our team's many weaving histories. At the core of the artwork are three white patterned rings, representing detecting, deterring, and preventing corruption. Our approach is fearless but fair and we work towards our goals with integrity, determination, and courage. We are on a journey to build a culture of unity, inclusion, and trust as we grow.

Our people working together are represented by white dots between each of the lines. At the heart of the artwork is the central element, encapsulating our commitment to contributing to reconciliation as we work to create a culturally safe environment where First Nations staff and partners feel respected and included.

Integrity at Our Heart

The artwork concept and narrative were developed by Navada Currie. Navada is a Mununjali and Kabi Kabi artist at Gilimbaa.

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Introduction

All public officials will encounter situations in which they have a personal interest, or another duty, which could affect, or be affected by, how they perform their public functions or duties (or could reasonably be perceived to do so).

Most of these do not result in corrupt conduct. However, because corruption generally involves the abuse of a public power, position or privilege for a private purpose, most corrupt conduct starts with a conflict of interest.

Purpose of this guide

This guide is designed to help Commonwealth public officials identify and properly manage conflicts of interest, and thereby reduce the risk of corrupt conduct in the Commonwealth public sector.

It aims to strike a practical balance: protecting public decision-making from corrupting influences, while recognising that conflicts of interest can be managed appropriately.

This is general guidance: each conflict of interest needs to be considered on a case-by-case basis.

Why managing conflicts of interest matters

Public officials must perform their duties in the public interest and without regard to personal interests. When this does not happen, confidence in government and the public service is undermined.

Undeclared and unmanaged conflicts of interest may result in allegations of impropriety, undermine confidence in the decision-making process, and bring the validity of decisions into question.

Public officials should remember that perceptions in relation to conflicts of interest, as well as real conflicts of interest, can impact the legitimacy of government, and trust and confidence in institutions and our democratic system.

Who this guide is for

This guide is intended for Commonwealth public officials involved in public administration.

Most people who work for, exercise the powers of, or perform functions for, the Australian Government or the Australian Parliament are [public officials](#) under the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act). This includes consultants and contracted service providers under Commonwealth contracts administered by Commonwealth agencies.

This guide is not concerned with judicial or quasi-judicial decision-making, for which there are special rules.

What is a conflict of interest?

A conflict of interest exists when a public official or other person has a personal interest, or another duty, that could affect or be affected by how the public official or person performs their public or official functions or duties (or could reasonably be perceived as doing so).

Corrupt conduct and conflicts of interest

There are 4 types of corrupt conduct under the NACC Act, and conflicts of interest are relevant to all of them:

1. breach of public trust by a public official.¹
This happens when a public official exercises a power in bad faith or for an improper purpose²
2. abuse of office by a public official. This happens when a public official uses their position improperly to benefit themselves or harm someone else³
3. misuse of official information by a current or former public official⁴
4. conduct of any person, including a public official's own conduct, that could adversely affect the honest or impartial exercise of a public official's powers, functions or duties as a public official.⁵

Each type of corrupt conduct generally involves a public official acting in their own interest or the interest of someone else rather than in accordance with their public or official duty.

1 Under the NACC Act, public officials include parliamentarians and their staff, staff members of Commonwealth agencies (including Australian Government departments, Commonwealth companies and statutory bodies), contracted service providers under Commonwealth contracts administered by Commonwealth agencies, and National Anti-Corruption Commission staff members.

2 NACC Act, s 8(1)(b).

3 NACC Act, s 8(1)(c).

4 NACC Act, s 8(1)(d).

5 NACC Act, s 8(1)(a), and see *Berejiklian v Independent Commission Against Corruption* [2024] NSWCA 177 at [243], where the NSW Court of Appeal observed: 'The ... prohibition of the "partial exercise" of official functions is directed to any exercise of those functions which is influenced by a personal interest conflicting with that public duty.'

Disclosing, declaring and managing conflicts of interest

When a public official has a personal interest or relationship that could be relevant to the performance of their public or official duty, there are 3 crucial steps they should follow:

1. **disclose** the personal interest or relationship
2. **assess** the circumstances and (if appropriate) **declare** the conflict of interest
3. **manage** the conflict of interest.

