**ACT Health**

**Procedure**

**Conflict of Interest**

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| Purpose |

ACT Healthaddresses the management of conflict of interest in alignment with Section 9 of the *Public Sector Management Act 1994*, Section 5.1 of the ACT Public Sector Integrity Policy and the ACT Public Service Code of Ethics.

This document establishes procedures to be followed within ACT Health in adhering to these whole-of-government policies.

The document assists management to implement a system that satisfactorily and reasonably deals with conflicts of interest, and help all staff develop an awareness of possible conflicts of interest and how to deal with them.

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| Scope |

This procedure applies to all ACT Health staff, whether they are permanent, temporary, casual, contractors or volunteers.

In relation to Visiting Medical Officers and other contract staff, it applies to their conduct at any time in which they are receiving payment for work done within ACT Health, or where they are acting in an official capacity on behalf of ACT Health.

It includes conflicts, whether real, potential or perceived, arising from close personal relationships both outside and within the workplace.

It also applies where public officials face a *conflict of duty* – that is, where they have roles in more than one organisation, which may have competing objectives.

The procedure does not cover the issue of therapeutic or treatment relationships with family members or close friends. ACT Health staff from a regulated health profession are subject to professional standards regarding professional and personal boundaries, breaches of which may be notified to the relevant regulator – for example, the Australian Health Practitioner Regulation Agency (AHPRA).

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| Roles and responsibilities |

Staff must:

* Perform duties in a fair and unbiased way and not make decisions affected by self-interest or personal gain;
* Be aware of their obligation to identify and assess private and personal interests and whether they conflict or have the potential to conflict with their official duties;
* Avoid wherever possible placing themselves in a position of perceived, potential, or actual conflict of interest, and manage those conflicts of interest that cannot be avoided;
* Declare immediately any conflict of interest or potential conflict of interest and complete a conflict of interest declaration (Attachment 1);
* Advise their manager if they have a close personal relationship in their workplace that may represent a perceived, potential or actual conflict of interest;
* Report any suspected breaches of this procedure to their manager or director; and
* Treat all persons equally and fairly and not show preference to any individual or organisation.

Managers, in addition to their responsibilities as staff members (above), must:

* Make staff aware of this procedure, the obligations it places on them, and how they should be dealt with;
* Ensure that meeting participants have an opportunity to declare any conflict of interest in relation to items on the meeting agenda;
* Monitor the work of staff and the risks to which they may be exposed; and implement preventative strategies.

Executives/ delegates, in addition to their responsibilities as staff members (above), must:

* Ensure that staff are aware of this procedure;
* Receive conflict of interest declarations made by employees, students, volunteers or contractors within their Branch and determine the action to be taken in each case;
* Seek the advice of the Senior Executive with Responsibility for Business Integrity and Risk (SERBIR) when uncertain about the course of action;
* Retain conflict of interest declarations on a confidential file; and
* Investigate potential breaches consistent with relevant Enterprise Agreements and professional standards.

The SERBIR must:

* Provide information and advice to executives and managers where a conflict of interest may arise or has been declared.

People and Culture must:

* Ensure that staff orientation includes information about the need to declare any conflict of interest and the means by which this is done.

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| Procedure |

There are five elements to the procedure for managing conflict of interest in ACT Health:

Identify ⇨ Declare ⇨ Assess ⇨ Decide ⇨Monitor

**Identify a conflict of interest**

In the everyday work environment, staff at all levels are exposed to possible conflicts of interest. It is not always easy to decide when private interests and public duty are, or might be, in conflict with each other.

The key test is whether a public official could be influenced, or appear to be influenced, by a private interest while carrying out their public duty.

Private interests are usually known only to an individual and it is important for staff members to take responsibility for identifying and declaring their own conflicts of interest.

Cultural contacts or practices in Aboriginal and Torres Strait Islander communities and other small, close-knit groups may at times raise questions about how best to identify and respond to perceived conflicts of interest (e.g. community relationships, membership of associations and affiliations with others). Where unsure, staff should consult with their manager.

Managers should ensure that there are opportunities for staff to identify and declare potential conflicts. For example at the beginning of a decision-making meeting or selection panel, participants should be asked to declare any conflict.

The table below can assist staff members to decide whether they have a conflict of interest.

