



GUIDELINE

Identification and management of conflicts of interest

Direction to staff

You must comply with this instructional material under the Practice Statement Framework.

Summary of main points

This document outlines:

- the process
 - for employees to identify whether they may have a conflict of interest
 - for identifying, declaring and managing conflict of interests.
- what a conflict of interest is.
- the need for all employees to make annual declarations regarding conflicts of interest.
- failure to declare or effectively manage a conflict of interest.

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Purpose of this document

This document details the process for employees and supervisors to fulfil their obligations concerning the identification, disclosure and management of conflicts of interest.

Notes:

- All APS employees have obligations to declare and manage conflicts of interest under:
 - the *Public Service Act 1999* (Cth)
 - the *Public Governance, Performance and Accountability Act 2013* (Cth)
 - the Protective Security Policy Framework (PSPF).
- APS employees who are also security clearance holders may have additional obligations to disclose conflicts of interest to the Australian Government Security Vetting Agency (AGSVA). For further information, refer to Security Clearances Policy.

Definitions

The following table defines terms used in this document.

Term	Definition
Actual conflict of interest	A direct conflict between an employee's official duties and responsibilities and existing private interests which will, or does, improperly influence the performance of an employee's duties.
Associates	Close associates of the employee. Note: could include: <ul style="list-style-type: none"> • relatives • community, sporting, recreational associates • professional associates • friends or social connections • current and former romantic partners.
Conflict of interest	A situation where an employee has a private interest (whether financial or non-financial) or an affiliation which could improperly influence or could be perceived to influence the performance of their official duties and responsibilities. Note: These can be actual, perceived or potential conflicts.

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Term	Definition
Financial conflict	Where the employee has a financial interest, outside of their normal pay, in the outcome of departmental activity.
Material personal interest	<p>An interest that can, or could, give rise to an actual, potential or perceived conflict of interest.</p> <p>Notes:</p> <ul style="list-style-type: none"> • There must be a real or sensible possibility of conflict and not simply a remote or theoretical possibility of conflict. • Where no reasonable person could draw a connection between the employee's personal interest and his or her duties, then the personal interest is not 'material'.
Perceived conflict of interest	Where it could be perceived, or appears, that the private interest could improperly influence the performance of duties, even if it does not actually do so.
Personal conflict	These relate to interests that are non-financial, where the benefit to be realised by the employee is best characterised as ideological or doing someone a favour.
Private interest	<p>Interests in the employee's private life that may have, or be perceived to have, an impact on that employee's ability to perform their duties for the department in an impartial manner.</p> <p>Note: This also may include the private interests of those with whom the employee is closely associated.</p>

Policy statement

Public confidence in the APS is essential for the proper functioning of government.

If the community thought that public servants were pursuing their own agendas, it may undermine this confidence.

This may occur even where there is no actual conflict, highlighting that even perceived conflicts of interest may be of concern.

Employees must:

- declare all actual, potential or perceived conflicts of interest
- comply with management strategies to mitigate the risks posed by conflicts of interest.

All conflicts of interest must be resolved in the public interest.

Notes:

- The department has obligations to undertake employment screening for all new personnel, as well as have policies, processes and procedures in place to monitor the ongoing suitability of personnel to access Australian Government resources under the Protective Security Policy Framework (PSPF).
- Conflict of interest declarations assists the department to
 - assess an employee's suitability
 - fulfil the department's PSPF obligations.
- Declaring a conflict of interest may not always remove the perception of a conflict of interest, but it does allow the department to manage the situation in a professional and ethical manner.

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- This helps protect
 - the department
 - the integrity of the department's processes and decision making
 - the employee's reputation.
- The following principles guide this document:
 - Employees should avoid any conflicts.
 - Where employees cannot avoid a conflict, the employee must declare and manage the conflict.
 - The department requires its employees to act with integrity.
 - The department is obliged by the PSPF to assess the eligibility and suitability of its personnel.
 - Declaring a conflict is not 'set and forget' – continued active management is a requirement.
 - The department requires its employees to discharge their duties, and be seen to discharge their duties, with the utmost impartiality and propriety.
 - Failing to declare a conflict of interest may amount to a breach of the APS Code of Conduct.
 - Declaring conflicts of interest better positions the department to manage and respond to risk.
 - Senior Executive Service (SES) officers play a critical role in setting the example and tone for all employees to follow.
 - The obligation of employees to disclose conflicts of interest operates alongside any obligations the employee may have to inform AGSVA of such conflicts.
 - All employees are obliged to report suspected undeclared conflicts of interest.