Disclosing

Disclosing the interest or relationship identifies the nature and scope of your personal interest(s).⁶ It helps ensure that you are not the sole judge of whether it gives rise to a conflict of interest. It is good practice to formally disclose that you have no competing interests or duties, if that is the case.

Assessing and declaring

Assessing and declaring the conflict ensures that you and everyone involved in decision-making consider the conflict and its implications. The importance of requiring formal declarations, whether oral or written, is that it requires officials to turn their mind to whether their interests or relationships create a relevant conflict in the context of the process in question. It also alerts others involved to the existence of any conflict, so they can take it into account. For example, views expressed by a person who has declared a conflict can be considered and weighed in the light of that knowledge.

Managing

The purpose of managing the conflict is to ensure, as far as possible, that performance of the relevant function is not, and can be shown not to be, influenced by the personal interest.

⁶ Section 29 of the *Public Governance Performance and Accountability Act 2013* (Cth) and section 13(7) of the Code of Conduct contained in the *Public Service Act 1999* (Cth), impose general obligations to make disclosures of personal interests.

Do not self-manage your conflict

Self-managing a conflict involves public officials attempting to deal with integrity issues by themselves and failing to disclose to or seek assistance from management or their agency's integrity framework.

Self-managing conflicts can expose public officials to compromise and denies the agency the opportunity to understand, appreciate and deal with risk holistically. Senior and experienced public officials may be particularly vulnerable if they decide to self-manage conflicts of interest, given their ability to influence agency decision-making.

You are not the best judge of how your conflict of interest should be managed. Announce your management plan, consult others, seek advice, and ensure that the management plan is recorded.

Determining appropriate management

What is appropriate management depends on the circumstances, including the nature of the conflict, the nature of the process, and the role or function of the official.

In some cases, it may be necessary for the official to be completely excluded from the process. In others, it may be sufficient for the official not to be the decision-maker, without being completely excluded from the process.⁷

This must be determined on a case-by-case basis, considering the factors described above, and the operating context, including the respective roles of the conflicted official and of the ultimate decision-maker.

⁷ However, where the function involves a quasi-judicial or administrative decision to which the rules of procedural fairness apply, the official must be completely excluded, in order to avoid the decision being affected by apprehended bias.

Identifying a conflict of interest

A conflict of interest exists when a public official or other person has a personal interest, or another duty, that could affect or be affected by how the public official or person performs their public or official functions or duties.⁸

Types of interest and duty

Conflicts of interest can arise from:

- personal financial interests
- personal non-financial interests
- competing duties, which can be public or personal.

Financial interests

If you could directly or indirectly personally benefit or be adversely affected financially by the way you perform your public functions, you have a financial interest.

Examples:

- If the decision could result in assets you own increasing or decreasing in value, you have a financial interest.
- If a funding or procurement decision you are making will result in a financial benefit to you or your family, you have a financial interest.
- If you could receive a financial benefit as a result of the way you perform your public functions, such as concessions, discounts, gifts or hospitality, you have a financial interest.

- If your prospective employer after leaving the Australian Public Service could benefit or be adversely affected by the way you perform your public functions, you have a financial interest because there could be an effect on your prospective employment.
- On the other hand, a very small shareholding in a very large public company whose interests might be affected by a decision would not generally be regarded as a material financial interest.

Managing conflicts of interest arising from financial interests

Any material financial interest creates a real conflict of interest and must be disclosed, declared and managed as such, as described above. **You must disclose** the relationship or interest, and you must not be the decision maker.

⁸ There are various definitions in Commonwealth public sector legislation, regulations, guides and policies. If you are unsure whether your personal interest or competing duty creates a conflict and what actions you need to take to avoid, disclose, declare or manage it, and seek advice within your agency about your obligations. You may also find it useful to refer to guidance produced by the Australian Public Service Commission and the Department of Finance.

Non-financial interests

Non-financial interests typically concern relationships: family, friends and associates (including relationships formed through work or community engagement, sporting, cultural, social or voluntary activities). They can also arise from prior association with or attachment to an issue or organisation: for example, a political, social or professional group.

