

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate and International Tax Division
Topic: ATO request
Reference: Spoken (7 June 2023)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: You indicated at estimates that you'd also had a request from the ATO in 2018. Did that trigger any concerns? Who received that request?

Ms Brown: I'd have to take that on notice. I think it came into one of our offices. It didn't come in at a deputy secretary or secretary level. Exactly where it came in, I'd have to take on notice.

Senator O'NEILL: Could you provide a sense of how frequently such requests might occur? I'm hoping it's pretty exceptional, so it would have been memorable. The question that follows is: What did that trigger, and was the response adequate? What changes might you recommend in light of retrospective capacity?

Ms Brown: We do have regular contact with the ATO over a wide range of matters, so it will depend on how this matter was expressed. We're happy to take that on notice.

Answer:

These matters relate to an ongoing Australian Federal Police investigation and Treasury is unable to respond further in order to ensure the investigation is not prejudiced.

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate Division
Topic: Code of Conduct investigations
Reference: Spoken (7 June 2023)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: Ms Kelley, could the situation that I'm talking about possibly occur—if people abrogated themselves of their professional responsibility and jumped literally across the table from being a public servant to a lucrative, high-paying, partnership position with one of the big four?

Ms Kelley: It is possible because the obligation is on the individual. But, in terms of a breach of this policy, it applies whether you're a current public servant or you have left the public service. If they fail to disclose or appropriately manage their conflict of interest, they may be investigated under the APS Code of Conduct. The APS Code of Conduct does apply to both serving and non-serving public servants.

Senator O'NEILL: Are you aware of how many such investigations are afoot?

Ms Kelley: No, I'm not. We'd have to take that on notice.

Answer:

Treasury does not collect or hold data on investigations at an APS-wide level.

At 20 June 2023, Treasury has one APS Code of Conduct investigation underway that does not relate to misconduct arising from a failure to disclose or appropriately manage conflicts of interest after leaving APS employment.

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate Division
Topic: Former Treasury officials
Reference: Spoken (7 June 2023)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: You perhaps could take this last one on notice. Of the employees who leave the department and move to work within the audit, assurance and consultancy sectors, what percentage, would you say, go on to work at the big four?

Ms Kelley: We'd have to take that on notice.

Senator O'NEILL: Thank you.

Answer:

Treasury does not collect or record this information. Since 1 January 2023, 67% of separations from Treasury were movements to other APS agencies.

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate Division
Topic: Conflict of Interest policy
Reference: Spoken (7 June 2023)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: Based on the report of a couple of people who've contacted me separately, there were descriptions of people who worked for the ATO who were advancing matters against large companies and getting very close to finalising and concluding a settlement of the matter, and then, at the last hurdle, they were recruited by a big company, like PwC or KPMG, and they're sitting on the other side of the table in combat with their colleagues with whom they were working just a matter of days or weeks before. Is that a plausible possibility? Can that happen? To the best of your knowledge, does it happen?

Ms Kelley: I will refer to Treasury's conflict of interest policy, which we are, of course, happy to share with the committee. We do have some clear guidance there around post-separation employment outside the public sector. Officials are required to disclose any offers of post-separation employment that may represent a real or apparent conflict of interest upon receipt of that offer. This also includes offers that they are not inclined to accept, as an apparent conflict of interest may still arise—for example, where an official involved in a tender process is offered employment by a tenderer. We have laid that out very clearly in our conflict of interest policy, which we are happy to share with you.

Senator O'NEILL: Thank you.

Answer:

Treasury's Conflict of Interest Policy is attached.



AUDIENCE	CATEGORY
All Treasury APS employees, Commonwealth agency secondees, contractors, consultants, and office holders who are officials of Treasury	Governance

Policies and procedures

Conflict of Interest

This document was endorsed by Executive Board

It was last reviewed in October 2022 and is scheduled for review in November 2025

For further information or questions, phone Risk and Governance on x3271 or email riskandgovernance@treasury.gov.au

Contents

Overview	3
Purpose	3
Scope.....	3
How does this policy and/or procedure relate to me?	4
Contacts	6
Guidance on Conflict of Interest	7
Principles of Conflict of Interest Management at Treasury	7
The Conflict of Interest Management Cycle.....	8
Identify	8
Disclose	11
Manage	13
Monitor	14
Outside Employment	14
Post Separation Employment Outside the Public Sector	15
Breach of Policy	16
Procedures for Conflict of Interest Management.....	16
General Conflict of Interest Management Procedure:	17
Annual Declaration Process for Executive Level 2 staff, SES and Office Holders:	19
Outside Employment Procedure	19
Terminology.....	21
Related documents	23
Version control	23



Overview

This Policy provides information and guidance on handling conflicts of interest (including post-separation employment), and how to seek approval to engage in outside employment to maintain the professionalism, integrity, and accountability of Treasury.

Purpose

The purpose of this policy is to protect the integrity of the Australian Public Service (APS) by clarifying roles and expectations for the management of conflicts of interest. The public is entitled to have confidence in the integrity of their public officials, and to know that the personal interests of employees do not conflict with their public duties.

The purpose of disclosure is to ensure that the Secretary of Treasury is aware of any personal interests or relationships of employees which improperly influence, or could be seen to improperly influence, employees in their duties.

Scope

The Treasury Conflict of Interest Policy (the Policy) applies to all Treasury staff (staff), including APS employees, office holders who are officials of Treasury for the purposes of the Finance Law, and Commonwealth agency secondees. This policy also applies to contractors and consultants to the extent that the related contracts require them to follow Treasury's policies generally or follow this Conflict of Interest policy.

