

PROCEDURE

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CATEGORY	Procedure	SUBJECT	Governance
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Conflicts of Interest

Purpose

The purpose of this procedure is to:

- Provide guidance to SLM & SARA workers to understand their obligations in relation to declaring and managing their private interests
- Outline managerial obligations in assessing declared Conflicts of Interest
- Provide a framework for registering and recording Conflicts of Interest

Background

The Organisation is responsible for maintaining public confidence in its activities, which includes implementing adequate systems to manage organisational risks. It is important to manage conflicts of interest because they may lead to improper decision making and could constitute corrupt conduct.

The specific obligations of workers in relation to their private interests are established within the NSW Public Service Commission's [Code of Ethics and Conduct for NSW government sector employees](#) and SLM & SARA [Code of Conduct](#).

Scope

This procedure applies to all persons undertaking work for, or engaged by, SARA and SLM in either a paid or unpaid capacity. This includes:

- All SARA & SLM employees (ongoing, temporary, casual)
- Contractors, contingent or agency staff engaged to perform work for, or on behalf of SARA & SLM
- Work experience students and volunteers
- Consultants where their engagement requires adherence to the SLM/SARA Code of Conduct

PROCEDURE

1. Key principles

Under the SLM & SARA [Code of Conduct](#), staff have an obligation to avoid, report and record conflicts of interest. Any conflicts of interest must be disclosed, registered and resolved or managed.

While having a conflict of interest is not inherently wrong, workers should avoid placing themselves in potentially compromising situations.

2. Identifying conflicts of interest

A 'conflict of interest', whether actual, potential or reasonably perceived, occurs when a person's private interests could objectively influence the performance of their public duties. Private interests are the interests that arise from personal or non-work life and can bring financial or other material benefits to a person. Private interests can include the interests of a persons close connections, including family, friends, and/or the interests of associates.

In most cases, only the individual in question will be aware of the potential for a conflict of interest. Consequently, the onus is on each individual to identify any relevant conflicts and act in accordance with the procedure with respect to them.

The following categories can also be used to identify private interests that may create a conflict of interest:

- pecuniary, or financial, interests
- people who are more than acquaintances, including family and friends
- connections to people who have provided income or may provide income
- organisations and clubs, and people connected to them
- connections to people and entities who have given benefits or favours
- other people or matters that are closely connected to you.

Examples of situations which may give rise to a conflict of interest affecting the performance of official duties include:

- a financial interest (yours or that of a family member, relative, friend or associate) in a matter you deal with in the course of your work (please see *Procurement Policy*)
- a personal relationship that could be seen to unduly affect your decision, for instance, when conducting a job selection
- receipt of a gift, benefit or hospitality that may cast doubt on your ability to apply independent judgement (please see [Gifts and Benefits Policy](#))
- other employment that conflicts with your duties for SARA/SLM (please see [Secondary Employment Procedure](#))
- participation in political or community activities or making political comments that may relate to, or be seen as relating to, the work of SARA/SLM.

3. Declaring Conflicts of Interest

Conflicts of interest must be declared promptly and in writing using the *The Private Interest Declaration form*.

Non-Executive Employees must:

- Disclose any conflicts of interest to their manager as soon as you become aware of the conflict
- Use the Staff (non-Senior Executive) Declaration form
- Comply with any actions/methods implemented by your manager to manage the conflict
- If you are undertaking procurement, you must declare any conflicts of interest using the *Conflict of Interest Declaration – Procurement form*
- If you have undertaken secondary employment, you must declare this using the *Secondary and Voluntary Employment Form*. This is to be signed off by the Director of your division. Please see the *Secondary and Private Employment Procedure*, for full details
- If you have a change in manager, you must notify your new manager of the conflict and inform them of how it is being managed
- If applicable, disclose to a convenor of a selection panel if you have a conflict of interest arising from the work of the panel
- In the event that there is uncertainty about whether a conflict of interest exists advice should be sought from your Manager or the Governance team, at governance@records.nsw.gov.au.

