



Australian Government

National Capital Authority

CONFLICT OF INTEREST POLICY

August 2021

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1 Introduction

- 1.1 The National Capital Authority (**NCA**) is established under the *Australian Capital Territory (Planning and Land Management) Act 1988 (PALM Act)*. The NCA is a non-corporate Australian Government agency within the Infrastructure, Transport, Regional Development and Communications Portfolio.
- 1.2 The NCA performs the role as trustee of Australia's National Capital, Canberra, and in this capacity, serves the interests of the Australian Government, the nation and its people.
- 1.3 The NCA is responsible for shaping the National Capital into the future; managing and enhancing the nationally significant parts of Canberra; and educating and informing people about Australia's National Capital. The key activities of the NCA include:
 - a) preparing, reviewing and administering the National Capital Plan;
 - b) commissioning, assessing and approving applications to undertake works on National Land;
 - c) preparing development control plans, urban design guidelines, master plans and draft amendments to the National Capital Plan;
 - d) promoting awareness of Canberra as the National Capital by:
 - encouraging participation, appreciation and celebration in the National Capital, e.g. by encouraging public and private events to be held on National Land; and
 - providing education about the Capital, e.g. through the National Capital Exhibition;
 - e) managing and maintaining assets and land on behalf of the Australian Government, including:
 - renewal works to enhance or protect national assets e.g. refurbishment of monuments and fountains;
 - construction of public infrastructure e.g. roads, parking, pathways and lighting; and
 - development of the landscape settings for new building sites, public parks and places for commemoration and celebration;
 - f) administering pay parking on National Land.
- 1.4 More information about the NCA is available from the website at www.nca.gov.au.

2 The NCA's obligations

- 2.1 As an Australian Government agency, the NCA has conflict of interest obligations deriving from a number of sources, including under the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*, the *Commonwealth Procurement Rules (CPRs)*, the Accountable Authority Instructions (AAIs), the *Public Service Act 1999 (PS Act)*, the *Criminal Code Act 1995*, and the fraud control strategies outlined in the NCA's Fraud Control Plan.
- 2.2 The PGPA Act, for example, requires Commonwealth entities to meet high standards of governance, performance and accountability and to use and manage public resources properly.
- 2.3 The CPRs have provisions relating to conflicts of interest. It is common for entities to rely on declarations from employees, contractors and advisory bodies to identify any conflicts that may require management.
- 2.4 The Australian Public Service (APS) Code of Conduct has a number of provisions which are relevant to conflict of interest, but in particular provides that APS employees must "take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment". Public confidence in the integrity of the APS is vital to the proper operation of government. Confidence may be jeopardised if the community perceives that an employee has a conflict of interest when undertaking their functions. APS employees need to be aware that any private interests, both

financial and personal, could conflict with their official duties. The NCA places equivalent obligations into arrangements with contractors and service providers to the NCA.

3 Purpose of this policy

- 3.1 The Conflict of Interest Policy provides information about conflicts of interest and describes how they are managed by the NCA in undertaking its activities.

4 Coverage

- 4.1 This policy applies to all NCA staff, including Authority Members, volunteers and contracted staff. Where relevant, the NCA places equivalent obligations into arrangements with service providers to the NCA.

5 What is a Conflict of Interest?

- 5.1 A conflict of interest exists when a person is influenced, could become influenced, or could be perceived to be influenced, by a personal interest when undertaking their official duties. Conflicts of interest may be real, perceived or potential:
- 5.1.1 **Real** – where a direct conflict exists between a person’s official duties and their private interests, such that the person’s private interests could improperly influence the performance of their official duties.
 - 5.1.2 **Perceived** – where the public might reasonably perceive that a person’s private interests might improperly influence the performance of their official duties, regardless of whether or not that is the case.
 - 5.1.3 **Potential** – where a person’s private interests are not currently conflicting with their official duties, but they could conflict in the future.
- 5.2 Awareness of the potential for conflicts of interest is important at all times, but the risk of a conflict occurring increases when employees are involved in particular types of work, for example, procurement. Three types of interest that can give rise to a conflict of interest are financial, political and personal.