**Factors to consider when deciding if there is a conflict of interest**

Do I, a relative, friend or associate stand to gain or lose in any way from a decision or action that I make in the course of my work?

Have I made any promises or commitments in relation to the matter?

Have I received a benefit or service from someone who stands to lose or gain from a decision on the matter?

Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to lose or gain from consideration of the matter?

Could there be benefits for me in the future that could cast doubt on my objectivity?

If I do participate in assessment or decision-making, would I be happy for my colleagues and the public to be aware of any association or connection?

Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?

Am I uncertain about my ability to act impartially and in the public interest on this matter?

*If the answer to any of these questions is ‘yes’ then you should make a conflict of interest declaration.*

**Declare a conflict of interest**

Staff can declare a conflict of interest in a number of ways. For example, in recruitment and procurement panel processes, and in seeking agreement to work at a second job, there is a formal requirement to declare any conflict, a process for resolving any matters declared, and arrangements in place for retaining records related to the declaration.

In other circumstances, whenever a staff member becomes aware of a conflict of interest (whether pecuniary or non-pecuniary, perceived or actual), a Conflict of Interest Declaration form, available under People and Culture on the ACT Health intranet, should be completed (Attachment 1). The declaration should include the nature of the conflict of interest, the relationship between the parties, the context in which it occurs, and the actions taken or proposed to be taken to address the conflict.

Declarations must be submitted to the delegate (the Executive Director, Branch Head or equivalent executive[[1]](#footnote-1)).

In circumstances where making an initial written declaration is not possible, for example, in an emergency, the person’s immediate supervisor should be verbally informed. As soon as possible after the event the Executive Director should be notified and a report prepared which provides detail of reasons for the actions that were taken.

Prior to the matter being assessed (see below), the staff member should exercise caution and not participate in decision-making relating to the potential conflict.

Staff members also have an obligation to report possible conflicts of interest that have the potential to bring the health service into disrepute. If staff members are aware that another staff member has a potential conflict of interest that has not been disclosed, they should report the matter on the Conflict of Interest Declaration form.

If the possible conflict of interest potentially involves corrupt conduct, maladministration or serious and substantial waste of public resources, the staff member should contact the SERBIR.

**Assess a conflict of interest**

Once declared to the delegate, the conflict of interest should be reviewed without delay and discussed with the staff member involved. Feedback should be provided within seven calendar days.

If the delegate is uncertain about the course of action to take they should consult the SERBIR. It may also be necessary to seek legal advice (see Request for Legal Advice procedure).

In cases where the conflict of interest relates to close personal relationships in the workplace, delegates should seek advice from People and Culture on the most appropriate action.

Delegates should not assess a conflict of interest if it relates to themselves or someone with whom they have a close personal relationship. In such cases the matter can be referred to another executive, or advice sought from the Executive Director of People and Culture.

Reporting potential or actual conflicts may involve disclosing personal information. This information is to be handled in such a way that privacy is appropriately managed, having regard to the circumstances.

The table below can assist delegates when assessing a declared conflict of interest.

**Matters to consider when assessing a conflict of interest**

What is the nature of the relationship that could give rise to the conflict?

Is the matter pecuniary or non-pecuniary?

Should legal advice or advice from the SERBIR or People & Culture be sought?

Has enough information been provided to allow a proper assessment?

Could the person’s involvement in this matter cast doubt on their integrity?

Could the person’s involvement damage the reputation of ACT Health or the ACT Government as a whole?

How would it look to a member of the public?

What is the best option to ensure impartiality, fairness and protection of the public interest?

**Decide a course of action**

Choosing the right option to deal with a conflict of interest will depend on the circumstances of the matter and an objective assessment of it. Generally, if a pecuniary interest is disclosed, the staff member must not be involved in consideration or discussion of the matter in which they have the interest. A broader range of options exists for dealing with conflicts of interest that do not have a pecuniary component.

Options can include:

* ***Register*** *the conflict of interest by making a formal declaration*
* For minor or perceived conflicts of interest, the making of a formal declaration may be sufficient, with no further management action being necessary.
* ***Restrict*** *the involvement of the staff member in the matter that gives rise to the conflict*
* This may include abstaining from voting, withdrawing from discussion of affected proposals or having restricted access to sensitive information. This strategy can be useful when it is possible to separate the staff member with the conflict from parts of the activity or process, or when the conflict is not likely to arise frequently.
* ***Remove*** *the staff member with the conflict from the matter entirely*
* This may be appropriate where the conflict is serious and ongoing and a one-off restriction or recruitment of others may not be feasible.
* ***Relinquish*** *or divest the private interest*
* This may involve the person liquidating or withdrawing from their private interest.
* ***Recruit*** *a disinterested third party to oversee part or all of the process*
* This can be useful when it is not practical or desirable to remove the staff member with the conflict from the decision-making process, such as when they have specific expertise.
* ***Resign*** *from the public sector agency*
* This is a last resort to resolve a serious conflict of interest which may need to be considered if the conflict cannot be resolved in any other way.

Once the course of action has been determined by the delegate they should record their decision on the Conflict of Interest Declaration form, with any supporting information and reasons. This should be retained on a secure file for future reference. A copy should be provided to the staff member.

All declarations of conflicts of interest and the subsequent decision process must be readily accessible should the management of a conflict of interest be questioned.

**Monitor a conflict of interest**

To ensure the strategy chosen to manage the conflict of interest remains relevant, it is important that the matter be regularly reviewed by the delegate responsible for assessing the matter, in consultation with the staff member. This should include:

* The original situation that has given rise to declaring the conflict of interest;
* The initial determinations and management decisions;
* The strategy put in place to manage the conflict of interest;
* Actions taken in implementing the management strategy;
* Changes in the situation that may have an impact on the strategy;
* Perceptions held by others as to whether the conflict is still having an influence on the matter; and
* Changes made to the management strategy and its implementation.

If changes to the situation are quite significant, it may be necessary to re-determine the approach to managing the conflict.

**Non-compliance**

Where staff fail to declare a conflict of interest, refuse to resolve or properly manage a conflict, or act to the disadvantage of the public interest, appropriate investigations and disciplinary actions may be taken, as set out in the Enterprise Agreements, Public Sector Management legislation and standards, and professional standards and legislation (e.g. *Health Practitioner Regulation National Law (ACT) Act* 2010).

Depending on the seriousness and nature of the breach, penalties may include disciplinary action ranging from counselling to dismissal. Serious breaches may necessitate reporting the matter outside ACT Health (e.g. to ACT Policing, the ACT Public Service Commissioner or AHPRA).

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| Implementation |

People and Culture will incorporate the provisions of this procedure into relevant human resources and training manuals; present information handouts at orientation programs for new staff; and provide ongoing training/staff development on managing potential conflict of interest in the workplace.

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| Evaluation |

**Outcome Measures**

ACT Health staff are aware of their responsibilities in regard to the ACT Government’s Code of Ethics, *Avoiding Conflicts of Interest.*

Any perceived, potential or actual conflicts of interest by staff that are reported internally and/or publicly have previously been declared and addressed.

**Method**

Information regarding conflict of interest and how it should be declared is included on all orientation schedules.

The discussion and actions arising from declarations are documented and stored securely by the delegate, retrievable if a report of conflict of interest requires investigation and to confirm that a matter of conflict of interest has been addressed.

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| Related policies, procedures, guidelines, frameworks, standards and legislation |

**Policies**

* Fraud and Corruption Control Policy
* Second Job
* Gifts and Benefits
* ACT Public Sector Integrity Policy
* Research Practice
* Recruitment

**Procedures**

* Second Job
* Gifts and Benefits
* Recruitment
* Donations, Fundraising and Seeking External sponsorship
* Recruitment of Senior Medical and Dental Practitioners
* Request for Legal Advice

**Guidelines**

* ACT Health Procurement Guideline

**Frameworks**

* Fraud and Corruption Control Plan

**Standards**

* Public Sector Management Standards 2016
* ACT Public Service Code of Conduct
* ACT Public Service Code of Ethics
* Allied Health Professionals ACT Standards of Practice
* Australian Accounting Standards Board 124 Related Party Disclosures (AASB 124)

**Legislation**

*Public Sector Management Act* 1994

*Government Procurement Act* 2001

*Health Practitioner Regulation National Law (ACT) Act* 2010

All ACTPS Enterprise Agreements 2013-17

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| Definition of terms |

**Conflict of interest**

A conflict of interest exists when it is likely that a staff member could be influenced or perceived to be influenced, by a personal interest when carrying out their public duty. Conflicts of interest can be actual, perceived or potential.