A relationship gives rise to a material interest if it is of such significance that a desire to maintain, foster, enhance or salvage the relationship could influence the way you perform your public function. If you have a significant relationship which could affect or be affected by the way you perform your public function, you have a non-financial interest. If you have a significant association or attachment which could affect or be affected by the way you perform your public function, you have a non-financial interest.

The question of whether a relationship is strong or proximate enough to give rise to a conflict depends on an assessment of the nature of the relationship – whether and to what extent the relationship is personal or professional, and close or remote. Broadly:

- The closer and more personal the relationship, the more likely it is to be a material interest. An immediate family or close personal relationship will almost invariably qualify.
- If the relationship has any financial implications, it is likely to be a relevant material interest. A partner or dependent would almost invariably qualify.
- On the other hand, merely knowing a person professionally would usually not.

If the relationship, association or attachment is such that a desire to maintain, foster, enhance or salvage it actually could influence the performance of your functions, there is a real conflict.

However, in this area, the perception as well as the reality is important: even if the relationship would not really influence your decision, there is an apparent conflict if a reasonable informed observer might think that the impact of the performance of your function on the relationship could do so.

Managing conflicts arising from non-financial interests

You must disclose any potentially relevant relationship to a relevant third party.

In consultation with the relevant third party, you must assess whether the relationship is such as to give rise to a real or apparent conflict and if so declare that you have a conflict.

In the case of a real conflict, **you must not be the decision-maker.**

In the case of an apparent conflict, **you should not be the decision-maker.** If you do remain the decision-maker, **you must record the steps you have taken to disclose and assess** with a relevant third party and set out the reasons why there is no real conflict of interest and why you and the relevant third party have determined you are able to make a decision that is unaffected by the apparent conflict.

Competing duties

A duty is a legal or moral obligation that you owe to someone else, whether or not it is associated with your job.

A competing duty exists where you have a duty to another public or private organisation or individual, that could be inconsistent with your public or official duty. This can happen if you have 2 or more roles with competing priorities. It can arise in the context of secondary or future employment.

Examples:

- the director of a private company owing duties to the shareholders
- the trustee of a charity owing duties to the trust
- a government representative on a board
- secondary or outside employment.

In each of those capacities, you have a duty to act in the best interests of the company, the trust, the board or the secondary employer.

This is often not a problem. However, sometimes that duty might be in competition, and cause you to act inconsistently with, your public or official duty – or could reasonably be perceived to do so. The interests of your competing duty might differ from those of the public interest.

For example, in your public role you might have access to confidential information you are required to protect. But that same information might be valuable to the organisation you have a duty to in your other role.

Managing conflicts of duties

Competing duties must be disclosed in accordance with the policies and procedures of your Commonwealth public sector employer and the other person or organisation you owe a duty to.

You should inform any person or organisation to whom you owe a conflicting duty that your paramount obligation is to the Commonwealth and that you can accept the other role only on the condition that you are not required to act inconsistently with your duty to the Commonwealth. Should your competing duty require you to act inconsistently with your duty to the Commonwealth, you must relinquish the competing duty. Should your competing duty be to another Commonwealth public sector entity (for example, a board role), you must disclose, assess and manage the conflict of interest with both entities.

This does not apply to professional duties inherent in your role. For example, a government lawyer still owes a duty to the court, and a medical practitioner still owes a duty of care to their patients. It is understood and permitted that officials in such positions will carry out their professional duties.

Types of conflict of interest

Conflicts of interest can be classified as:

- real (sometimes called ‘actual’)
- apparent (sometimes called ‘perceived’)
- potential.

Real conflicts of interest

A real conflict of interest exists where you have a personal interest or competing duty that could affect or be affected by the way you perform your public powers, functions or duties.

Example:

- A public official owns land, the value of which could increase or decrease depending on what decision the official makes. As the official’s personal interest could affect or be affected by how they perform their public powers, functions or duties, there is a real conflict of interest.

Real conflicts, if not declared and appropriately managed, present a corruption risk.

Disclosing, declaring and managing real conflicts of interest

You must disclose the relevant personal interest or relationship as soon as reasonably practicable to a relevant third party.