All staff of Treasury must take reasonable steps to identify, assess and disclose real or apparent conflicts of interest as they may arise from their personal interests.

Legislation

Under section 29 of the *Public Governance, Performance and Accountability Act 2013*, an official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.

Under section 13 of the *Public Service Act 1999*, the APS Code of Conduct (the Code) requires that officials take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their APS employment, and disclose details of any material personal interests relevant to, or in connection with, their APS employment that may give rise to a conflict.

How does this policy and/or procedure relate to me?

If you are a/an:	Then your responsibility is to:
Treasury staff member, including APS employees, office holders who are officials of Treasury for the purposes of the Finance Law, and Commonwealth secondees	<ul style="list-style-type: none"> • Apply the principles inherent in the APS Code of Conduct and uphold the APS Values. • Assess your personal interests to identify whether they conflict, could be perceived to conflict, or have the potential to conflict, with your role and responsibilities. • Disclose personal interests (financial or otherwise) that could give rise to a conflict of interest as soon as they become apparent. • Seek advice from your manager if you are uncertain about whether a conflict of interest arises or exists from your personal interests. • Cooperate with managers to avoid or manage conflicts of interest, including abiding by any specific probity plans that may be in place for your work area, or tasks. • Reconsider personal interests at appropriate times, for example during a change in role or responsibility, or when you are undertaking specific activities (for example, procurement, grant administration or recruitment). Refer to trigger points in the ‘Conflict of Interest Management Cycle’ for guidance on when to reassess conflicts. • Report staff who may not have declared a conflict of interest, or may not be managing it, to your manager or the Director, Risk and Governance.
Contractor, Consultant or private sector secondees	<ul style="list-style-type: none"> • Adhere to any conflict of interest requirements or obligations to behave consistently with the APS Code of Conduct, as required by Treasury, and to the extent of your (or your organisation’s) contract. • Assess your personal interests and relationships to identify whether they conflict, or have the potential to conflict, with your role and responsibilities. • Disclose personal interests (financial or otherwise) that could give rise to a conflict of interest as soon as they become apparent. • Seek advice from your contract manager if you are uncertain about whether a conflict of interest arises or exists from your personal interests. • Cooperate with managers to avoid or manage conflicts of interest, including abiding by any specific probity plans that may be in place for your work area or tasks. • Reconsider personal interests at appropriate times, for example during a change in role or responsibility, or when you are undertaking specific activities (for example, procurement, grant administration or

	recruitment). Refer to trigger points in the ‘Conflict of Interest Management Cycle’ for guidance on when to reassess conflicts.
<p>Manager – (including contract managers or equivalent in the case of contractors and consultants that do not have a direct supervisor)</p> <p>(In addition to responsibilities for all Treasury staff)</p>	<ul style="list-style-type: none"> • Lead by example and encourage ongoing conversations on conflict of interest amongst staff to ensure awareness of obligations. • Provide your staff with the information pertaining to Treasury’s conflict of interest through Treasury’s Onboarding Program. • Determine whether a disclosure from your staff is material and could present a real or apparent conflict. • Ensure all material real or apparent conflicts reported by your staff have a documented conflict of interest management plan. • Monitor adherence to conflict of interest management plans and escalate as required.
<p>Executive Level 2 (EL2) staff</p> <p>(In addition to responsibilities for all Treasury staff and managers)</p>	<ul style="list-style-type: none"> • Complete the compulsory EL2 conflict of interest declaration process on commencement, and annually, regardless of whether you have identified a real or apparent conflict.
<p>SES staff and office holders who are officials of Treasury for the purposes of the Finance Law</p> <p>(In addition to responsibilities for all Treasury staff and managers)</p>	<ul style="list-style-type: none"> • Apply the principles inherent in the APS Code of Conduct and uphold and promote the APS Values. • Lead by example and encourage ongoing conversations on conflict of interest amongst staff to ensure awareness of obligations. • Complete the compulsory SES conflict of interest declaration process on commencement, and annually, regardless of whether you have identified a real or apparent conflict. • Assess and declare any other conflicts as they arise. Refer to trigger points in the ‘Conflict of Interest Management Cycle’ for guidance on when to reassess conflicts.
<p>Risk and Governance Unit</p> <p>(In addition to responsibilities for all Treasury staff)</p>	<ul style="list-style-type: none"> • Update and maintain this Policy and related materials on behalf of Treasury. • Advise staff and managers on determining whether a disclosure is material and could present a real or apparent conflict and suitable measures that could be taken to manage a conflict. • Initiate the annual declaration of interest process for EL2’s, SES and office holders’ and update the Secretary on outcomes from the process. • Monitor implementation of the policy, escalate issues as they become known and identify improvements to be made to better support Treasury staff in managing conflict of interest obligations.



Contacts

For advice, please contact Risk and Governance on x3271 or email riskandgovernance@treasury.gov.au, who are also responsible for updating and maintaining this policy/procedure.

To provide feedback on this policy/procedure, please contact Director, Risk and Governance.

Guidance on Conflict of Interest

What is a conflict of interest?

A **real** conflict of interest occurs where there is a conflict, or the potential for a future conflict, between the public duty and a staff member's [personal interests](#) that improperly influences the staff member in the performance of their duties.

An **apparent** conflict of interest occurs where it appears that a staff member's personal interests could improperly influence the performance of their duties, but this is not in fact the case.

Refer to the [terminology](#) section for definitions of other key terms used throughout this policy.

Principles of Conflict of Interest Management at Treasury

The following principles underpin the approach to managing conflicts of interest at Treasury. conflict of interest management is an ongoing process, and these principles should be used by all staff to guide continuous consideration of conflicts on a day-to-day basis.

Principles of Conflict of Interest Management at Treasury



Personal accountability

The integrity of Treasury and the APS relies on each of us being personally accountable for our decisions including identifying, disclosing, managing, and monitoring conflict of interest.



Always act in the public interest

Conflict of interest should be front of mind in everything we do. We must act in the public interest each time we provide advice, make decisions, allocate funding, and everything in between. ¹



If in doubt, disclose

Disclosure allows a decision to be made, justified and documented, even if it is determined that there is no conflict. Ask yourself how it could look if this undisclosed interest was 'uncovered'?



Keep a record

Conflict of interest management is all about transparency. There must be records of conflict of interest disclosures and management plans for decisions to be defensible when placed under scrutiny.



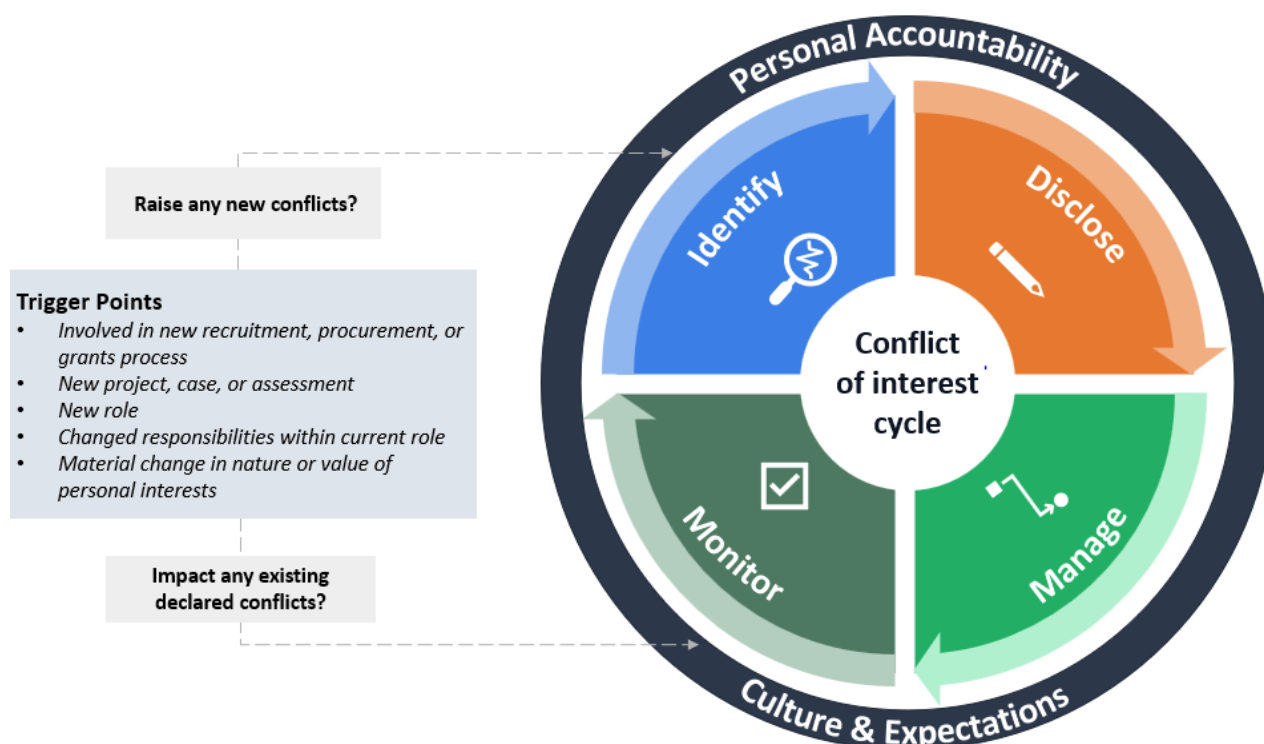
Take a risk-based approach

Some functions and activities can be at a higher risk of real or apparent conflict of interest. Management of conflict of interest needs to be proportionate to the level of risk exposure to Treasury. Avoiding all conflicts at all costs is not always in the public interest.

¹ As per the *Public Governance, Performance and Accountability Act 2013* and the *Public Service Act 1999*

The Conflict of Interest Management Cycle

Conflict of interest management is an ongoing process and should follow the 'Conflict of Interest Management Cycle' below, starting at 'identify'. Interests should be re-assessed whenever any of the 'triggers' occur to determine whether any new conflicts might arise, or whether any changes may be required to existing management plans for previously disclosed conflicts.



The remainder of this section provides further guidance on each phase of the cycle.

Identify

All staff have a responsibility to identify real or apparent conflicts of interest and either take reasonable steps to avoid them or disclose and manage the conflict where it cannot be avoided. However, only **material** personal interests need to be disclosed.

Materiality

To be material, personal interests need to be of a type that can give rise to a real or apparent conflict of interest that could affect the ability of the staff member to discharge their duties or obligations appropriately. Personal interests do not give rise to a conflict of interest unless there is a **real or sensible possibility of conflict** and not simply a remote or theoretical possibility of conflict². If no reasonable person

² Source: Australian Public Service Commission (APSC) – APS Values and Code of Conduct

could draw a connection between the staff member's personal interest and their duties, then the personal interest is not 'material'.

Considerations for Assessing Materiality



The type or size of the staff member's personal interest, real or apparent



The nature or significance of the particular decision or activity being carried out by Treasury



The extent to which the staff member's personal interest could affect, or be affected by, Treasury's decision or activity

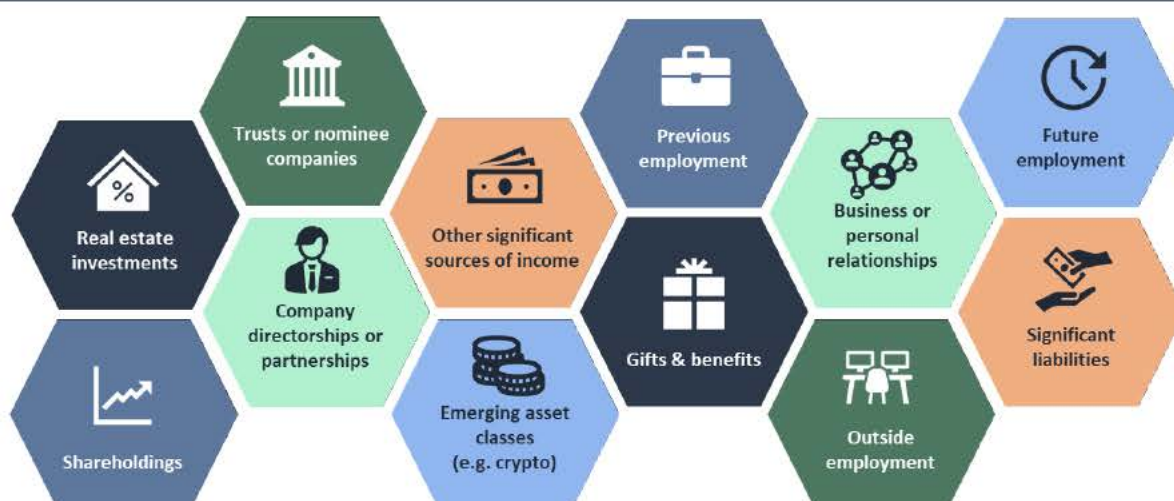


The nature or extent of the staff member's current or intended involvement in Treasury's decision or activity.

Personal interests

Personal interests include any stake or relationship of a financial, professional, or social nature which could be perceived to impact upon the decisions of the public service. Examples of personal interests include:

Types of Personal Interests



For the purpose of this policy, personal relationships may include relationships with family members, friends, or any other close or intimate relationships.

Interests of immediate family members

Any personal interests of immediate family members that are known must also be disclosed, where the person considers that these interests influence, or could be seen to influence, the decisions they are taking or the advice they are giving.

The term 'immediate family member' includes parents, spouses, and dependent children. It may also apply to any other relatives and close friends who live with the employee or with whom the employee has a dependent relationship.

Functions at higher risk of conflict of interest

Some functions present a higher risk of conflict of interest. This includes any advice or decision making related to:

Function	Activity
Procurement and recruitment	<ul style="list-style-type: none">• Procuring goods or services• Tendering for and managing contracts• Engaging and promoting employees• Making appointments to statutory positions
Distribution of goods, services, or funds (including grants)	<ul style="list-style-type: none">• Allocating grants of public funds• Approving loans, guarantees, and investments• Providing a service• Allocating subsidies, financial assistance, concessions, or other relief
Regulation of individual or business activities	<ul style="list-style-type: none">• Developing regulation, including policy and legal work, as well as stakeholder engagement functions• Inspecting, regulating or monitoring standards, businesses, equipment, or premises• Issuing qualifications or licenses• Issuing or reviewing fines or penalties• Determining fees
Making binding decisions	<ul style="list-style-type: none">• Issuing determinations on matters

Function	Activity
	<ul style="list-style-type: none"> • Issuing binding judgements • Exercising statutory powers • Voting as a member of a board or committee
Advising Government on policy reforms with significant impacts on business	<ul style="list-style-type: none"> • Advising Government on taxation policy • Advising on other key policy decisions by Government with impact across entities or sectors of the economy, particularly listed entities.

Disclose

Conflicts of interest, real or apparent, cannot always be avoided. Where this is the case, staff should raise the matter in discussion with their manager. Relevant factors to be considered include how the matter relates to the particular role and responsibility of the staff member and Treasury's overarching accountability and probity obligations. Only material personal interests need to be disclosed.

The overriding principle for a declaration of a material personal interest is: **if in doubt, disclose.**

Further guidance on personal interests that would often warrant, or not warrant, disclosure is provided on the intranet.

For guidance on how to make a conflict of interest declaration, see the 'General Conflict of Interest Management Procedure'.

All disclosures are to be managed in accordance with the *Privacy Act 1988*, which includes complying with the Australian Privacy Principles. Managers have a responsibility to ensure that any declarations made to them are handled discretely and on a need-to know basis. If a need to obtain specialist advice or to escalate is identified, the manager must only share the declaration with a relevant more senior manager or the specialist area, and if required, the Risk and Governance Unit as owners of the conflict of interest policy.

If a disclosure contains the personal information of another person, including a family member, it will generally be necessary for the employee to obtain that person's consent to disclose this information. If consent is not given, or is unable to be sought, then the employee should discuss with their SES manager, in general terms, their understanding of the conflict of interest. The SES manager can then decide what action may need to be taken.

If necessary, the [APSC's Ethics Advisory Service](#) is available to provide independent advice on ethical issues to all Australian Public Service employees.

Annual declarations for SES & Treasury office holders

Consistent with APSC requirements, officials in SES roles must make an annual declaration of their material private circumstances, and the circumstances of their immediate family, that could give rise to a real or apparent conflict. Office holders who are officials of Treasury for the purposes of the Finance Law are also subject to the requirement for annual declarations.

The annual declaration process provides the Secretary with awareness of any private circumstances or relationships which could, or could be seen to, influence the decisions SES officials and office holders are making or the advice they are giving. It also gives these staff a regular opportunity for in-depth consideration of whether their personal interests might give rise to a real or apparent conflict with their duties and take action to manage any conflicts that arise from those circumstances.

The annual declarations process is administered in confidence by Executive Coordination and Governance Branch (ECGB). Annual declarations should be reviewed at the occurrence of any of the 'trigger points' outlined in the ['Conflict of Interest Management Cycle'](#).

For information on how to complete the annual declaration see the ['Annual Declaration Process for Executive Level 2 staff, SES and Office Holders'](#).

Annual declarations for Executive Level 2 staff

Under this Policy, EL2 staff (including staff acting at the EL2 level for three or more months in a financial year) must make an annual declaration of their material private circumstances, and the circumstances of their immediate family, that could give rise to a real or apparent conflict.

The annual declarations process is administered in confidence by Executive Coordination and Governance Branch. Annual declarations should be reviewed at the occurrence of any of the 'trigger points' outlined in the ['Conflict of Interest Management Cycle'](#).

For information on how to complete the annual declaration see the ['Annual Declaration Process for Executive Level 2 staff, SES and Office Holders'](#).

Other declaration requirements

Some areas of Treasury present a higher risk of real or apparent conflict of interest for staff, requiring a higher level of transparency of interests to ensure the integrity and accountability of work undertaken. This includes areas that:

- handle national security information or have access to market sensitive or commercial information
- perform a regulatory function, or are involved in regulatory advice
- advise Government on key policy reforms for entities or sectors of the economy that would affect the value of a business, and
- work closely with industry and interest groups.

The relevant First Assistant Secretary of these areas may direct all staff or a subset of higher risk staff, regardless of level or employment basis, to complete a conflict of interest declaration, whether the staff

member has identified any real or apparent conflicts or not. This may occur on an annual or other frequency, as determined by the relevant First Assistant Secretary.

Probity

Certain new activities or programs may also need to establish a dedicated probity plan which will include documentation of probity risks specific to the activities undertaken, relevant treatments, and the decision maker for assessing probity risks of individual staff members.

For more information on establishing a probity plan, please contact General Counsel Branch.

Manage

Once a general disclosure is made, the staff member and their manager share responsibility for discussing and managing the conflict of interest. Depending on the level of risk, more senior managers may be involved in determining the response, in addition to seeking advice from the Risk and Governance Unit.

Where a disclosure is required for a specific activity such as recruitment, the staff member and person accountable for the specific activity - such as the chair of a recruitment panel or the chair of a tender evaluation committee - share responsibility for discussing and managing the conflict of interest. Depending on the level of risk, more senior managers may be involved in determining the response, in addition to seeking advice from the area that owns the function (e.g. procurement, HR).

Effective management of conflict of interest relies on joint participation to develop an appropriate management plan.

Discussing Conflicts of Interest



Detail the nature of the circumstances giving rise to a real or apparent conflict of interest, and the likelihood and consequence of it occurring.



Agree the actions the staff member and/or manager will take to manage the conflict of interest.



Identify any issues of privacy or sensitivity and how these can be managed.

Conflict of interest must be managed transparently, in a way that can be understood and defended. Mitigation options for a conflict of interest management plan include:

Mitigating Conflicts of Interest



Restricting or removing involvement of staff in matters in which they have (or may be seen to have) a conflict of interest



Recruiting third parties who do not have an interest (such as probity or legal advisers) to advise on or participate in the matter, and considering and where appropriate following their recommendations;



Reassigning the staff member to a role that mitigates the conflict



Relinquishing assets or other private interests that give rise to the conflict.

For more information on how to manage conflicts of interest, see the ['General Conflict of Interest Management Procedure'](#).

Monitor

All staff have a responsibility to monitor their own personal interests and other observed interests across Treasury to ensure conflicts are appropriately identified, disclosed, and managed. Refer to the 'trigger points' in the ['Conflict of Interest Management Cycle'](#) for guidance on when to re-assess your personal interests. Further guidance including case studies can be found on the intranet.


If you believe someone has not declared a material interest that represents a real or apparent conflict, you should report this to your manager, or the Director, Risk and Governance.

Managers should regularly monitor the conflict of interest management plans they are responsible for to assess compliance and ensure they continue to adequately mitigate the risks of disclosed conflicts. Managers should also have conversations with new staff, or staff that have changed roles, to ensure that they are aware of any relevant conflicts that the staff member previously declared.

Additionally, the Executive Coordination and Governance Branch has responsibility to monitor the conflict of interest policy as a whole, including assessing compliance and fitness for purpose.

Outside Employment

Prior to engaging in any paid outside employment, officials of Treasury as defined by the Finance Law must obtain approval from their SES manager. This includes officials on approved leave (regardless of the leave period or type). SES employees generally are not expected to engage in paid outside employment, but in



these instances, must obtain approval from the Secretary. If the Secretary wishes to engage in outside employment, they must obtain approval from the Minister.

It is important to note that although approval does not necessarily need to be sought prior to commencing an unpaid role, these roles may still present a real or apparent conflict. Where there is a risk of a material conflict of interest, real or apparent, arising from an unpaid role this must be declared, and in these instances, Treasury officials must also submit the outside employment form prior to commencing the unpaid role.

For consultants and contractors, approval does not need to be sought for outside employment (paid or unpaid), but where it represents a material real or apparent conflict this must be declared and managed in line with the rest of this policy.

Key considerations in assessing applications for outside employment include:

- Is there a real or apparent conflict of interest? If so, can it be adequately managed?
- Is there potential for the outside employment to adversely impact the employee's performance or wellbeing (for example, where the responsibilities of both roles require an unsustainable time commitment to successfully fulfil)?

Approval to undertake outside employment can be withdrawn if a conflict of interest subsequently arises and cannot otherwise be managed, or if it becomes apparent that the employee's performance or wellbeing is being adversely impacted.

Where a non-SES official disagrees with their SES manager's decision to not approve their outside employment application, the official may seek a review of that decision by their SES manager once removed.


Even if outside employment has been approved, it is inappropriate to use Treasury facilities or resources for purposes relating to the outside employment. For example, the use of meeting rooms, information technology equipment, telephones, stationery and office supplies, or Treasury's phone list.

For guidance on how to seek approval for outside employment, see the ['Outside Employment Procedure'](#).

Post Separation Employment Outside the Public Sector

When a public official resigns and obtains subsequent employment outside of the public sector, this is referred to as 'post separation employment'. Post separation employment can represent a conflict of interest risk where the official has access to information or decision making influence that could advantage their new employer.

To mitigate this risk, officials, as defined by the Finance Law, are required to disclose any offers of post separation employment that may present a real or apparent conflict upon receipt of the offer. This includes offers they are not inclined to accept, as an apparent conflict of interest may still arise. For example, where an official involved in a tender process is offered employment by a tenderer.



In exceptional circumstances, where an employee's application for a role presents a material real or apparent conflict with their Treasury role, this should be declared at the point of the application.

In assessing risks associated with post-separation employment, managers should consider the potential for the official to misuse information or inappropriately influence decisions or advice to advantage a new employer. Managers should also consider the:

- importance of the position held by the official
- nature of the employment offer and its relationship to the official's role
- relationship of the proposed employer with the Commonwealth
- period during which information gained or contacts made would continue to be of value to the official and the potential employer.

Where a manager has assessed there is a conflict arising from an official's intention to separate from Treasury, the following actions should be considered:

- **re-allocation** of the official's duties
- temporary **movement** of the official to a different work area
- taking **leave** until the new appointment commences
- seeking a **declaration** at separation to safeguard information obtained during the official's employment with Treasury.

Breach of Policy

Where Treasury staff fail to disclose or appropriately manage a conflict of interest, they may be investigated under Treasury's Procedures for Determining Suspected Breaches of the APS Code of Conduct or other administrative processes.





Procedures for Conflict of Interest Management

This section outlines detailed steps for how to manage conflict of interest. Refer to the appropriate procedures below for:


- General conflict of interest management
(*This applies to general duties, recruitment, procurement, grants, and post-separation employment*)
- The annual declaration process for SES and office holders
- Outside employment

General Conflict of Interest Management Procedure:


What	How	Who
Identify		
Step 1:	Identify any new or existing personal interests that may represent a real or apparent conflict with your work.	All staff
i HINT	Refer to ' <u>identify</u> ' guidance above for types of interests and higher risk activities. Refer to the trigger points in the ' <u>Conflict of Interest Management Cycle</u> ' for guidance on when to re-assess your interests.	
Disclose		
Step 2:	Discuss the identified interests with the relevant manager	You and a relevant manager
i HINT	<p>Refer to the '<u>manage</u>' guidance above for what the discussion should cover.</p> <p>If the conflict relates to your day-to-day role, discuss with your manager.</p> <p>If the conflict relates to a specific activity, discuss with the relevant manager for that activity for example the chair of a recruitment panel, the delegate for a procurement etc.</p>	
Step 3:	<p>Complete the appropriate conflict of interest form.</p> <ul style="list-style-type: none"> • If the conflict relates to general duties, grants, or is part of the annual declaration, complete the <i>Declaration of Private Interests</i> form in Aurion. It will automatically be work-flowed to your manager. If you don't have access to Aurion (for example some contractors and consultants), request and complete a copy of the offline version of the <i>Declaration of Private Interests</i> form and return to the relevant manager. • If the conflict relates to a procurement, complete the relevant <i>Procurement Conflict of Interest Declaration</i> form (either APS, non-APS, or organisation) and return to the relevant procurement officer in the Financial Frameworks Team in Chief Finance Officer Branch. • If the conflict relates to recruitment, complete the recruitment conflict of interest form, and return to the chair of the recruitment panel. <p>Include a description of the personal interests and why they potentially raise a real or apparent conflict.</p>	You


 WARNING	<i>When you submit a new Conflict of Interest form through Aurion it will supersede any previous declarations. Make sure all relevant interests are declared each time the form is submitted.</i>	
 HINT	<i>If the declaration includes the personal information of any immediate family members or close relationships, you must obtain their consent using the Family Member Declaration Form prior to submitting.</i>	
Manage		
Step 4:	Assess the risk and determine an appropriate management approach for the identified conflict/s	Relevant manager
 HINT	<i>Refer to 'manage' guidance above, and the "Manager's checklist for assessing declarations" on the intranet for key considerations and management options.</i>	
Step 5:	<p>Record the agreed conflict management plan.</p> <ul style="list-style-type: none"> • If in Aurion, complete the 'Conflict Management Plan' section of the form outlining the agreed management approach. Click 'Submit'. • If a non-Aurion form, complete the 'Conflict Management Plan' section of the form outlining the agreed management approach. 	Relevant manager
Monitor		
Step 6:	Regularly re-assess whether the agreed Conflict Management Plan is being adhered to, and whether it is adequately mitigating the risk.	Relevant manager & SES manager
Step 7:	Monitor for any 'trigger points' indicating a need to re-assess potential conflicts.	You
 HINT	<i>Refer to the trigger points in the 'Conflict of Interest Management Cycle'.</i>	
Step 8:	<p>If you move roles or your manager changes, you will need to submit a new Conflict of Interest Declaration form through Aurion, or forward your existing conflict of interest form and management plan to the new manager.</p> <p>If the relevant procurement officer or recruitment chair changes, you should forward your existing conflict of interest form and management plan to the new procurement officer or recruitment chair.</p>	You

Annual Declaration Process for Executive Level 2 staff, SES and Office Holders:

What	How	Who
Identify		
Step 1:	<p>Inform new Executive Level 2 staff and SES staff of their requirement to complete an annual conflict of interest declaration, starting with a declaration on commencement.</p> <p>Inform staff appointed to acting EL2 or SES roles for 3 months or more of their requirement to complete an annual conflict of interest declaration, starting with a declaration on commencement of the acting role.</p> <p>Inform office holders of their requirement to complete an annual conflict of interest declaration, starting with a declaration on commencement of their appointment.</p>	SES Manager
Step 2:	Complete a <i>Declaration of Private Interests</i> form through Aurion as soon as practicable after commencing your role. If no potential conflicts have been identified, state this in the form.	EL2, SES & office holders
 HINT	Refer to the ' <u>General Conflict of Interest Management Procedure</u> ' for guidance on how to complete the declaration.	
Step 3:	Email all applicable staff annually, advising of their requirement to complete the annual declaration process.	Risk and Governance Unit
Step 4:	Complete the ' <u>General Conflict of Interest Management Procedure</u> ' to make your declaration through Aurion.	EL2, SES & office holders

Outside Employment Procedure

What	How	Who
Identify		
Step 1:	Identify any paid outside employment that you engage in or are seeking to engage in, as well as any unpaid voluntary engagement where a real or apparent conflict of interest could arise.	All Treasury officials (including if on approved leave)
Disclose		
Step 2:	Discuss the outside employment with your manager.	You and your manager
 HINT	Refer to the ' <u>outside employment</u> ' guidance above for what the discussion should cover.	

Step 3:	<p>Complete the Outside Employment form in Aurion. The form will be automatically work-flowed to your manager.</p> <p>If you are on long term leave without pay, request a hard copy form from Risk and Governance. Complete and send to your manager.</p>	You
Manage		
Step 4:	Assess the risk and determine whether the outside employment will be approved or not.	SES manager
 HINT	<i>Refer to 'manage' guidance above, and the "Manager's checklist for assessing declarations" on the intranet for key considerations and management options.</i>	
Step 5:	<p>Note the decision (approve/not approve) and submit or sign (for hard copy) the Outside Employment Form. Advise the staff member of the outcome.</p> <p>For hard copies, email the completed form to People and Organisational Strategy Branch at employmentrelations@treasury.gov.au.</p>	SES manager
Step 6:	If the application is rejected and you disagree with this decision, reach out to your SES manager once removed to request a review.	You
Monitor		
Step 7:	Regularly re-assess whether the outside employment is sustainable, or any new potential conflicts of interest arise. Discuss any concerns or conflicts with your SES manager. For staff on long term leave you should contact People and Organisational Strategy Branch at employmentrelations@treasury.gov.au .	You and your SES manager
Step 8:	If a conflict of interest subsequently arises that cannot be otherwise managed, or it becomes apparent that the employee's performance or wellbeing is being adversely impacted, the staff member can either voluntarily cease the outside employment, or the manager can withdraw approval for the outside employment.	You and your SES manager

Terminology

Term	Meaning
Apparent conflict of interest	Where it appears that a staff member's personal interests could improperly influence the performance of their duties, but this is not in fact the case.
Immediate family member	Spouses, dependent children and any other relatives and close friends who live with the employee or with whom the employee has a dependent relationship.
Material	Personal interests that could reasonably give rise to a real or apparent conflict of interest that could affect or be perceived as affecting the ability of the staff member in discharging their duties or obligations appropriately.
Finance Law	<p>For the purpose of the PGPA Act, Finance law comprises:</p> <ul style="list-style-type: none"> • the PGPA Act • the PGPA Rule • any other instrument made under the PGPA Act (for example: Commonwealth Procurement Rules (CPRs), Commonwealth Grants Rules and Guidelines (CGRGs) and PGPA (Financial Reporting) Rule 2015 (FRR); accountable authority instructions under section 20A; determinations establishing special accounts under section 78; determinations transferring functions between non-corporate Commonwealth entities under section 75; and government policy orders under sections 22 or 93) • an Appropriation Act.
Official	<p>Section 13 of the PGPA Act provides that an Official is a person who is in, or forms part of, Treasury or another Commonwealth entity (other than a listed entity), including:</p> <ul style="list-style-type: none"> • a person who is, or is a member of, the accountable authority of the entity; or • a person who is an officer, employee or member of the entity; or • a person, or a person in a class, prescribed by an Act or the rules to be an official of the entity. <p>Each of the following is not an official of a Commonwealth entity (other than a listed entity):</p>

	<ul style="list-style-type: none"> • a Minister; • a judge; • a consultant or independent contractor of the entity (other than a consultant or independent contractor of a kind prescribed as an official by an Act or the rules); • (d) a person, or a person in a class, prescribed by an Act or the rules not to be an official of the entity. <p>A person who is prescribed by an Act or the rules to be an official of a Commonwealth entity that is a listed entity.</p>
Office holder	A person appointed by a Minister to a statutory or non-statutory position within the Treasury portfolio.
Outside employment	A staff member engaging in any employment (paid or unpaid) or business in addition to their departmental employment. This includes voluntary work where a real or apparent conflict of interest could arise.
Personal relationship	Relationships with immediate family members, friends, or any other close relationships.
Post-separation employment	The role in which a staff member is employed outside the public sector after ceasing work at Treasury.
Real conflict of interest	There is a conflict, or the potential for a future conflict, between the public duty and a staff member's personal interests that improperly influences the staff member in the performance of their duties.
Staff member	Any member of Treasury staff including APS employees, secondees, contractors and consultants (to the extent their contracts require them to be subject to the conflict of interest policy), as well as office holders who are officials of Treasury for the purposes of the finance law.
Trigger points	Changes that should 'trigger' staff to re-assess their personal interests and whether they could represent a real or apparent conflict.



Related documents

Treasury Fraud and Corruption Control Plan

Treasury Conflict of Interest Case Studies

Treasury's Procedures for Determining Suspected Breaches of the APS Code of Conduct

Version control

Date Modified	Version	Section of document	Author of change	Summary of change
November 2022	1.0	All	Risk and Governance	New document for Secretary's approval

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate and International Tax Division
Topic: Internal advice
Reference: Spoken (7 June 2023)
Senator: Barbara Pocock

Question:

Senator BARBARA POCOCK: Could we seek from you, then, not only the minute but any other meeting notes, emails or other advice in relation to this matter prior to 22 December, internally, within Treasury, and since. I would like to have a look at those.

Ms Brown: Advice to the Treasurer—Assistant Treasurer?

Senator BARBARA POCOCK: Discussion within Treasury of this matter and the advice that was given.

Ms Brown: We can take that on notice.

Answer:

Treasury has no record of seeking to clarify with the ATO the circumstances over protected taxpayer information claims.

There are no records to indicate Treasury informed the Treasurer of the ATO's request for information.

These matters relate to an ongoing Australian Federal Police investigation and Treasury is unable to respond further in order to ensure the investigation is not prejudiced.

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate and International Tax Division
Topic: Confidentiality agreement
Reference: Spoken (7 June 2023)
Senator: Barbara Pocock

Question:

Senator BARBARA POCOCK: I will move on. Treasury signed a confidentiality agreement, its third, with Peter Collins in 2018, two years after the tax office was alerted to the issue. Do you think it's a problem that one arm of the government is signing a third confidentiality agreement when another part of the government knows that serious issues have arisen in relation to this individual?

Ms Brown: I think that's right. That's why I said the laws have to balance, and at certain times you realise that balance might not be right. It's appropriate that we look at whether that balance is right, given what we now know.

Senator BARBARA POCOCK: Who approved that confidentiality agreement in 2018? Whose signature was on it and who approved it?

Ms Brown: I would need to take that on notice.

Senator BARBARA POCOCK: What level of person usually approves those things?

Ms Brown: It's usually one of the senior executives in the relevant division.

Senator BARBARA POCOCK: I look forward to seeing that. Was anyone in Treasury aware of the Peter Collins matter at this point?

Ms Brown: In 2018? I'd have to check the dates of when the ATO indicated to us versus the date we signed that confidentiality agreement.

Answer:

These matters relate to an ongoing Australian Federal Police investigation and Treasury is unable to respond further in order to ensure the investigation is not prejudiced.

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

2022 - 2023

Division: Corporate Division
Topic: ATO and Treasury discussions
Reference: Spoken (7 June 2023)
Senator: Deborah O'Neill

Question:

CHAIR: I have just a couple of quick ones to finish—and I don't mind if you take this on notice—on the advice, request for information or discussion between yourselves and the ATO in relation to Mr Collins and that first time that you heard with respect to breach. Could you provide to us on notice the nature of the inquiry from the ATO and whether any information was provided by yourselves to the ATO?

Senator O'NEILL: Chair, I want to clarify this. I think that information was provided to us in estimates last week. It was a request for a copy of the confidentiality agreement signed by Mr Peter John Collins. That was the flag that gave the identity to Treasury, and that was through the request from the ATO. That is why I wanted to clarify when Senator Pocock was asking questions if that was what occurred and whether that was all that occurred.

Ms Brown: Let me take that on notice, seeing there is a difference in the two questions here, and come back to you with a comprehensive answer.

Senator O'NEILL: Thank you.

Answer:

These matters relate to an ongoing Australian Federal Police Investigation and Treasury is unable to respond further.