Legislative framework

The following table outlines the legislation relevant to identification and management of conflicts of interest.

Relevant legislation	How it applies
<i>Privacy Act 1988</i> (Cth)	Outlines the requirements that the department must meet regarding the storage, review and dissemination of declared conflicts of interest.
<i>Public Service Act 1999</i> (Cth)	Section 13(7) provides that APS employees must: <ul style="list-style-type: none"> • take reasonable steps to avoid any conflict of interest • disclose any material personal interests that conflict with the employee's employment.
<i>Public Governance, Performance and Accountability Act 2013</i> (Cth)	Section 29 provides that officials must disclose details of any material personal interest that relates to the affairs of the agency employing the official.

Roles and responsibilities

The following table outlines the roles and responsibilities undertaken in this guideline.

Role	Responsibility
Approval delegate	Being the employee's Executive Level (EL) 2 supervisor. Note: Where the employee is an EL2 or above, the approval delegate is the employee's immediate supervisor.

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Role	Responsibility
Employee Note: Includes SES officers.	Identifying, declaring and managing conflicts of interest. Important: Employees must declare annually, regardless of whether they identify a conflict or not.
Employee's supervisor	<ul style="list-style-type: none"> Actively considering the real or apparent risk posed by the conflict. Seeking to resolve it in the public interest. Developing, implementing and monitoring appropriate strategies to manage conflicts of interest. Identifying conflicts that employees may themselves have not identified. Resolving matters where it may be unclear if a conflict of interest exists.
Integrity Coordination Analysts	<ul style="list-style-type: none"> Assessing conflict of interest declarations to determine whether adequate management strategies are in place. Undertaking review of publicly accessible information to assess declarations, or lack thereof. Providing advice to employees and supervisors on matters described in this guideline.

What is a conflict of interest?

A conflict of interest refers to a situation where an outside interest influences, has the potential to, or could be seen to influence a behaviour or decision we make at work.

There are many different circumstances that could give rise to an actual, potential or perceived conflict of interest.

While there is no complete list identifying interests requiring disclosure, a key test for identifying a conflict of interest is to ask yourself whether a third party would question if your financial or private interests might influence:

- the way you behave
or
- the way you carry out your duties.

Ultimately, employees and supervisors must use common sense in determining what interests may present a conflict.

If in doubt, get in touch with the Integrity Coordination team for advice, integrity@awe.gov.au.

Notes:

- Conflicts of interest can be categorised as
 - Financial conflicts
 - Personal conflicts
 - Political or ideological associations
 - Criminal associations.
- Below are descriptions of categories of conflicts that could arise in any situation.

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- Each of these may amount to an actual, perceived or potential conflict involving
 - the employee alone
 - or
 - their close associates.

Financial conflicts

These arise where the employee has a financial interest, outside of their normal pay, in the outcome of departmental activity.

Note: For example: Where the employee owns a business regulated by the department, and the employee were involved in decision making associated with the regulation of that type of business. This could be perceived that the employee is making decisions for the benefit of their outside business.

Below is a list of financial interests that employees may need to disclose:

- directorships
- shareholdings
- real estate
- trusts
- self-managed super funds.

Scenario

Mohammed is an EL1 who works in the Canberra office developing policy relating to the cattle industry broadly. Mohammed owns a cattle farm.

Mohammed is involved in a project that is likely to provide some financial relief to cattle farmers, dependent on certain eligibility criteria. Mohammed is one of many employees involved in the development of the policy.

Mohammed will benefit financially if the policy is implemented (along with many other cattle farmers). Mohammed is unsure as to whether they should declare this potential conflict.

Best practice

Mohammed should declare the conflict. Whenever there is the possibility that an employee will receive a financial benefit other than their normal pay they should declare the conflict and propose a management strategy.

Scenario

Sarah is an APS4 who works in environmental assessments doing field work in Queensland. While onsite Sarah met the representative of a major mining company.

The representative offered Sarah a job to start at the end of the year, that they want to take. Sarah believes it's a really exciting opportunity because the salary is much higher than their APS4 salary.

There is currently an *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) referral underway for this company, and Sarah is supposed to be working on it and assessing it.