Financial interests

- 5.3 Financial interests include holding securities (such as shares), real estate, directorships, running a private business or other income sources, which might be affected by a decision made within the NCA.
- 5.4 Section 13(10) of the PS Act relevantly provides that an APS employee must not improperly use inside information or their position to gain a benefit for themselves or for any other person. For example, APS employees must not use information obtained at work to unfairly advantage them on the share-market, or provide information to a tenderer which would unfairly advantage them.

Political interests

- 5.5 Political interests include where an employee has a relationship with a lobbyist, is a member of a political party, or is a member of an organisation that advocates about political matters. Section 13(11) of the PS Act requires APS employees to uphold the APS Values, one of which is that the APS is apolitical. An APS employee must be able to provide impartial advice.

Personal interests

- 5.6 Personal interests include personal relationships, such as those made during sporting, social or cultural activities, friendships made at work, and family or intimate relationships.

Examples of conflicts of interests

Examples of where personal interests may conflict with official duties are where an employee is:

- in a position to assess a grant to a community group to which they belong;
- a member of a Selection Advisory Committee (SAC) and has a personal relationship with an applicant for the position; and
- a member of a Tender Evaluation Committee (TEC) during a procurement process and owns shares in a company that is tendering for an NCA contract.

5.7 Situations where there is a heightened potential for a conflict of interest to arise include involvement in:

- the assessment of works approval applications;
- payments processing where a person has an interest in a service provider to the NCA
- procurement processes;
- selection panels, where a member has a relationship with an applicant; and
- a supervisory role between an employee and their partner, family member or friend.

5.8 The NCA manages real, perceived or apparent conflicts of interest in several ways, notably:

- at the commencement of employment, personnel must complete an Acknowledgement of Conflict of Interest Policy (**Appendix A**) and a Declaration of Material Interests (**Appendix B**);
- Authority Members, Senior Executive Service officers, EL2 level personnel, and personnel whose job descriptions require them to be involved in key financial, planning or procurement decisions are also to complete a *Declaration of Material Interests* on commencement, and annually thereafter (by 31 July each year);
- Personnel involved in particular processes from time to time, but not as a regular component of their role, such as procurement or recruitment, will be required to complete the relevant Conflict of Interest declaration specific to each process.

6 Acknowledgement of Conflict of Interest Policy

6.1 As part of the induction process, new NCA personnel will be provided with a copy of this policy by the Human Resources Team. All personnel (employee and contractors) will be asked to complete the Acknowledgement of Conflict of Interest Policy (see **Appendix A**) within the first week of their employment and return the completed form to the Manager, Human Resources. This form is required to be completed once, on engagement with the NCA, and will be placed on an employee's personnel file/contractors work order file.

7 Declaration of Material Interests

7.1 Government policy provides that the Chief Executive, members of the Senior Executive Service (SES) and those acting in SES positions for longer than three months, are required to disclose their own private interests, and those of their immediate family, to the extent to which they are aware of those interests. Further, section 13(7)(b) of the PS Act provides that an APS employee must disclose the details of any material personal interest of the employee in connection with the employee's APS employment.

7.2 The NCA's Chief Executive has determined that where staff are likely to be involved in key financial, planning or procurement decisions, they are required to complete the Declaration of

Material Interests form (see **Appendix B**). Material interests are required to be declared only where they are of such a nature that they may conflict, or may be perceived to conflict, with personnel's NCA duties. Personnel must include their personal material interests and, where known, any material interests of a dependent, spouse or partner of the individual. There is only a requirement to specify monetary values of financial interests where personnel has a shareholding in excess of five percent or \$50,000 of a company.

- 7.3 On commencement, each staff member will return a completed Declaration of Material Interests form to the Chief Executive and retain a duplicate copy for their own records. If that staff member's circumstances change and a material interest is created by that change then they must submit an updated form to the Chief Executive as soon as practicable. All senior employees (SES and EL 2s) are required to provide an annual Declaration of Material Interests form and return it by 31 July each year to either confirm that their previous circumstances remain unchanged or to advise of the relevant revised circumstances.
- 7.4 If the provided information show a conflict, the Chief Executive will resolve the conflict with the individual (see 'Managing Conflicts of Interest' below). The requirements to disclose actual, potential or perceived conflicts and manage them appropriately are ongoing obligations.
- 7.5 Completing the Declaration of Material Interests form does not absolve personnel of their continuing obligation to avoid a conflict wherever possible.
- 7.6 Due to privacy issues associated with the release of information to third parties, if a staff member discloses the personal information of another person in a Declaration of Material Interest then the staff member should inform that person of:
- the details of the personal information disclosed to and now held by the NCA; and
 - to whom the information may reasonably be expected to be released.
- 7.7 The Manager, Human Resources, is responsible for retaining declarations on appropriate files. Once noted by the Chief Executive, the forms should be provided to the Manager, Human Resources, who must classify them as 'Official: Sensitive – Personal Privacy' and place them on the relevant personnel or contractor files, or other relevant files (recruitment of tender evaluation files) . Access to the forms must be restricted on a 'need-to-know' basis. Personnel may access their own forms at any time.

