

In whose interests?

Preventing and managing
conflicts of interest in the APS



Australian Government

Australian Public Service Commission



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Reimagine

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Citizens ... must all, in one way or another, pay taxes and rates and they are all affected, in one way or another, by decisions of the Government. The quid pro quo for this is that citizens in our democracy are entitled to, and expect, a particularly high standard of stewardship of the resources—intellectual, personnel, materiel and financial—that they have granted the public sector.

Lynelle Briggs, Australian Public Service Commissioner, 6 November 2008

Setting the agenda

Government's expectations of APS

On 30 April 2008, the Prime Minister set out the seven elements of the Government's vision for the future Australian Public Service:

- Reinvigorating the Westminster tradition of an independent public service with merit-based selection processes and continuity of employment when governments change
- Building a professional public service committed to excellence
- Developing evidence-based policy making processes as part of a robust culture of policy contestability
- Enhancing the strategic policy capability of the public service
- Strengthening the integrity and accountability of government
- Broadening participation in government through inclusive policy processes
- A contemporary view of government service delivery that emphasises both efficiency and effectiveness in outcomes.

This booklet

This booklet focuses on the second and fifth elements of this reform agenda, namely:

- Building a professional public service committed to excellence
- Strengthening the integrity and accountability of government

It complements other booklets in this series, which will provide an expanded discussion of some elements of ethical decision making, such as:

- reinvigorating the Westminster tradition
- appropriate handling of privacy issues
- communicating in a modern and diverse media environment
- public interest disclosures/whistleblowing
- freedom of information.

The public servant's duty ... is to preserve his independence of judgment and action from improper influence coming from his personal interests, pecuniary or otherwise, direct or indirect.

Public Duty and Private Interest, Report of the Committee of Inquiry (1979)

Preventing and managing conflicts of interest in the APS

What is conflict of interest?

The Organisation for Economic Co-operation and Development (OECD), in its Guidelines for managing conflict of interest in the public service (2005), defines conflict of interest as:

... a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

The OECD points out that there does not need to be an actual conflict of interest for it to matter:

A situation that looks like a conflict of interest may be enough to undermine public confidence, even if in fact there is no conflict or it has already been resolved.

Why does it matter in the APS?

Public confidence in the integrity of the APS is vital to the proper operation of government. That confidence may be jeopardised if the community perceives that public servants are working to serve other agendas. APS employees need to be aware that their private interests, both financial and personal, could conflict with their official duties, and need to know what to do when a conflict arises.

What is a private interest?

An 'interest' in this context means anything that can have an impact on an individual or group. The term 'private interests' includes not only an employee's own personal, professional or business interests, but also the personal, professional or business interests of individuals or groups with whom they are closely associated. This can include relatives, friends or even rivals and enemies. (Conflict of Interest Policy Framework, Victorian Public Service)

Who is likely to be exposed to conflicts of interest?

Any APS employee may, at times, be in situations where there are conflicts of interest between their public duty and personal interests. The more senior, the more likely such conflicts are and the bigger the consequences of not responding to them appropriately.

Agency heads and SES employees are required to declare in writing any financial and other interests, held by themselves or members of their family, that could involve a real or apparent conflict of interest.

Who is responsible for managing conflicts of interest?

Managing conflicts of interest is the shared responsibility of APS agency heads, leaders and managers, and individual APS employees. All employees have a responsibility to ask themselves whether their actions or decisions could give rise to a real or apparent conflict of interest, and if so, to take action to manage that.

Agencies need to have in place policies and procedures to manage real and apparent conflicts of interest.

How can we prevent and manage conflicts of interest?

Avoiding all conflicts of interest (real or perceived) is not always feasible or even desirable. Where conflicts of interest are apparent, they should be handled in an open and transparent way that can be understood and defended. Practical measures include:

- **register or declare** in writing a possible or potential conflict of interest to a manager (for an agency head, this will be the relevant Minister)
- **restrict involvement** of APS employees in matters in which they have (or are perceived to have) a conflict of interest
- **recruit** third parties who do not have an interest (such as probity advisers) to advise on or participate in the matter
- **remove** APS employees from involvement in matters in which they have real or perceived conflicts of interest
- an APS employee may have to **relinquish** assets or other private interests
- in rare circumstances, APS employees may need to **resign** from their employment.

... one's own self-interest should not overtake loyalty to the long-term interests of an organisation, or to the wider public.