* *Actual conflict of interest*involves a direct conflict between a staff member’s current duties and responsibilities and their existing private interests.
* *Perceived conflict of interest* is where it could be perceived, or appears, that a staff member’s private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
* *Potential conflict of interest*arises where a staff member has private interests that could conflict with other official duties in the future.

A conflict of interest may involve otherwise legitimate private activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to improperly influence the employee’s performance of their duties.

**Pecuniary and non-pecuniary interest**

An ‘interest’ can either be *pecuniary*or *non-pecuniary*.A pecuniary interestis an interest that a person has in a matter because of a reasonable likelihood (or expectation) of financialgain to that person. A non-pecuniary interestis defined as any private interest, which does not pertain to money (e.g. kinship, friendship, membership of an association, society or trade union or political party).

**Personal or private interest**

Personal or private interests are those that can bring benefit or advantage to a staff member as an individual, or to others whom the staff member may wish to benefit.

**Corruption**

Corruption is dishonest activity in which a person acts contrary to the interests of ACT Health and abuses their position of trust in order to achieve some personal gain or advantage for themselves or for another person or entity.

**Close personal relationship**

A close personal relationship is one in which there is a close personal connection between staff members. Close personal relationships include, but are not limited to, spouse, former spouse, intimate partner, former intimate partner, parent, child, sibling, grandparent, uncle, aunt, cousin, niece or nephew.

**Competing interests/ conflict of duty**

Conflicts of interest can arise where a person has official roles in more than one public organisation. In these situations it may be difficult to keep the roles separate and this can lead to poor performance, improper decision making or improper use of information.

**Staff**

For the purposes of this procedure, staff refers to any person performing work for ACT Health, on a permanent, temporary or casual basis. It includes volunteers, contractors, visiting medical officers, students, consultants, and researchers performing work within ACT Health facilities.

**Senior Executive with Responsibility for Business Integrity and Risk (SERBIR)**

An executive nominated by the Director-General responsible for the implementation of the integrity strategies and the processes for the detection and investigation of fraud and corruption. ACT Health’s SERBIR is the Executive Director, People and Culture.

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| References |

1. NSW Health Policy Directive: Conflicts of Interest and Gifts and Benefits (PD2015\_045). This document includes useful attachments with examples of conflicts of interests and options for their management.

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| Search terms |

Conflict, interest, conduct, integrity, corruption, integrity, perceived, potential, SERBIR

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| Attachments |

Attachment 1 – Conflict of Interest Declaration form

**Disclaimer**: *This document has been developed by ACT Health, Canberra Hospital and Health Services specifically for its own use. Use of this document and any reliance on the information contained therein by any third party is at his or her own risk and Health Directorate assumes no responsibility whatsoever.*

*Policy Team ONLY to complete the following:*

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| *Date Amended* | *Section Amended* | *Divisional Approval* | *Final Approval* |
| *01/10/2017* | *Complete Review* | *Janine Hammat, ED, People and Culture* | *PAC* |
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*This document supersedes the following:*

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| *Document Number* | *Document Name* |
| *DGD14-010* | *Conflict of interest policy and procedure* |
| *DGD14-009* | *Conflict of interest – close personal relationships policy and procedure* |

## Attachment 1 – Conflict of Interest Declaration form

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| **Conflict of Interest Declaration** | | | |
| **Name** |  | **Designation** |  |
| **Section** |  | **Telephone** |  |
| **Nature of conflict of interest (including the context in which it occurs)** | | | |
| **Action taken/ proposed to be taken** | | | |
| **Additional information** | | | |
| **Employees signature**  **Date** | | | |
| **Delegate’s decision on the actions to be taken to resolve the conflict.**  *Delegate to determine action to be taken within 7 days and forward to office of the Senior Executive with Responsibility for Business Integrity and Risk for inclusion on Conflict of Interest Declarations Register.*  *Delegate should note consultation with/ agreement of staff member to the action proposed.* | | | |
| **Delegate**  *Print name* | | **Signature**  **Date** | |

1. Codes A, A1, B, C and G of the ACT Health People and Culture Delegations Manual. [↑](#footnote-ref-1)