8 Managing Conflicts of Interest

- 8.1 Section 13(7)(a) of the PS Act provides that APS employees must take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment. The principle for avoiding a conflict of interest is straightforward; when making a decision at work personnel should only be influenced in that decision by factors that are genuinely relevant to it. Personnel should not be influenced by, for example, the impact that it might have on them, members of their family, or their friends.
- 8.2 Where personnel believe they may have an actual, potential or perceived conflict of interest in performing their regular duties they should inform their supervisor immediately, complete a relevant Conflict of Interest form, and then take such action as their supervisor or the Chief Executive directs in order to avoid or manage the conflict. Similarly, where personnel are invited to participate in a particular process, such as a procurement or recruitment process, they should inform the manager of that process, complete the relevant Conflict of Interest form, and then take such action as that manager or the Chief Executive directs in order to avoid or appropriately manage the conflict.
- 8.3 Additionally, based on the information disclosed in a Declaration of Material Interests form, or a Conflict of Interest form, the Chief Executive will decide whether there is an actual, perceived or potential conflict of interest. If there is a conflict, the Chief Executive may do one or more of the following:

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- rearrange the person's duties or assign the personnel to other duties;
 - require the person to divest a particular interest if it would give rise to a conflict of interest with their official duties;
 - in the case of a personal relationship between two NCA staff members, move one person to another work area;
 - remove a SAC or TEC member from a particular selection process;
 - deal with a conflict in relation to a procurement process in accordance with the relevant probity plan or
 - take other appropriate action to appropriately manage the conflict.

8.4 The Chief Executive will document in writing the decision-making process and steps taken to manage the conflict of interest.

8.5 Documentation relating to declarations of conflict of interest will be provided to the Manager, Human Resources, for placement on the relevant personnel or work order file.

9 Making Public Comment and Participating Online

Official Capacity

9.1 Some personnel, as part of their official duties, provide comment to the media and through websites, including social networking and blogging websites. Comments may include information surrounding agency activities, updates to the public and responses to commentary.

9.2 When commenting in an official capacity, employees are bound by the APS Values and Code of Conduct, including a duty under the Public Service Regulations, not to disclose certain information without authority.

9.3 Requests to clear material for public release are to be submitted to the relevant Senior Executive Service Officer.

Unofficial Capacity

9.4 Personnel may engage in online and social media activity and make public comments in a professional or private capacity, separate to their APS employment. However, employees must be aware that doing so carries risks, such as breaching the APS Code of Conduct, and could lead to sanctions including termination of employment.

9.5 Under the APS Code of Conduct, employees must, at all times, behave in a way that upholds the APS Values, such as acting impartially and apolitically, and uphold the integrity and good reputation of the employee's Agency and the APS. Therefore, employees should consider whether their online and social media activity, including making posts and 'liking' and commenting on posts, could breach the APS Code of Conduct.

9.6 For in-depth information on employees' use of social media, please see the APSC guidance: [Social media: Guidance for Australian Public Service Employees and Agencies](#).

10 Outside Employment and Volunteer Work

10.1 Employees are able to perform paid work and volunteer work outside the APS, provided it does not conflict with, or adversely affect, the performance of their official duties.

10.2 As a general rule, employees should not engage in paid or volunteer work if it:

- would create an actual, perceived or potential conflict of interest with their official duties; or
- is likely to affect their efficiency in the performance of their official duties.

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- 10.3 Additional information is included in the Engaging in Outside Employment Policy and [Application to Engage in Outside Employment](#).