Senator the Hon John Faulkner, 9 September 2008)

Taking an ethical lead in the APS is everyone's business

Agency heads and SES employees

Managers, and in particular senior managers, constitute the most influential community of practice in the public service. Their role impacts on every other community and every organisation. Their behaviour sets the values. Their ideas, words and actions in large measure shape the culture of the public service. (the Hon Jocelyne Bourgon PC OC, President Emeritus at the Canada School of Public Service, 19 June 2008)

In addition to the general requirement to comply with the APS Values and Code of Conduct, the *Public Service Act 1999* places specific responsibilities on agency heads and SES employees to uphold and promote the Values and Code (sections 12 and 35). This obligation reflects the importance that senior managers have as role models in their agencies who set the tone for 'how things are done around here'.

All employees

All APS employees are obliged to uphold the APS Values and comply with the Code of Conduct.

We must all be vigilant about identifying personal interests – financial or otherwise, including close personal relationships – that may, or as importantly, may be seen to influence us improperly. We should actively manage these conflicts of interest.

We can all be leaders in how we conduct ourselves, make our decisions and manage our affairs.

Requirements of all APS employees under the *Public Service Act 1999*

Relevant Values (S. 10)(1)

- (a) the APS is apolitical, performing its functions in an impartial and professional manner
- (d) the APS has the highest ethical standards
- (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public ...

Relevant Code of Conduct elements (S. 13)

- (1) An APS employee must behave honestly and with integrity in the course of APS employment
- (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 any other person

(11) An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS



APS Values and Code of Conduct in practice

Values and Code

Values

10 (1) (d) the APS has the highest ethical standards

The Value of the *highest ethical standards* reflects the expectation the public has that power, authorised by Parliament and delegated to Ministers and to public servants, will be exercised to a standard of ethics at least as high as anywhere in the community.

10 (1) (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public ...

APS employees should provide reasonable assistance and help the public to understand their entitlements and obligations. But being responsive does not mean public servants can ignore the law or provide a benefit to which a person is not entitled.

Elements of the Code

13 (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 any other person

13 (11) An APS employee must at all times behave in a way that upholds the APS Values and integrity and good reputation of the APS

In Practice

Situation

Amy works in an area which is developing policy on housing assistance. She has heard that the government is considering extending increased assistance for first home buyers beyond the current cut-off date, but that means testing will be introduced.

Amy's cousin is considering buying a first home and would be eligible under the existing rules, but may not be if a tight means test was introduced.

Amy has close extended family networks, with all members helping each other where they can.

Ethical behaviour goes beyond the requirements of lawful behaviour. It requires employees to merit the respect of the public in their official dealings. This is not a requirement for zealotry, but for professionalism, taking into account all the APS Values, including achieving results and managing performance.

APS Values and Code of Conduct in practice

What are the issues?

Amy is experiencing conflicting loyalties – to her employer and to her family, especially her cousin.

Amy is aware of the restrictions placed on her in using inside information for her own benefit or for that of someone close to her. She weighs this up in her mind.

Amy believes in ‘fair play’. She knows she cannot advantage the interests of one member of the public (her cousin) over other members of the community.

Resolution

Amy provides her cousin with publicly available information on the various forms of assistance available to first home buyers from Commonwealth, state/territory and local government sources. Amy does say that this is information as it currently stands and that things may change over time.

See the REFLECT model (inside back cover) for hints on reaching sound decisions, through exercising good judgement and practising reflection

Values and Code

Values

10 (1) (d) the APS has the highest ethical standards

In terms of personal behaviours, [as APS employees] we are obliged to have the 'highest ethical standards'. This is a natural consequence of the authority the public, through the Parliament, has vested in us: that authority must be exercised in the most ethical way. (Lynelle Briggs, 22 February 2005)

Elements of the Code

13 (1) An APS employee must behave honestly and with integrity in the course of APS employment

13 (7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment

In Practice

Situation

Daniel is representing his agency on the selection panel for a tender for cleaning services in the government building in which he works. The contract is to be shared by three of the four government agencies in the building, together with the building's owner. A preferred tenderer has yet to be selected, with the process to be completed next week.

The building owner sponsors an inter-agency darts competition for the building's tenants. Daniel is an office-bearing member of his agency's social club and deals regularly with the building owner in this capacity.

Daniel attends a BBQ, at which he hears that the building owner may have an interest in BioKleen, one of the companies tendering. Daniel also finds out that David, his fiancée's brother-in-law, works for the company concerned. Daniel does not get along with David.

What are the issues?