Best practice

Sarah should declare the conflict.

Sarah now has a material personal interest in the mining company. The mining company's success in the EPBC Act referral process, or otherwise, could impact Sarah's future intended employment.

Sarah and their supervisor should work together to develop a strategy which will minimise the risks associated with this relationship, for example changing Sarah's tasks within her current role to avoid working on this particular EPBC Act referral assessment, or a temporary or permanent reassignment of duties.

Personal conflicts

These relate to interests that are non-financial, where the benefit to be realised by the employee is best characterised as:

- ideological
or
- doing someone a favour.

These can often arise in contexts where a former department employee gains employment with a firm that does business with the department.

In such scenarios, the former employee may reach-back into the department to make commercial use of their former contacts.

While this may not be done with bad intentions, it:

- is still improper
- may give rise to reputational damage to the department.

Notes:

- An employee can still be conflicted despite not receiving some financial benefit.
- For example
 - A conflict of interest may arise where the employee participates in a recruitment activity where they have a close relationship with one or more of the candidates.
 - This could influence the way in which the employee makes recruitment decisions.
 - Were such a conflict not declared, it may be perceived that the employee is doing a favour for the person with whom they have a close relationship.

Below is a list of personal interests that employees may need to disclose:

- family relationships
- sexual relationships
- social relationships
- professional relationships
- criminal associations
- where an employee has been convicted of an offence
- where an employee has been charged with an offence
- certain political associations
- voluntary activities or outside employment.

Scenario

Fatima is an APS6 Biosecurity Officer in Melbourne responsible for inspecting imported flowers.

Fatima has begun a close personal relationship with Sam, a flower wholesaler who imports large quantities of flowers.

Sam is subject to regulatory inspections by the department.

Best practice

Fatima should declare the conflict.

Fatima would likely have an actual conflict of interest were they to inspect Sam's flowers.

Fatima may not be able to do their job properly due to their close personal relationship with Sam. Further, it is not good for the reputation of the department to have employees inspecting the goods of their friends.

Fatima and their supervisor should work together to develop a strategy which will minimise the risks associated with this relationship, for example by not taking part in the inspection of Sam's flowers.

Scenario

Ashley and Jina are good friends and worked together for several years as Biosecurity officers.

Recently, Jina took a job working for a logistics firm which has significant dealings with the department. The firm that Jina now works for is managing a valuable, and exclusive, contract importing rare and exotic seeds.

Jina's firm learns that a competing logistics firm has been seeking to win the contract regarding the import of these seeds.

Jina rings Ashley and asks what sort of dealings the competitor has had with the department, in a general sense, to better understand the competitor's position in the market.

Best practice

Ashely must not assist Jina in a manner different to that which the department would assist any other stakeholder.

Ashley should politely refuse to do as Jina has requested. Were Ashely to provide, even in a general sense, this sort of commercial information to Jina, trust in the department may be undermined.

In addition, such provision may expose the department to significant risks to the integrity of its regulatory functions.

Ashely should declare their relationship with Jina, and discuss this incident with their line management.

Ashely and their manager should put measures in place to ensure that Ashley has no dealings with Jina in a professional capacity, and develop a strategy to make clear to Jina to not make any similar representations in the future.

Ashely and their manager should also consider contacting Integrity Coordination for advice.

Political or ideological associations

Employees have the same rights as others in the community to participate in our democracy.

This includes:

- participation in political activities
- commenting on the affairs of the day.

Being an employee with the department also comes with responsibilities that extend into the private lives of our employees.

Departmental employees must always:

- act in a manner consistent with APS values
- ensure their conduct does not detrimentally affect the reputation and integrity of the department.

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Conflicts of interest, particularly perceived or potential conflicts of interest, may arise due to some forms of political or ideological affiliation or activity.

Where employees are engaged in political activities, consideration must be given to whether those activities may raise perceptions of conflicts of interest.

The focus should be on whether a reasonable person would consider an employee's political participation to detract from their ability to act with impartiality.

It would generally be inappropriate for an employee to participate in political or ideological activities that are closely linked to the employee's professional duties or responsibilities.

An additional factor to consider is:

- the seniority of the employee
- their role in the political activity.

Note: For example: a casual APS3 Environmental Assessments officer who participates in a rally in Melbourne calling for an end to live exports is less likely to amount to a perceived conflict of interest. However, were an EL1 in the Live Exports section to hold office in an organisation that expressly demands the end of live exports; this would likely be an unacceptable conflict.

Scenario

Hector works in the Forestry section advising the Commonwealth on sustainable timber felling.

Hector came to the department after completing an Environmental Science degree and has a long history of involvement in environmental activism and support for groups associated with environmental politics.

Hector maintains involvement with an anti-logging association and was recently appointed its Treasurer.

Hector was also recently promoted to an EL1 and will have a wide degree of latitude in drafting and directing Commonwealth policy as it relates to logging.

Best practice

Hector has reached a point where they must consider their continued participation with the environmental group and their employment within the Forestry section.

This sort of perceived conflict is unacceptable and cannot be managed simply through declaration.

Hector will either have to resign their office with the group or find a new role within the department.

Criminal associations

Employees who associate with known criminals may be required to declare these conflicts.

Particular functions, including regulatory functions, of the department are susceptible to criminal infiltration for a range of reasons.

Were these functions corrupted, criminals may realise substantial profits while our biosecurity and other quality assurance functions would suffer.

This damage would not only be reputational, but could have severe consequences for the safety of the broader Australian community.

The types of criminal associations employees would normally have to declare are those involving criminals associated with organised crime.

Additionally, it would be expected that a declaration be made where employees have associations with criminals who have a history of contravening laws related to:

- our biosecurity functions

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- our export functions
- our biodiversity protection obligations
- any other aspect of our regulatory or legal functions.

The most preferable response to the identification of these forms of conflicts of interest is to have the employee cease their association with the criminal.

However, the department recognises that in some cases this may not be possible.

Note: For example: where the criminal is a family member.

Important: Where the employee is unable to cease associating with the criminal, the association must be managed tightly by the employee's supervisor.

Management of these types of conflicts can be difficult, and it may be necessary to remove the employee from a role relevant to the criminal offending of the associate.

The employee may also be required to report contacts with the association on an ongoing basis, to assure the integrity of the department.

These sorts of associations will require the assistance of Integrity Coordination to manage.

Working alongside family members or friends

It is not uncommon that members of the same family, or close friends, work together within the department.

It is also not uncommon that we develop friendships, or relationships, with those we may work with.

This guideline is not to be read as a prohibition on such relationships, nor is it implied that every friendship and/or relationship requires declaration or management.

However, there are certain circumstances where close friendships and/or family relationships will amount to a conflict of interest which will require declaration and management.

In addition, certain relationships and reporting lines may not be appropriate.

These are generally where there is a direct, or indirect supervisory relationship between the friends and/or family members.

Note: For example: It is presumptively an unmanageable conflict of interest for a spouse to supervise their spouse.

Where there is a close personal relationship between employees alongside a close professional relationship, employees should contact Integrity Coordination for advice.

Management of declared conflicts of interest

Employees must formally declare any conflicts of interest through the department's Lighthouse system for making declarations, accessible via the intranet.

Note: For further guidance on how to declare conflicts of interest, refer to the intranet.

Where management strategies are required, these are also to be outlined.

New starters with the department must make a conflict-of-interest declaration within one month of commencement.

Note: This requirement operates regardless of whether they declared a conflict when applying for work with the department.

Employees must make an **annual declaration** regarding any identified conflicts of interest.

Where employees do not identify a conflict of interest, they must make a declaration stating they have not identified a conflict of interest.

Employees and/or their supervisors must annually declare conflicts in accordance with:

- this guideline
- their work plan and learning agreement.

This means all annual declarations must be finalised prior to the employee finalising their work plan and learning agreement.

Employees must discuss with their managers, during performance discussions, whether they may have a conflict of interest.

Notes:

- i.e. Before 31 August of each year, or whenever determined in accordance with the date deemed by the department in respect of the finalisation of performance agreements.
- As this guideline is due to commence post the work plan and learning agreement cycle for 2020/21, the requirement to declare in accordance with the performance cycle will become operational for the 2021/22 performance cycle.

A conflict of interest can occur at any time, including situations where there was no previous conflict of interest.

Employees are required to update or make declarations as and when their circumstances change to the extent that a conflict of interest may arise.

Circumstances may change due to structural movements, such as following machinery of government changes. Following such changes, employees must consider whether their declarations continue to fully capture any potential, actual or perceived conflicts of interests.

Employees are strongly encouraged to:

- avoid self-assessment of conflicts of interest
- discuss any concerns they have with their supervisor.

In addition, where an employee with a declared conflict of interest moves to a different position within the department, the employee must:

- advise the new supervisor of the existing conflict of interest
- provide the new supervisor with a copy of the management plan.

Similarly, prior to accepting a new position, employees must discuss with their new supervisor whether the new position creates any actual, potential or perceived conflicts of interest.

All declared conflicts of interest must be approved by the approval delegate.

Strategies to minimise the risks of declared conflicts

In developing strategies to minimise the risks associated with the conflict, the employee with the conflict and line management may consider:

- restricting or removing the employee's involvement with the duty subject to conflict, including segregating or reducing duties related to the affected matter
- supervising the employee more closely
- engaging a non-conflicted third party (such as a probity advisor) to advise on or participate in the matters affected
- engaging a peer or subject-matter expert to review the work of the conflicted employee
- transferring the employee to an alternate role that is unconnected with the conflict
- limiting or removing access to electronic and physical records, systems and information
- the employee relinquishing the interests they have which are the cause of the conflict

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- in rare circumstances, the employee resigning.

Integrity Coordination, provides on request:

- assistance to line management in determining appropriate mitigation strategies
- advice and practical examples via
 - training or outreach
 - resources on the intranet/s.

What happens with declarations submitted

The department treats employee declarations of conflicts of interest in strict confidence.

Declarations are stored securely in accordance with requirements under the *Privacy Act 1988*.

The employee's immediate supervisor will view declarations as part of the declaration process.

Note: In situations where the conflict is such it would not be appropriate for the immediate supervisor to have oversight of it, affected employees should contact the Integrity Coordination team for assistance.

Integrity Coordination, Conduct and/or Fraud and Corruption team members may view declarations to ensure any actual, perceived or potential conflicts of interest or other threats to the integrity of the department are:

- identified
- managed effectively.

Conflicts declared elsewhere

The department has in place:

- Guideline: *Management of secondary employment and voluntary work*
- Guideline: *Receipt of gifts and benefits*.

Where employees have declared a gift or benefit and/or have approval for secondary employment/voluntary work, they do not need to make a further conflict of interest declaration.

Instead, employees will note during the declaration process that they have a declaration or approval elsewhere.

In addition, business areas may have in place local procedures to manage conflicts of interests.

These procedures may have their own templates and/or forms tailored to the specific needs of those business areas.

In such circumstances, when making their annual declarations, employees do not need to repopulate their online form but must attach the forms used by business areas to their declarations.

Contractors, panels and board memberships

As a condition of their contract, contractors are required to advise of any potential conflicts of interest arising during the period of the contract.

Certain types of appointment arrangements may not be compatible for the department systems for declaring conflicts of interest.

Note: A typical example would include the appointment of an external panel involved in the selection and allocation of grant recipient monies.

Those with responsibility for such appointments must ensure they have an adequate process in place to allow appointees to declare any conflicts of interest.

Notes:

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- For example: This may include having the line area draft a conflict of interest declaration form specific to the appointment.
- Where required, Integrity Coordination can provide assistance in developing such materials.

Where the declarant is also a security-clearance holder

Involvement in certain types of outside activities is of security concern if it poses a conflict with the security-clearance holder's security responsibilities.

Where an employee considers they should declare a conflict of interest, they must also consider whether they are required to notify AGSVA.

Security clearance holders are under an obligation to disclose certain changes of circumstances in order to maintain their clearance.

It is likely that a conflict that requires declaration under this guideline will also require notification to AGSVA.

Note: For further information regarding the notification of AGSVA, employees should contact the Personnel Security team (personnel.security@awe.gov.au).

Review of decisions

The following review options are available if the employee and supervisor disagree regarding:

- the need to make a declaration
or
- the need to provide certain details in a conflict of interest declaration
or
- the proposed management strategy.

When...	Then...
the disagreement is able to be resolved locally	employee and supervisor come to an agreement about whether there is a need to: <ul style="list-style-type: none"> • provide the details in dispute • make the declaration • the proposed management strategy.
the disagreement is unable to be resolved locally	the parties should seek advice from Integrity Coordination.
employees disagree with a direction given by a supervisor	they may seek a review of action. <p>Note:</p> <ul style="list-style-type: none"> • A review of action procedure is managed by the Conduct team. • For further information, refer to the intranet.