Senior Executive Employees:

- A senior executive (including an acting senior executive) must make a written declaration, via the *Senior Executive Private Interest Declaration Form*, of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by the senior executive
- Where a senior executive has no such private interests to declare, they must declare a “nil return”
- After a senior executive makes an initial declaration, a fresh declaration must be made:
 - As soon as practicable, following any relevant change in the senior executive’s private interests;
 - As soon as practicable, following the senior executive’s assignment to a new role or responsibility

- At least annually
- Senior Executives (Director level and above) must provide their declaration to the Chief Executive Officer.
- Signed declarations must be forwarded to the Governance team at governance@records.nsw.gov.au
- The Chief Executive Officer, as the **Agency Head** for SLM and SARA, is additionally required to provide any declarations to the Department Secretary.
- Executive members should refer to the [Public Service Commission Circular 15-08: 'Declaration of private interests – supplementary information'](#) when making their declaration.

4. Managing Conflicts of Interest

Managers are required to resolve, mitigate or manage any real, perceived or potential conflicts of interest.

It is the responsibility of line managers to review their staff member's *Private Interest Declaration form* and detail any management actions required to resolve, mitigate and/or manage the conflict of interest. Managers are required to sign an acknowledgement before sending the completed form to the Governance team. Managers are ultimately responsible for ensuring that all agreed management actions are implemented.

Failing to identify, declare and actively manage the impacts of employees' conflicts of interest can affect the reputation and working relationships of individual employees, as well as that of the Organisation.

The Governance team is responsible for maintaining a centralised register of all declared conflicts of interest. The register (amongst other audit duties) will be used as a tool to identify staff members who have declared a conflict of interest; and to routinely monitor with managers to ensure:

- the risk has not increased
- the staff member is still under the same management (and if not, ensure the new manager is aware of the conflict)
- the staff member is complying with any management plans in place
- they have declared any changes
- that if there are any repeat declarations in regards to gifts and benefits, further investigations are made

5. Breaches of the Conflicts of Interest Procedure

Any potential breaches of the Conflicts of Interest Procedure or Code of Conduct should be referred promptly to the Chief Operating Officer for assessment.

Alleged breaches of the Conflicts of Interest Procedure or Code of Conduct will be properly investigated and, where appropriate, action taken. This may include:

- imposing disciplinary action, such as a demotion or dismissal
- terminating contracts or other contractual remedies
- undertaking administrative or civil action against an official or related entities
- reconsidering decisions that have been adversely affected by a conflict of interest

The [Government Sector Employment Act 2013](#) and the [Government Sector Employment Rules \(in particular Part 8\)](#) establish procedures for dealing with allegations of misconduct, and actions that may be taken. Those actions may range from a caution to termination of employment.

Roles and Responsibilities

Managers are responsible for:

- Addressing any workplace conduct that appears to be improperly benefiting a particular party
- Ensuring staff are aware of conflict of interest policies and procedures
- Ensuring that relationships with suppliers and other contractors remain on a professional footing
- Providing approved conflict of interest declaration forms to the Governance team for registration and filing

- Being alert to, and following up on, suspicious or indications that a conflict of interest has been concealed or mismanaged
- Reporting suspected breaches of policy and cooperating with any investigative enquiries
- Determining risk to the Organisation that may occur from a declaration of conflict. In terms of likelihood and consequences, the risk of a conflict of interest should be assessed in order to decide which management actions are appropriate. Please refer to Section 3 and Annexure A which describes the key factors that contribute to the risk.
- Determining how the conflict will be managed and ensure the implementation of agreed actions.

The People and Culture team is responsible for:

- Recording on an employee's personnel file any decision made or relevant information concerning applications under this policy
- Ensuring training material is provided to all new staff within the induction process
- Respond to staff enquires in relation to this Procedure and/or associated policies

The Chief Operating Officer is responsible for:

- approving or declining escalated matters that may be of high risk or
- investigating potential breaches
- ensuring that arrangements proposed by employees do not create a conflict of interest that cannot be managed appropriately, or that would adversely affect the employee's capacity to carry out their Organisational duties and responsibilities
- considering relevant factors, when assessing the merits of an application, as set out in the Secondary Employment Procedures
- Declaring own conflicts of interest

The Governance Team is responsible for:

- maintaining a centralised register of all declared conflicts of interest.
- The register (amongst other audit duties) will be used as a tool to identify staff members who have declared a conflict of interest; then Governance can routinely check-in with managers to ensure:
 - the risk has not increased
 - the staff member is still under the same management (and if not, ensure the new manager is aware of the conflict)
 - the staff member is complying with any management plans in place
 - they have declared any changes
 - that if there are any repeat declarations in regards to gifts and benefits, further investigations are made
- restricting access to the register to organisationally nominated delegates, and any other individuals permitted by law
- providing advice and support to employees and management to enable them to fulfil their obligations under this procedure
- investigating complaints and allegations relating to breaches of the procedure.
- routinely disseminating information on conflict of interest to staff, for example in staff newsletters or other communication documents.