Daniel is aware that a reasonable person might perceive a conflict of interest between his roles on the tender panel and in the social club. He is also aware that there is potential for him to be (or be seen to be) biased.

Daniel does not consider the impact his relationship with David might have on his decision making.

Resolution

Daniel verifies BioKleen's ownership and confirms that there is an association with the building owner. He alerts all panel members and his own agency's management to the potential for conflict of interest and the community's perception that the tender process has not been 'at arms' length'.

The tender is readvertised. If BioKleen re-tenders, the building owner is required to step aside from the process. In addition, the government agencies decide to secure the services of both an independent panel member and a probity adviser.

Daniel wonders whether he would have acted as he did if not for his relationship with David. Was he influenced in taking action because he does not get on with David? He seeks advice from the Australian Public Service Commission's Ethics Advisory Service on ethical decision making so that he is better able to deal with situations in which personal relationships are involved.

See the REFLECT model (inside back cover) for hints on reaching sound decisions, through exercising good judgement and practising reflection

Values and Code

Values

10 (1) (a) the APS is apolitical, performing its functions in an impartial and professional manner

APS employees, whether or not they are members of political parties, are expected to separate their personal views on policy issues from the performance of their official duties. This is an important part of professionalism and impartiality as an APS employee.

Elements of the Code

13 (7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment

13 (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 any other person

13 (11) An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS

In Practice

Situation

Jack is a member of the Forest Saviours, affiliated with the Greens Party. He works in a policy area in an environmental agency and has recently been promoted to senior policy adviser for the management of old growth forests.

The Forest Saviours are considering the next steps in their long-running campaign for the preservation of an old growth area slated for woodchipping and have called for volunteers to work out the details of the campaign and for possible direct action.

Jack is facing a dilemma. He values the opportunity he has to influence and contribute to government policy in an area in which he is passionately interested and has expertise. He is also a very active member of the Forest Saviours and has taken leave to participate in past campaigns.

What are the issues?

For the first time, Jack is experiencing a potential clash of his personal and professional values. He strongly believes in the environmental causes pursued by Forest Saviours. He is also conscious that he must serve the government of the day in providing policy advice based on evidence not his political and private views.

As he is moving into more senior roles, Jack's political and private activities have greater potential to clash with his APS role.

Perceptions matter. Jack is becoming increasingly aware that his involvement in environmental campaigns, especially in direct action, can lead to people reasonably perceiving he has a conflict of interest.

He is also increasingly coming into contact with confidential policy material of real interest to the Forest Saviours. If leaked, this information has the potential to cause significant public damage to his agency.

Resolution

Jack decides to place priority on his public service role and to take a back seat in Forest Saviours. He declares his potential conflict of interest to his manager. Both agree to monitor the situation and, if necessary, to investigate areas of policy responsibility in the agency where there is less likelihood of overlap between Jack's professional duties and his political and private interests.

See the REFLECT model (inside back cover) for hints on reaching sound decisions, through exercising good judgement and practising reflection



Values and Code

Values

(1) (d) the APS has the highest ethical standards

Personal behaviour and ethics are emphasised firstly by the requirement that we have ‘the highest ethical standards’. [This is] amongst the defining characteristics of the Public Service as an institution, because our ethical obligations go beyond those the community might generally espouse for everyone. (Andrew Podger, former Public Service Commissioner, 5 October 2002)

Elements of the Code

(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 any other person

(11) An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS

In Practice

Situation

Lee was working as a senior policy officer in a team that has responsibility for policy for social security payments, including the Disability Support Pension (DSP).

Lee has been approved leave for two years to work for an organisation that provides Job Network and Disability Employment Network (DEN) services.

Lee has signed up to, and is bound by the organisation’s Code of Ethics. One of the requirements is that information not in the public domain or not required to fulfil its contractual obligations to government is to be treated with strict confidentiality.

Lee, as an ongoing APS employee, is bound by the APS Values and Code of Conduct even while on leave without pay.

Lee becomes aware that the organisation is using its knowledge of assessment processes to stream clients to whichever of Job Network or DEN will return the better profit margin. The profit is used to cross-subsidise some of the organisation’s other activities, such as providing a breakfast club for disadvantaged people.

The organisation is also ‘getting clients over the line’ for DSP, rather than Newstart which is paid at a lower rate.

What are the issues?

Lee is bound by two sets of values and codes of conduct or ethics—those of the organisation and the APS Values and Code of Conduct. Does one set have priority over the other?

Lee is unsure whether the organisation is behaving ethically, although it is obeying ‘the letter of the law’. What are Lee’s responsibilities in relation to raising concerns with the way the organisation operates?