The identity of the relevant third party will depend on your role, responsibilities and the internal requirements of your organisation, but should ordinarily be someone in a senior supervisory or integrity role in your agency.

This disclosure needs to occur early enough in the process to enable any conflict of interest to be effectively managed. You may need to obtain consent if the declaration contains personal information as required by the *Privacy Act 1988* (Cth).

In consultation with the relevant third party, **you must assess** whether those circumstances give rise to a conflict and if so **declare** that you have a conflict.

In consultation with the relevant third party, **you must manage** your conflict of interest. Except in a case of impossibility (that is, where there is no process by which an alternative decision-maker can be appointed), **you must not be the decision maker**. This may require delegating the decision-making to a delegate of sufficient seniority and experience to make an independent decision, making clear that the delegated decision-maker is expected to make their own independent decision, and ensure that the delegate is able to do so.

In the case of a real conflict, **you should not participate at all in the decision-making process**.

If the decision or process is one from which you could gain information that could be used to advantage your competing personal interest, then **you must be isolated from the relevant information**. This will often be the case where the competing interest is financial. However, this is not necessary where the information could not be used to the advantage of your competing interest.

Apparent conflicts of interest

An apparent conflict of interest exists where a reasonable informed observer might think that you have a personal interest, relationship or competing duty that could affect, or be affected by, the way you perform your public or official powers, duties or functions, even though there is no real conflict of interest.

Apparent conflicts of interest can arise in the context of both financial and non-financial interests.

Examples:

- A public official has had a longstanding professional and social relationship with a person who is applying for a position, where the official is on the selection panel. Although the official is interested only in selecting the most appropriate candidate, a reasonable informed observer might think that the relationship was such that the official has an interest in their colleague being successful, and so there is an apparent conflict of interest.
- A public official involved in administering a grants scheme is a member of a community organisation that has applied for a grant. Although the official has no personal interest in the success or failure of the application, a reasonable informed observer might think that their association with the community group gives them an interest in the success of the application, and so there is an apparent conflict of interest.

Apparent conflicts as distinct from real conflicts present a low risk of corruption. However, as explained above, perceptions are important because they affect the perceived legitimacy of, and therefore confidence in, public decision-making.

Disclosing, declaring and managing apparent conflicts

You must disclose the relevant personal interest or relationship as soon as reasonably practicable to a relevant third party (as described above).

In consultation with the relevant third party, **you must assess** whether those circumstances give rise to a conflict and if so **declare** that you have a conflict.

In consultation with the relevant third party, **you must manage** your conflict of interest. Except in a case of impossibility (that is, where there is no process by which an alternative decision-maker can be appointed), **you should not be the decision-maker**. This may require delegating the decision-making to a delegate of sufficient seniority and experience to make an independent decision.

If you remain the decision maker, **you must record the steps you have taken to disclose and assess** with a relevant third party and set out the reasons why there is no real conflict of interest and why you and the relevant third party have determined you are able to make a decision that is unaffected by the apparent conflict.

In the case of an apparent conflict, depending on the nature of the apparent conflict and the nature of the process, **it is preferable not to participate at all in the decision-making process**. If you do participate (for example by making a recommendation), you must disclose your apparent interest to the decision-maker, make clear that any delegated decision-maker is expected to make their own independent decision, and ensure that the delegate is able to do so.

If the process involves a quasi-judicial or administrative decision to which the rules of procedural fairness apply, **you must not participate at all in the decision-making process**, in order to avoid the decision being affected by apprehended bias.

If the decision or process is one from which you could gain information that could be used to advantage your apparent personal interest, then **it is prudent to be isolated from the relevant information**. This will often be the case where the competing interest is financial. However, this is not necessary where the information could not be used to the advantage of the apparent competing interest.

Potential conflicts of interest

A potential conflict of interest is where there is a real possibility that you will have a personal interest, relationship or competing duty that could affect the way you exercise your public powers, perform your public functions or discharge your public or official duties. The possibility may arise because you may in the future have to make decisions of a particular type that could impact the interest or competing duty that you already have; or because you may in the future acquire interests or duties that could be impacted by the types of decision that you are required to make.