Independent assessment and review of employee conflicts of interest

From time to time, Integrity Analysts will review whether employees have adequately declared potential conflicts of interest (via open-source and records held on departmental systems).

In consultation with the department's personnel security team, Integrity analysts prioritise the independent assessment and review of declared or undeclared conflicts of interests for employees in high-risk roles.

Note: A high-risk role is one in which an employee may have a high degree of autonomy and/or access to information which, if improperly used, could result in reputational or other harm to

- the department and/or
- it's functions.

Where Integrity Coordination identifies that an employee may have failed to declare a conflict of interest, Integrity Coordination may refer the matter to the Conduct team for assessment.

Conflicts of interest declarations at on-boarding

Where a candidate applies for employment with the department, and does not identify a conflict of interest, the candidate is required to make a declaration stating they are not aware of any conflicts of interest.

Where a candidate applies for employment with the department, and identifies a conflict of interest, the candidate must provide all relevant details regarding the identified conflict of interest.

Integrity Coordination:

- assesses the declaration, and all information provided, to form an assessment as to how the conflict of interest may be managed
- provides all completed assessments and any associated recommendations to the Recruitment team for consideration.

Obligation on employees to report suspected conflicts of interest

All employees are obliged to report suspected undeclared conflicts of interest.

Employees must either report such suspicions:

- to their line management
- or
- directly to the Integrity Coordination team.

Where it is suspected that a senior employee (i.e. SES officer) has failed to declare a conflict, employees must contact the Integrity Coordination team.

All reports of suspected undeclared conflicts of interest are treated in-confidence.

Integrity Coordination assesses all reports of suspected undeclared conflicts of interest in accordance with its established procedures for assessing misconduct.

Failure to declare or effectively manage a conflict of interest

Integrity Coordination assesses all reported failures to declare or effectively manage conflicts of interest.

Integrity Coordination may:

- also independently identify that an employee has failed to declare a conflict of interest
- independently assess whether proposed management strategies are effective.

Failures to declare or effectively manage conflicts of interest can be attributed to both:

- the employee
- the employee's supervisor.

It is the responsibility of all employees and their supervisors to identify, declare and effectively manage all conflicts of interest.

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Failing to declare or effectively manage a conflict of interest may, in certain circumstances, amount to a breach of the APS code of conduct.

Depending on the seriousness and context of the failure, the consequences for failing to declare and/or effectively managing a conflict of interest could include:

- warnings
- a deduction from salary by way of fines
- formal reprimands
- reduction in classification
- re-assignment of duties
- reduction in salary
- termination of employment.

Further information and advice

The Integrity Coordination team provides advice regarding all aspects of the material covered in this guideline.

Employees can contact the Integrity Coordination team via:

- email: integrity@awe.gov.au
- phone: 1800 998 880.

Integrity Coordination treats all correspondence in-confidence.

Record keeping

Information must be stored:

- in the appropriate department electronic filing systems
- in accordance with all relevant legislation.

Note: Integrity Coordination does not file or process any paper records.

Integrity may additionally store information in systems used to facilitate the making of disclosures.

Related material

The following related material is available on the Instructional Material Library:

- Policy: *Ensuring integrity in the department*
- Policy: *Water acquisition and divestment declaration of interests*
- Guideline: *Use of social media*
- Guideline: *Receipt of gifts and benefits*
- Guideline: *Management of secondary employment and voluntary work* (under development)
- Reference: *Manual conflict of interest declaration form*.

The following related material is available on the intranet:

- Conflict of Interest declaration form (Lighthouse).

The following related material is available elsewhere:

- The APS Values and Code of Conduct in Practice (Australian Public Service Commission)
- The Commonwealth Procurement Rules (Department of Finance)

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- The Responsibilities of Security Clearance holders (Australian Government Security Vetting Agency)
- Conflicts of Interest (Australian Public Service Commission).

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Date published: 16/03/2021

Official

Version no.: 1

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Document information

The following table contains administrative metadata.

Instructional Material Library document ID	Instructional material owner
IMLS-12-4169	Assistant Secretary, Integrity

Version history

The following table details the published date and amendment details for this document.

Version	Date	Amendment details
1	16/03/2021	First publication of this guideline.

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