11 Legislative and Policy Framework

Background

- 11.1 While undertaking their official duties, APS employees are required to comply with Australian laws and policy documents including, but not limited to:
- the *Public Service Act 1999*;
 - the *Criminal Code Act 1995*;
 - the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Procurement Rules*;
 - legislation relating to anti-discrimination, privacy, freedom of information, health and safety, the creation and destruction of records, administrative decisions, public interest disclosures and employment;
 - subordinate legislation made under the above primary legislation;
 - mandatory government-wide policy documents, such as relevant Department of Finance Resource Management Guides; and
 - the NCA Accountable Authority Instructions and policy documents.
- 11.2 Examples of some of the above legislation, subordinate legislation and policy documents are set out below.

Public Service Act 1999

- 11.3 The *Public Service Act 1999* (PS Act) contains several aspects of the APS Values and APS Code of Conduct that are relevant to the management of conflicts of interest.
- 11.4 The APS Values, at section 10 of the PS Act, include the following:

Committed to service

- (1) The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Ethical

- (2) The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

Accountable

- (4) The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Impartial

- (5) The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

- 11.5 The Code of Conduct, at section 13 of the PS Act, requires that:

- (1) An APS employee must behave honestly and with integrity in connection with APS employment.
- (2) An APS employee must act with care and diligence in connection with APS employment.
- (3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.

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- (4) An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, *Australian law* means:
 - (a) any Act (including this Act), or any instrument made under an Act; or
 - (b) any law of a State or Territory, including any instrument made under such a law.
 - (7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
 - (10) An APS employee must not make improper use of:
 - (a) inside information; or
 - (b) the employee's duties, status, power or authority;in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person;
 - (11) An APS employee must at all times behave in a way that upholds:
 - (a) the APS Values and APS Employment Principles; and
 - (b) the integrity and good reputation of the employee's Agency and the APS.

Public Governance, Performance and Accountability Act 2013

- 11.6 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides a framework for governance, accountability, performance and the use of resources across Commonwealth entities. Section 15 of the PGPA Act provides that an agency head must promote the proper use (that is, the efficient, effective and ethical use) of Commonwealth resources in their agency.
- 11.7 Sections 25 to 29 of the PGPA Act set out the general duties that apply to officials of all Commonwealth entities particularly in their management and use of public resources. There are five general duties, which are:
 - a duty of care and diligence;
 - a duty to act in good faith and for a proper purpose;
 - a duty in relation to use of position;
 - a duty in relation to use of information; and
 - a duty to disclose interests.
- 11.8 These general duties provide a uniform set of expected behaviours that covers all officials in meeting high standards of governance, performance and accountability. These duties are in addition to any other legal duties that an official may have under their employment framework or through an employment contract.
- 11.9 In line with this obligation, it is the responsibility of all employees to ensure that the potential for conflict of interest is properly managed and reported to the Chief Executive as soon as a potential conflict is identified. This includes consideration of requests for agreement to undertake outside employment or issues associated with post-separation employment.

Criminal Code Act 1995

- 11.10 Subsection 142.2(1) makes it an offence for a Commonwealth public official to exercise influence, engage in conduct, or use any information in their official capacity with the intention of dishonestly obtaining a benefit for themselves or another person, or dishonestly causing a detriment to another person. An offence may attract a five-year prison term.

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- 11.11 Subsection 142.2(2) makes it an offence for a person who has left the APS to use official information obtained while employed, dishonestly to obtain a benefit for themselves or another person or to cause detriment to another. An offence may attract a five-year prison term.

Commonwealth Procurement Rules

- 11.12 The *Commonwealth Procurement Rules* (CPRs), issued by the Minister for Finance, establish the core procurement policy framework and articulate the government's expectations of all departments and agencies subject to the PGPA Act and their officials, when performing duties in relation to procurement.
- 11.13 *Value for money* is the core principle underpinning Australian Government procurement and is enhanced in government procurement by:
- a) encouraging competition and being non-discriminatory;
 - b) the efficient, effective, economical and ethical manner use of public resources that is not inconsistent with the policies of the Commonwealth;
 - c) facilitating accountable and transparent decision making;
 - d) encouraging appropriate engagement with risk; and
 - e) being commensurate with the scale and scope of the business requirement.
- 11.14 The CPRs provide that procurement must be conducted ethically to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity. Ethical behaviour avoids conflicts of interest, and does not make improper use of an individual's position.
- 11.15 The CPRs can be located on the Department of Finance website.

