

Conflicts of Interest

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AUTHORISED BY: Deputy Secretary, Finance, Strategy & Operations	AUTHORISED DATE: 6/03/2017
ISSUED BY: Corporate Strategy	EFFECTIVE DATE: 27/04/2017
CATEGORY: People, Ethics and Conduct	REVIEW DATE: 30/01/2019

Policy Statement

The NSW Department of Industry (the department) is committed to creating a workplace culture that encourages and supports staff to identify and declare conflicts so that they can be managed openly and transparently.

Purpose

The purpose of this policy is to:

- Ensure staff are not improperly influenced by their own private interests
- Build and maintain a professional and ethical workplace
- Promote the NSW public sector core values of integrity, trust, service and accountability
- Minimise the risk of fraud or corrupt conduct
- Safeguard community trust and confidence.

Scope

This policy applies to the management of conflicts of interest and conflicting duties and applies to everyone performing work for the department, including:

- Ongoing, temporary, term, casual and seconded staff
- Contractors and consultants
- Board and committee members appointed by the department.

It expands on, and is to be read in conjunction with, the department's Code of conduct.

It does not apply to Liquor & Gaming NSW staff who must comply with the LGNSW Probity Framework.

Objectives

To ensure that:

- The integrity and objectivity of the department is maintained at all times
- The right decisions are made, free from conflicting interests wherever possible.

Requirements

1. *Staff, contractors and consultants* must:

- Be aware of their obligation to avoid, where possible, conflicts of interest
- Assess their private / personal interests and whether they conflict, or have the potential to conflict, with their departmental duties and responsibilities
- Discuss actual, potential or perceived conflicts of interest as appropriate with their manager or Senior Executive

- Disclose all conflicts of interest and complete a conflicts of interest declaration form via the FSO Portal
- Treat all persons equally and fairly and not show any preference to any individual or organisation
- Manage conflicting duties using the same procedures that apply to conflicts of interest.

2. *Managers* must:

- Action conflicts of interest reported to them within **five working days** of receiving the declaration form from their staff
- Recommend the appropriate course of action for managing the declared conflicts of interest
- Confirm approved management actions are completed and documented
- Promote ethical conduct and regularly remind staff of their responsibilities in relation to conflicts of interest
- Take appropriate action in relation to breaches of this policy in consultation with the Deputy Secretary, Finance Strategy and Operations as the department's Fraud Control Officer.

3. *Approvers* (as Secretary's delegate) must:

- Approve or otherwise determine the recommended course of action for managing conflicts of interest declared by staff
- Investigate and assess any conflicts of interest matters referred to them.

4. *Senior Executives* must:

- Declare conflicts of interest via the FSO Portal where they arise due to a specific situation (e.g. involvement in recruitment or procurement panels)
- Ensure they continue to meet their private interest disclosure obligations
- Ensure staff comply with this policy and associated procedures
- Investigate and assess any conflicts of interest matters referred to them.

Requirements – Boards and Committees

Members of boards and committees who are non-departmental staff are appointed for their expertise and skill in particular areas. As a consequence, there may be the potential for conflicts of interest to arise between their duties to the board or committee and their private interests (or the duties or interests of others).

1. *Board and Committee members (including Chairs)* must:

- Disclose interests, including positions and pecuniary interests in corporations, partnerships or other businesses that may be relevant to the activities of the board or committee
- Disclose full and accurate details of interests or issues when they arise as soon as practicable to the board or committee chairperson
- At a minimum, act in accordance with relevant guidance issued by the NSW Department of Premier and Cabinet.

2. *Board and Committee Chairs* must:

- Ensure committee members declare any conflicts of interests arising at the commencement of each meeting
- Ensure appropriate action is taken where conflicts are declared during meetings (e.g. exclude members with declared conflicts from relevant discussions)
- Note all declarations in meeting minutes
- Ensure board or committee secretariats enter member declarations by submitting a conflicts of interest declaration form (on their behalf) via the FSO portal.