Example:

- A public official who assesses visa applications becomes aware that family members intend to apply for a visa. As there is a real possibility that the official might be required to consider their family members' applications and would have an interest in those applications being successful, there is a potential conflict of interest.

Potential conflicts of interest require management to avoid them becoming real conflicts.

Managing potential conflicts of interest

You should disclose the potential conflict of interest so the agency is aware of the potential for a conflict of interest to arise and if it does, a conflict of interest can be avoided, or appropriately managed.

Materiality

A conflict of interest exists only if the personal interest is material.⁹

The word 'material' conveys the idea that the interest must be of some substance or value, rather than merely a slight interest. Personal interests do not give rise to a conflict of interest unless there is a real or sensible possibility that they will influence your decision, and not simply a remote or theoretical possibility.¹⁰

Assessing the materiality of a conflict of interest

Factors to be weighed in assessing the materiality of the interest include the:

- type or size of your personal interest, real or apparent
- nature or significance of the decision
- extent to which the decision could be affected by (or affect) your personal interest
- nature or extent of your current or intended involvement in the decision.

⁹ Relevant provisions of the *Public Service Act 1999*, the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014* require that persons must disclose details of any material personal interest.

¹⁰ APS Values and Code of Conduct in Practice, Section 5.2.2: Section 5: Conflict of Interest ([apsc.gov.au](https://www.apsc.gov.au)). For there to be a possibility of conflict requires that a reasonable person 'looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict': *Phipps v Boardman* [1967] 2 AC 46 at 124.

How do I know if I have a conflict of interest?

This guide provides general advice on how to identify, disclose, assess and manage conflicts of interest, but each case will require specific consideration.

You should consider the responsibilities associated with your role, your agency or public office.

If in doubt, disclose your personal interests and seek advice on how to assess and manage any conflict.

If you do not think you have a conflict of interest, disclose that you have no conflicts of interest. Speak to your manager, your agency's integrity area or ethics contact officer or consult the APSC Ethics Advisory Service for advice.

The conflict of interest test

- **Could you be better or worse off financially as a result of the way you perform your powers, functions or duties as a public official?**

If yes, declare it, and you must not be the decision-maker and should not participate in the process.

- **Could the way you perform your powers, functions or duties as a public official be affected by or affect a significant relationship, association or attachment you have?**

If yes, declare it, and you must not be the decision-maker and should not participate in the process.

- **Might a reasonable informed observer think the way you perform your powers, functions or duties as a public official could be affected by or affect a significant relationship, association or attachment?**

If yes, declare it, and you should not be the decision-maker. If you do participate, you must disclose your apparent interest to the decision-maker, make clear that any delegated decision-maker is expected to make their own independent decision, and ensure that the delegate is able to do so.

Conflict of interest management in practice

You must continually assess how your interests could conflict with all aspects of your powers, functions or duties as a public official, or could reasonably be perceived to do so: for example, in recruitment and procurement processes, administrative decision-making, investigative or supervisory activities, policy development and advice, and when your role or duties change.

Failing to declare a conflict of interest does not of itself amount to corrupt conduct, but conflict of interest disclosures are important for transparency. An undisclosed conflict of interest can result in corrupt conduct if the official prefers their personal interest to their public or official duty.

Disclosing personal interests and relationships, and declaring conflicts of interest, are important steps, but they are not the solution. Declaring a conflict of interest does not mean it goes away.

Conflicts of interest must be actively managed and monitored to ensure that the competing interest does not affect the decision and to avoid the risk of corrupt conduct.

If you suspect on reasonable grounds that an undisclosed, unmanaged or poorly managed conflict of interest has resulted in serious or systemic corrupt conduct involving a Commonwealth public official, you should report this to the Commission. Your report will be treated confidentially, and you are entitled to a range of protections.

Mandatory referrals

Agency heads and Public Interest Disclosure officers of Commonwealth agencies and of Intelligence agencies have mandatory obligations to refer suspected serious or systemic corrupt conduct arising from undeclared, unmanaged or poorly managed conflicts of interest, unless they believe on reasonable grounds that the Commission is already aware of it.

[Mandatory referrals](#) must be made as soon as reasonably practicable.



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