Legislation

- *Government Sector Employment Regulation 2014*
- *Government Sector Employment Act 2013*

Related policies and procedures

- SLM/SARA Code of Conduct Policy
- SLM/SARA Secondary Employment Procedure
- SLM/SARA Managing Gifts and Benefits Policy
- SLM/SARA Public Interest Disclosure Policy

Definitions

- Conflict of Interest: means an actual, potential, or reasonably perceived conflict between an employee's private interests and the impartial performance of their official duties.
- Indirect interest: means where an employee does not personally have an interest, but their immediate family or a person with whom they are closely associated (including a supervisor) does, and the interest is known to the employee.
- Actual conflicts are a direct conflict between your current duties and responsibilities, and your private interests
- Potential conflicts are when a private interest could conflict with your official duties in the future
- Reasonably perceived conflicts are when a person may reasonably perceive that your private interests are likely to improperly influence the performance of your official duties
- Manager: means the employee's direct manager of the work area where the employee works.
- Non-pecuniary interest means an interest that does not have a financial component, and in the context of the Secondary Employment procedure includes an expectation or reasonable likelihood of a direct interest or indirect interest arising.
- Pecuniary interest: means an actual or potential financial gain or loss, or other material benefit, which may be a direct interest or an indirect interest.
- Private interests: means a pecuniary interest or a non-pecuniary interest
- Public interest: means treating all people with whom an employee interacts in the course of their work equally without prejudice or favour, and with honesty, consistency and impartiality.
- Secondary employment: Means any type of paid or unpaid employment or work outside the Organisation, including any business or commercial activity which may or may not generate an income.
- Volunteer: means a person who elects to provide a service through an organisation, by choice, without financial remuneration, for the benefit of the community or the organisation.

Revision history

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1.0	11/04/2022	First Draft	Angela O'Donnell
1.1	19/05/2022	Draft formally approved	Kathryn Natoli, Director, Strategy and External Relations

Review date

19/05/2024

Contact

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Annexure A

Managing conflicts of interest in the NSW public sector

Table from NSW ICAC

Source of risk	Comment
The activities of the branch, unit or area	Some workplace functions (such as procurement) entail higher risk.
The particular project, transaction or individual activity	This could relate to factors such as: • amount of public funds involved • individuals or parties that could gain or lose • whether the delivery of core government services could be affected • impact on public health and safety • susceptibility to corruption, fraud or compliance failures • relevant history of failures in project delivery • degree of reliance on suppliers or third parties • perceptions of key stakeholders and the public, including expectations of high levels of probity.
The extent of the official's involvement and ability to influence the outcome	The official might have complete ownership and control of the relevant matter or just be a minor player in a large team; alternatively, the official's discretion may be wide or narrow. The ability to influence others is also an important consideration.
The nature of the official's personal interest	If the interest is closely held or the potential personal benefit is large, the conflict carries more risk. A key consideration is how much, and how easily, the personal interest could be favoured.
Other deviations from process or probity issues	If the project or matter in question already deviates from the agency's normal procedure (for example, it is a non-compliant direct negotiation) or there is an existing probity issue (such as a late tender), the conflict of interest may be contributing to a cumulative risk to the agency's integrity and reputation. Small deviations from the established process, written procedures or rules that might otherwise be viewed benignly, may lead to substantial suspicions of impropriety connected to the conflict of interest. It is therefore important to consider the overall context of the situation.
The potential consequences if the official were to favour their interest	The agency should consider the consequences if the personal interest were favoured. This could include damage to brand and reputation, the potential for legal action, loss of public trust, delays to projects, interruptions to service delivery and mitigation costs. The total effect to the agency could be many multiples of the benefits that flow to the conflicted official.