NCA Accountable Authority Instructions

- 11.16 Employees should be aware of the NCA's Accountable Authority Instructions, which include direction on topics relevant to procurement, managing contracts, behaviour and relationships with clients, such as acceptance of gifts and benefits.



Appendix A - Acknowledgement of Conflict of Interest Policy

I acknowledge that:

- I have read and understand the National Capital Authority's Conflict of Interest Policy.
- The APS Values and APS Code of Conduct in the *Public Service Act 1999* place an obligation on all APS employees to behave with the highest ethical standards and I will abide by that obligation.
- I must provide the Chief Executive with the *Declaration of Material Interests* where my material interests are of such a nature that they may conflict, may be perceived to conflict, or may potentially conflict with my NCA duties. I will notify the Chief Executive where I have shareholdings that exceed 5% in a company or where the monetary value in a company exceeds \$50,000.
- I must submit a new *Declaration of Material Interests* form if my circumstances change and that change raises a new material interest that could create an actual, perceived or potential conflict of interest.
- If I am a senior employee (SES and EL 2s), I must provide an annual *Declaration of Material Interests* to the Chief Executive by 31 July each year to either confirm that my previous circumstances remain unchanged or to advise of a relevant change in circumstances.
- I agree to identify and report any actual, potential or perceived conflict of interest in relation to my duties or any other role I am asked to perform from time to time, to the relevant supervisor or process manager and the Chief Executive.
- I agree to identify and seek permission from the Chief Executive to undertake external paid or unpaid work as per the Engaging in Outside Employment Policy.

Name:
Position and Team:
Date:
Signature:



Appendix B – Declaration of Material Interests

To: NCA Chief Executive

- (1) You are only required to declare material interests if they are of such a nature that they may be seen to give rise to a conflict of interest or the perception of a conflict of interest in relation to your employment with the National Capital Authority (NCA).
- (2) You must declare your material interests and, where known to you any material interests of your dependent, spouse or partner.
- (3) You must declare any shareholdings that exceed 5% in a company or where the monetary value in a company exceeds \$50,000.
- (4) A non-exhaustive list of relevant material interests includes:
 - a) Financial, for example:
 - i. Securities including shareholdings and interests in trusts (e.g. shares in companies with which the NCA does, or intends to, conduct business);
 - ii. Real Estate/Property Interests (e.g. land or buildings that may be affected by a decision by the NCA);
 - iii. Directorships in companies or associations (e.g. a company that does business with the NCA);
 - iv. Income sources, including gifts or hospitality (e.g. income, gifts or hospitality from a lobby group, company, professional association, local councils or other body who may have an interest in influencing NCA decision making not including official allowances as an employee of the NCA); and
 - v. Liabilities (e.g. liabilities to organisations that have an interest in influencing NCA decision making not including credit cards, personal loans and similar liabilities to recognised banking and financial institutions).
 - b) Political, for example:
 - i. Membership of political parties;
 - ii. Relationship with lobbyists; and
 - iii. Membership of organisations that advocate about political matters.
 - c) Personal, for example:
 - i. Friendships made at work or during sporting, social or cultural activities, where the friend is applying for a position with the NCA;
 - ii. Family or intimate relationships where the person owns a business that is tendering for an NCA contract.

DECLARATION OF MY MATERIAL INTERESTS

I declare the following material interests which may give rise to a real, perceived or potential conflict of interest with my official NCA duties:

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DECLARATION OF MATERIAL INTERESTS OF MY DEPENDENT, SPOUSE OR PARTNER

I declare the following material interests of my dependent, spouse or partner which may give rise to a real, perceived or potential conflict of interest with my official NCA duties:

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I declare that I hold no interests, other than those identified above, which might give rise to a conflict of interest or the perception of a conflict of interest in my capacity as an employee of the NCA. I will notify the Chief Executive of any change to any information I have declared within 28 days of becoming aware of such a change.

Name of declarant:
Date of declaration:
Signature of declarant:

Date noted by the Chief Executive:
Signature of the Chief Executive:
Action determined by the Chief Executive to manage any conflict of interest: