Conflict of Interest

Commissioner's Guideline

NORTHERN TERRITORY GOVERNMENT

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Acronyms	Full form
CEO	Chief Executive Officer
Commissioner	Commissioner for Public Employment
DCDD	Department of Corporate and Digital Development
EI	Employment Instruction
GOC	Government Owned Corporation
NTG	Northern Territory Government
NTPS	Northern Territory Public Sector
OCPE	Office of the Commissioner for Public Employment
PSEMA or the Act	*Public Sector Employment and Management Act 1993* (NT)

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This Guideline provides information to Northern Territory Public Sector (NTPS) employees and agencies on identifying, declaring and managing conflicts of interest. It should be read in conjunction with Employment Instruction 12 – Code of Conduct but does not form part of the legislation.

Values and Integrity

The NTPS serves the people of the Territory and is entrusted with public resources, information and powers. The community is entitled to expect that these responsibilities will be exercised lawfully, fairly, professionally and in the public interest.

The NTPS Values of Ethical Practice, Accountability, Respect, Commitment to Service, Diversity and Impartiality, provide the behavioural foundation for integrity across the sector. They guide how we exercise our responsibilities, make decisions and deliver services to Territorians.

Integrity in the NTPS is the consistent alignment with, and adherence to, the NTPS Values, legislative obligations and professional responsibilities. It requires employees to act ethically, professionally and in the public interest, placing the public interest above private interests and maintaining the trust and confidence of the Northern Territory community.

Conflicts of Interest

Conflicts of interest can arise as a normal part of public sector employment and does not necessarily indicate wrongdoing. However, where a conflict is not identified, declared and appropriately managed, it can undermine impartial decision-making, public confidence and the integrity of the NTPS.

All employees have a responsibility to ensure their private interests do not improperly influence, or appear to influence, the performance of their official duties.

Legislative and Policy Framework

The *Public Sector Employment and Management Act 1993* (PSEMA) establishes the principles and requirements governing employment in the NTPS.

Employment Instruction 12 – Code of Conduct establishes the standards of conduct expected of NTPS employees. Section 5.4 of the Code requires public sector officers to:

- avoid any perceived, potential or actual conflicts of interests between their personal interests and their public duties;
- ensure their personal or financial interests do not influence or interfere, or be perceived to influence or interfere, with the performance of their duties or role;
- ensure the interests of family, friends or associates do not influence or interfere, or be perceived to influence or interfere, with the performance of their duties and/or role;
- disclose in writing to the CEO or Agency head any perceived, potential or actual conflict of interest at the earliest opportunity, and comply with any lawful and reasonable direction by an authorised officer to manage the conflict of interest; and
- disclose a declaration of bankruptcy to their CEO at the earliest possible opportunity.

NTG statutory board and committee members, contractors, or consultants in an official NTG capacity

These individuals should consult the following resources for guidance on conflict of interest matters relevant to their roles:

- NTG statutory board and committee members should refer to the NT Government Boards Handbook for guidance on managing conflicts of interest in their capacity as board or committee members.
- Where an employee holds a position on an NTG statutory board or committee, conflicts arising during board or committee proceedings must be declared and managed in accordance with the relevant board governance framework and section 6.7 of the NT Government Boards Handbook.
- Employees must also consider whether their board membership, associated interests, or external responsibilities intersect with their duties as an agency employee. Where such an intersection exists, or may reasonably be perceived to exist, the interest must also be disclosed and managed in accordance with this policy. Like a public sector employee undertaking unpaid or voluntary activities where a real, perceived or potential conflict of interest may arise, the employee must discuss the proposed appointment with their employing CEO and accept the decision of the CEO (section 6.7.2 of the NT Government Boards Handbook).
- Contractors and consultants should be referred to the conditions of contract information available on the NTG website.

What is a Conflict of Interest

A conflict of interest arises where an employee's private interests could conflict, or could reasonably be perceived to conflict, with the performance of their public duties.

A private interest can be financial or non-financial and may relate to the employee personally, or to their family, friends, associates or other persons or organisations with whom they have a relationship.

Conflicts may arise where an employee could gain a personal advantage, avoid personal loss, or where their impartiality, objectivity, or integrity in carrying out their official duties could be questioned.

A conflict of interest can be:

Actual – there is a direct conflict between an employee's current public duties and their private interests.

Potential – an employee has private interests that could conflict with their public duties in the future.

Perceived – a reasonable person could perceive that an employee's private interests may improperly influence the performance of their public duties.

The perception of a conflict can be as significant to public confidence as an actual conflict. Employees should therefore consider not only whether they believe they can act impartially, but how their involvement may reasonably be perceived by others.

Identifying a Conflict

Employees should continually consider whether they have a private interest that could affect, or reasonably be perceived to affect, the way they perform their public duties.

Private interests may include, but are not limited to:

- financial interests, investments, property or business interests;
- family, personal or social relationships;
- friendships or associations;
- previous or prospective employment;
- secondary or outside employment;
- membership on boards, committees, clubs or organisations;
- gifts, benefits or hospitality;
- personal, professional, community or volunteer activities; and
- obligations, loyalties or relationships that may compete with an employee's public duties.

Conflicts can arise in many areas of public administration, including recruitment and selection, procurement, contract management, grants, regulatory activities, investigations, complaints, disciplinary processes, allocation of resources and access to confidential information.

Conflicts of interest can arise at any stage of a process or decision. Employees should identify and disclose any conflicts regardless of their level of involvement or decision-making authority.

Employees should ask: *Could my private interests, relationships or associations influence—or reasonably be perceived to influence—how I perform this public duty?*

Where there is uncertainty, employees should disclose the circumstances and seek advice.

Declaring a Conflict

Employees are responsible for identifying and declaring their own conflicts of interest. A perceived, potential or actual conflict must be disclosed in writing to the Chief Executive, or delegated officer, of their Agency at the earliest opportunity.

Agencies may establish processes that enable declarations to be provided to an authorised manager or other delegated officer on behalf of the Chief Executive.

A declaration should contain sufficient information to allow the nature, context and significance of the conflict to be assessed.

Not all declarations will require management action. Assessment of a declaration may determine that no conflict exists or that existing controls are sufficient and no further action is necessary.

Employees must make a new or updated declaration where:

- a new conflict arises;
- circumstances relating to an existing conflict change;

- their duties or responsibilities change in a way that creates a conflict; or
- an existing management arrangement is no longer appropriate.

To declare a conflict, employees should refer to their agency specific instructions in relation to the required declaration form.

Certain positions are also required to complete ongoing or annual disclosures, including where no conflict is identified. Please refer to your agency specific guidance, or Governance unit, for further information.

Disclosure requirements for specific processes

Different processes across government require NTG employees to declare conflicts of interest in specific contexts. Disclosure alone does not resolve a conflict. The conflict must be assessed and, where necessary, appropriately managed.

Conflicts of Interest must be declared as early as possible, including prior to participation in relevant activities or decision-making processes, and managed in accordance with any applicable NTG or Agency process-specific requirements. Employees should consider the following:

- **Outside employment:**

  Employees must obtain approval by completing the OneNTG Outside Employment form, or as specified by their agency, prior to commencing any secondary or outside employment or business activity.

- **Recruitment and selection panels:**

  In accordance with the NTPS Recruitment and Selection Policy –

  - Selection panel members must declare and avoid conflicts of interest. Any conflict of interest must be documented on the approved conflict of interest from. The delegate must be advised of any conflict of interest prior to the shortlisting of applicants where a mitigation management plan is considered necessary.
  - A delegate must declare and avoid conflicts of interest and must not exercise their delegation where such a conflict exists.

- **Procurement panels:**

  Panel members must complete a *Confidentiality and Conflict of Interest form* prior to each assessment. Seek advice from your agency Governance unit regarding the management requirements of any declared procurement conflict and, where a conflict extends beyond the specific procurement processes a conflict declaration form should also be completed.

- **Grants and funding assessments:**

  Employees involved in the assessment, evaluation, or administration of grants, must complete the grants conflict of interest disclosure form prior to participation. Seek advice from your agency Governance unit regarding the management requirements of any declared grant or funding assessment conflict and, where a conflict extends beyond the specific assessment process a conflict declaration form should also be completed.

- **Key Management Personnel**

  Agencies will identify parties employed in roles and who are deemed 'key management personnel' who are required to complete a Declaration of Private Financial and Other Interests, including Immediate Family Members (and Other Relevant Persons). Please refer to your agency specific policy for further information.

- **Gifts and Benefits:**

  Employees must not solicit, seek or accept gifts, benefits, hospitality, travel, accommodation, entertainment or other advantages that could reasonably be perceived as influencing, or intending to influence, the impartial performance of their official duties.

  Where it is proposed to accept a gift or benefit, approval must be obtained in accordance with agency delegations and policies prior to acceptance, or as soon as practicable where prior approval is not possible. Please refer to your agency specific policy for further information.

Chief Executive Officers (CEOs)

In addition to agency conflict of interest and disclosure for specific purposes, CEOs are required to complete a Declaration of Private Financial and Other Interests ("Declaration") which is a requirement under Part B of Employment Instruction 12 – Code of Conduct. If a CEO has included the interests of other persons such as members of their immediate family in their declaration, those persons should complete Part B of the Declaration (Declaration of Private Financial and Other Interests, Immediate Family Members (and Other Relevant Persons). Nil Declarations are required to be completed including where there is nothing to declare.

Completed Declarations must be forwarded to the Commissioner for Public Employment (CPE), and the relevant portfolio minister.

On 1 July each year, or whenever there is a change in their financial and other interests that could conflict with their official duties (including when changing roles), CEOs are required to review and restate (or resubmit) their Declaration and forward it to the Commissioner for Public Employment.

CEOs undertaking acting arrangements in excess of three months, are also required to undertake the declaration process.

OCPE will maintain a register of all CEO conflict of interest declarations and will send reminders to CEOs in September and November of each financial year if not received.

The CPE will report to the Executive Remuneration Review Panel in October and January of each year, with respect to the compliance with regards to this requirement.

Executive Contract Officers

Executive contract officers are required to complete a Declaration, with the content and process for submission of Declarations to their CEOs to be in accordance with agency directions.

Completed Declarations are held as evidence of disclosure and, as such, provide some protection for CEOs, employees and agencies from unfounded allegations of bias concerning agency advice or decisions.

Certain positions are also required to complete ongoing or annual disclosures, including where no conflict is identified. Please refer to your agency specific guidance, or Governance unit, for further information including with respect to non-compliance and reporting requirements

Assessing a Conflict

Once a conflict is disclosed, it should be assessed by the relevant agency delegate to determine the management action required. The employee and their manager should discuss and document the agreed management arrangements. This plan is recorded in the relevant conflict of interest disclosure form (e.g. agency, procurement, or recruitment). The appropriate management response will depend on the circumstances and level of risk.

The plan should outline how the conflict will be managed and monitored. In most cases, this may include:

- Restricting the employee's involvement in matters directly related to the conflict.
- Removing the employee from the process, activity, or decision to prevent undue influence.
    - For example if there is a conflict of interest related to a recruitment process (that cannot be reasonably managed), the party with the conflict should be removed from the entire process.

In assessing a conflict, consideration should be given to:

- the nature and significance of the private interest;
- the employee's role, seniority and decision-making authority;
- the connection between the private interest and the employee's public duties;
- the extent to which the employee can influence a decision or outcome;
- the sensitivity or significance of the matter;
- whether confidential or privileged information is involved;
- the likelihood and consequences of the conflict affecting, or appearing to affect, impartiality;
- whether the conflict is temporary or ongoing; and
- how the circumstances would reasonably be perceived by members of the public.

Managing a Conflict

The objective of managing a conflict is to protect the integrity and impartiality of public administration, while adopting a response that is proportionate to the nature and level of risk.

The assessment and reasons for the management response should be appropriately documented. Please refer to your agency specific guidance, or Governance Unit, for further information regarding documentation requirements.

The following strategies may be used to manage conflicts, depending on the situation:

Strategy	What this means	When its suitable
Register	The conflict is formally recorded for transparency	For low-risk conflicts, where no action beyond disclosure is needed
Restrict	The employee's involvement is limited	When the conflict does not frequently arise and can be managed
Recruit	A neutral third party oversees the process	When it's not feasible for the employee to remove themselves, but third-party oversight is required
Remove	The employee removes themselves from the matter entirely	For ongoing or serious conflicts, where other options are not appropriate
Relinquish	The employee gives up the private or personal interest creating the conflict	When the commitment to public duty outweighs the private or personal interest
Resign	In exceptional circumstances where an ongoing conflict cannot otherwise be effectively managed, consideration may need to be given to whether the employee can continue to perform the relevant role or duties. The action to address a conflict in these circumstances may include, the employee transferring to another position, work unit or department, or in the most extreme instance an employee may resign from their position,	When no other options are workable, and the conflict cannot be effectively managed.

Managers and supervisors are responsible for managing and monitoring a disclosed conflict of interest and can seek advice from their agency's Governance unit at any stage of the declaration process. Once the management plan is approved by the appropriate delegate, agencies may require oversight from their internal Governance units to ensure appropriate management action is being applied to the situation. Please refer to your agency specific guidance, or Governance Unit, for further information regarding this.

Resolving disputes over conflict of interest management

If an employee and their manager cannot reach an agreement on how to manage a conflict of interest, the manager should seek guidance from their internal Governance unit to facilitate a resolution. If the matter remains unresolved, the agency CEO or Deputy CEO may be required to decide.

If an employee disagrees with the proposed management plan and wishes to formally challenge it, they may request the Commissioner for Public Employment review the action, intended action or decision under section 59 of the PSEMA.

To uphold the integrity of this process, the employee must immediately cease involvement in any activities related to the conflict until the issue is resolved.

Responsibilities

Employees	Agencies
Employees are expected to: • remain alert to circumstances that may create a conflict of interest; • avoid conflicts where reasonably practical; • declare perceived, potential and actual conflicts at the earliest opportunity; • provide sufficient information for the conflict to be properly assessed; • not participate in relevant decisions or activities while a conflict is being assessed or where participation could compromise the process; • comply with approved management arrangements and lawful and reasonable directions; • advise of any change in circumstances; • maintain appropriate records where required; and • seek advice from their manager, agency governance unit, Workforce Services within DCDD or human resources area within a GOC, where they are unsure whether a conflict exists or requires declaration.	CEOs are responsible for ensuring appropriate arrangements are in place to support the identification, declaration, assessment and management of conflicts of interest within their agency annually. Agencies should have appropriate systems to: • enable employees to readily declare conflicts; • ensure declarations are assessed by an appropriate senior delegate and, where necessary, independent person; • document management decisions and arrangements; • maintain appropriate records or registers; • protect personal information contained in declarations; • monitor and periodically review management arrangements; • identify functions or activities with heightened conflict-of-interest risks; • provide employees and managers with appropriate information, guidance and training; and • respond appropriately where conflicts have not been declared or management arrangements have not been followed.

High Risk Activities

Agencies should pay particular attention to conflicts arising in functions where employees exercise significant discretion, make decisions affecting individuals or organisations, control public resources, or have access to sensitive information.

These may include:

- recruitment and selection;
- procurement and contract management;
- grants and funding decisions;
- licensing and regulatory functions;
- investigations, complaints and disciplinary matters;
- delegations and financial approvals;
- boards, committees and assessment panels;

- management of confidential or commercially sensitive information; and
- decisions involving former employers, prospective employers, family members, friends or associates.

Where a specific legislative, policy or procedural framework imposes additional or different conflict of interest requirements, those requirements must also be complied with.

Where practical, agencies should establish preventative controls for areas where conflicts are foreseeable rather than relying solely on individual disclosure.

Agency Conflict of Interest

A conflict of interest could give rise to concerns regarding the independent decision making of an agency (rather than an individual) due to a relationship with an external organisation or individual.

When determining whether an agency conflict of interest exists, agencies should consider whether:

- the agency is in a contractual relationship with the organisation;
- the organisation has received or is likely to receive financial assistance from the NTPS;
- the organisation's primary role is to lobby ministers or Government;
- the organisation is regulated by the agency, or by another government agency;
- engagement with the organisation would otherwise present a real or apparent conflict of interest; or
- the agency's independent decision-making may be, or may reasonably be perceived to be, affected by the conflict of interest.

Agency conflicts of interest should be declared and mitigated as part of a general or agency Governance unit management processes. Where employees consider that there may be an agency conflict of interest, this should be discussed with the appropriate management.

Recording Declarations

Agencies are required to maintain centralised records of conflict of interest declarations and management plans, in accordance with Employment Instruction 9.

Failure to declare or manage a conflict

The existence of a conflict of interest does not, of itself, constitute wrongdoing.

However, failing to disclose a conflict, providing incomplete or misleading information about a conflict, failing to comply with an approved management arrangement, or using public office to improperly advance a private or personal interest may constitute a breach of the Employment Instruction 12 - Code of Conduct and may result in action under PSEMA.

Failure to adequately manage an actual or perceived conflict of interest may also be considered to be misconduct or unsatisfactory conduct under section 10 of the *Independent Commissioner Against Corruption Act 2017*.

All employees are required to report suspected improper conduct, including the failure to disclose or appropriately manage a conflict of interest unless they know it has already been reported.

Reports can be made externally to the Integrity and Ethics Commissioner (IEC), or internally to an agency nominated recipient. Reporting a matter internally does not remove an individual's obligation to report directly to the IEC where mandatory reporting requirements apply.

Further Information

Employees should contact their manager, agency Governance unit, Workforce Services or Human Resources area within a GOC, for advice about identifying, declaring or managing a conflict of interest.

Further information is available:

- *Public Sector Employment and Management Act 1993*
- Employment Instruction 12 – Code of Conduct
- relevant agency policies and procedures
- Office of the Integrity and Ethics Commissioner

For support interpreting or using this guideline and associated information contact OCPE on (08) 8999 4129 or email psagr@nt.gov.au.