Even if Lee is not directly involved in streaming clients or helping them claim benefits from Centrelink, others might perceive that Lee is enabling the organisation to ‘work around’ the government’s policy intention on welfare benefits.

Resolution

Lee discusses the situation with the ethics contact officer in his agency. The ethics contact officer and Lee talk to the Australian Public Service Commission Ethics Advisory Service about the issues raised by Lee’s outside employment. Lee weighs up the advice he has been given on options for resolving the ethical issues he faces.

He can see no way to satisfactorily deal with the perception that his involvement in DSP policy is being used by the organisation to its benefit. He remains uncomfortable about the way the organisation conducts its business, even though it is legal and ultimately produces a social benefit. He takes the view that ‘ends do not justify means’.

Lee decides that he needs to relinquish his outside employment. He finds that he is able to return to his APS employment prior to the date originally agreed. Lee has negotiated a move to another work area so that he does not face a similar position of being seen to use ‘inside information’ gained through his employment with the outside organisation.

See the REFLECT model (inside back cover) for hints on reaching sound decisions, through exercising good judgement and practising reflection



Leadership is an action-oriented concept, or a way of behaving, and employees at all levels can be leaders through their actions.

Lynelle Briggs, Australian Public Service Commissioner, 16 October 2008

Leading and managing for an ethical culture

checklist for action

Organisational checklist

- Release a policy on the agency's commitment to the APS Values and Code of Conduct and to promoting a culture in which ethical decisions are made and behaviours are observed. The policy should:
 - state that unethical decision making and associated behaviours are potential breaches of the APS Values and Code of Conduct and will not be tolerated
 - set out the responsibilities of the agency head, senior executives, other managers and employees to create a culture that supports ethical decision making and behaviours
 - provide a clear view of, and strategies to promote, appropriate standards of behaviour for employees at all levels
- Ensure all employees have easy access to the agency's policy on ethical decision making and behaviour (for example on the intranet) and regularly remind employees of their responsibilities
- Integrate expectations of appropriate behaviour and adherence to the APS Values and Code of Conduct into performance management and reviews
- Provide training in ethical decision making for all employees, making sure they understand and apply the APS Values and Code of Conduct and can exercise sound judgement
- Require that relevant employees declare personal interests that may impact on their capacity to make fair, impartial and accountable decisions
- Have in place policies for outside and post separation employment that clearly set out that there may be restrictions on when an APS employee can work in an area that has direct contact with the former workplace
- Set up networks of ethics contact officers to provide points of contact for employees to raise ethical issues and to provide a forum for discussion of ethical issues being raised across the agency
- Provide information on:
 - channels for employees to report or raise concerns or complaints (formal and informal processes and external avenues should be included)
 - where to go for advice and/or support (for example, employee assistance or counselling services, agency contact officers)
 - relevant internal and external review mechanisms

Leadership behaviour

Senior leaders

Leaders and managers, through their own actions, must be champions of ethical decision making and behaviour:

- Promoting the APS Values and complying with the Code of Conduct
- Openly discussing ethical dilemmas and how they would resolve them
- Articulating and modelling appropriate behaviour and decision making processes
- Being a source of inspiration and guidance, helping other employees resolve ethical issues
- Declaring personal interests that may get in the way of ethical decision making
- Rewarding ethical conduct and displaying zero tolerance of inappropriate behaviour

All employees

All employees should:

- Uphold the APS Values and comply with the Code of Conduct
- Display personal integrity and drive
- Bear in mind that it is not only senior people who may face a conflict of interest and be required to declare any conflict of interest that may arise
- Seek guidance when they have difficulties resolving ethical issues
- Raise concerns when they observe decisions and behaviours that do not appear to conform to ethical standards

Telling questions

What steps have you taken to make sure that you do not have, or cannot be perceived to have, a conflict of interest?

‘Do you think a reasonably minded member of the public would think it probable that you are not able to bring an impartial mind to this decision?’ (Jerrold Cripps, QC, Commissioner, Independent Commission Against Corruption)



Commission and other resources

Australian Public Service Commission

APS Values and Code of Conduct in practice: Guide to official conduct for APS employees and Agency Heads (see in particular Section 2), available at www.apsc.gov.au/values/conductguidelines.htm

Circular No 2007/1 Declarations of personal interests: Revised policy guidelines, available at www.apsc.gov.au/circulars/circular071.htm

Circular No 2007/3 Post separation employment: Policy guidelines, available at www.apsc.gov.au/circulars/circular073.htm

Circular No 2008/4: Requirements relating to the Lobbying Code of Conduct and post separation contact with Government, available at www.apsc.gov.au/circulars/circular084.htm

Merit and transparency: Merit-based selection of APS agency heads and statutory office holders (2008), available at www.apsc.gov.au/publications08/meritandtransparency.htm

One APS — One SES, available at www.apsc.gov.au/mac/oneaps.htm

Other resources

Australian Government Lobbyists Register and Lobbying Code of Conduct, available at <http://lobbyists.pmc.gov.au/lobbyistsregister/>

Code of Conduct for Ministerial Staff, available at www.smos.gov.au/media/code_of_conduct.html

Conflict of Interest Policy Framework, Victorian Public Service, Public Sector Standards Commissioner (Vic) available at [www.ssa.vic.gov.au/CA2571410025903D/WebObj/PSSC_ConflictIntFrame/\\$File/PSSC_ConflictIntFrame.pdf](http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/PSSC_ConflictIntFrame/$File/PSSC_ConflictIntFrame.pdf)

Conflict of Interest Guidelines, The Integrity Coordinating Group (WA), available at www.opssc.wa.gov.au/icg/documents/coi/guidelines.pdf

Identifying and Managing Conflicts of Interest in the Public Sector, Independent Commission Against Corruption (NSW), available at www.icac.nsw.gov.au/files/pdf/IdentifyingManaging.pdf

Managing conflicts of interest in the public sector: guidelines, Crime and Misconduct Commission (Qld) available at www.cmc.qld.gov.au/data/portal/00000005/content/25370001124425549294.pdf

REFLECT

APS Values and Code of Conduct: Decision-making model

1. REcognise a potential issue or problem

Ask yourself:

- do I have a gut feeling that something is not right?
- do I feel this is a risky situation?

Recognise the situation as one that may involve tensions:

- between two or more of the Values
- between the Values/Code and personal values.

2. Find relevant information

Find the relevant information and gather the facts:

- what was the trigger and what are the circumstances?
- identify the relevant legislation, policies and guidance (APS-wide and agency specific)
- identify the rights and responsibilities of relevant stakeholders
- identify any precedent decisions.

3. Linger at the 'Fork in the Road'

Linger at the 'Fork in the Road', pause to consult:

- supervisors and managers
- respected colleagues, peers, or support services—remember privacy.
- Talk it through, use intuition and analysis, listen and reflect.

4. Evaluate the options

Evaluate options, identify consequences, look at the processes:

- identify the risks
- discard unrealistic options
- apply the accountability test—would the decision stand up to public scrutiny/independent review?
- be prepared to explain the reasons for your decision.

5. Come to a decision

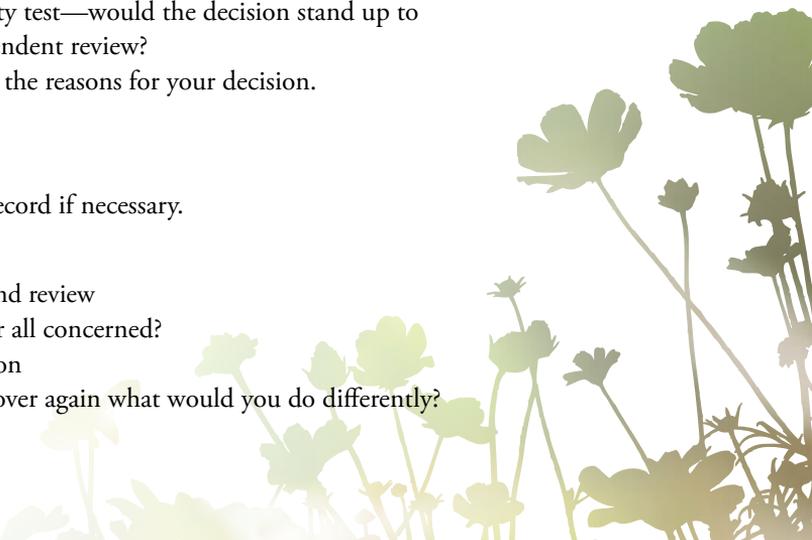
Come to a decision

- act on it and make a record if necessary.

6. Take time to reflect

Take time to **REFLECT** and review

- how did it turn out for all concerned?
- learn from your decision
- if you had to do it all over again what would you do differently?





Ethics Advisory Service TEL 02 6202 3737 WEB www.apsc.gov.au/ethics