3. *Staff appointments to boards of external entities*

The department's general position is that staff should not accept positions as directors on boards, committees or similar positions with incorporated associations, proprietary companies or companies limited by guarantee, if these entities have current, recent or prospective (within the last or next 12 months) business or professional dealings with the department.

Where exceptional circumstances exist, staff must formally apply using a Private or Secondary employment application form via the FSO Portal and obtain Secretary's approval. Where approval is given, staff must detail the conflicts of interest and how it will be managed as a part of the application.

No approval is required where staff are:

- Representing the department or NSW Government in a role stated in their position description
- Performing the normal course of their duties with the NSW Government, or
- Acting as the Secretary's approved representative on a Commonwealth or State committee.

This policy also applies to staff acting in a voluntary and private capacity on not-for-profit or community organisation committees.

Procedures

See NSW Department of Industry Conflicts of interest procedures.

Roles and responsibilities

1. Deputy Secretary, Finance Strategy and Operations:

- Legally obligated to report any instances of actual or suspected fraud, corruption or bribery to ICAC and the NSW Police.

2. Corporate Strategy Branch:

- Manage and review the policy, procedure and related forms
- Provide advice and raise awareness about managing conflicts of interest across the department
- Manage and maintain the official conflicts of interest register and the forms required to track and record this information
- Provide reports for the executive to assist the ongoing management of conflicts of interest
- Conduct an annual review of the Conflicts of interest register and report findings to the Secretary NSW Department of Industry

3. People Learning and Culture

- Incorporate conflicts of interest training as a part of the department's induction program.

Breaches

The department may take disciplinary action for breaches of the conflicts of interest policy in accordance with the relevant sections of the NSW *Government Sector Employment Act 2013*. Action may include counselling, official notification of unsatisfactory performance, formal cautions, demotion or dismissal. In serious cases the matter may be referred to the Police or other appropriate authorities.

Record-keeping

All assessments, decisions and actions undertaken for managing and monitoring conflicts of interest must be maintained in accordance with the NSW *State Records Act 1998*.

Completed conflicts of interest declaration forms are held in the Conflicts of interest register maintained by the Corporate Governance Unit. The register is the official NSW Department of Industry record and details the nature of conflicts of interest declared by staff and how they are to be managed.

Information in the Conflicts of interest register will be retained in accordance with the Records management policy after staff leave the department or leave the position they held when they made the declaration.

Access to the register is restricted to the Secretary, their nominated delegate/s (including the Deputy Secretary, Finance, Strategy and Operations), and any other individual permitted by law. The register is subject to annual review by the Deputy Secretary, Finance, Strategy and Operations.

Grievances

All disputes regarding conflicts of interest will be managed in accordance with the department's grievance resolution procedure.

Confidentiality and privacy

All conflicts of interest information is subject to the requirements of the NSW Privacy and Personal Information Protection Act 1998.

Unauthorised disclosure of confidential information is prohibited under the department's Code of conduct.

Definitions

For the purposes of this policy and related procedures, all terminology is taken to mean the generally accepted or dictionary definition with the exception of the following terms which have a specifically defined meaning:

- *Approver* Staff with a delegation Level 3 and above consistent with the levels of Authority within the Human Resources Manual of Authority.
- *Conflicts of Interest* Conflicts of interest occur when the private interests of a public official come into conflict with their duty to act in the public interest. Conflicts of interest are particularly relevant where the public official has a decision-making role.
- *Contractor* Person undertaking services for NSW Department of Industry subject to a written contract, who is not an employee of NSW Department of Industry, and not an employee of a labour hire agency contracted by NSW Department of Industry.
- *Corrupt conduct* Is deliberate or intentional wrongdoing, not negligence or a mistake. It has to involve or affect a NSW public official or public sector organisation
- *Employee* Person employed by NSW Department of Industry under the *NSW Government Sector Employment Act 2013*.
- *Managers* An authority that supervises staff within the structure of the department. Management levels 1 - 5 consistent with the Levels of Authority within the Human Resources Manual of Authority.
- *Non-pecuniary interest* Are interests that do not have a financial component but may arise from:
 - Personal or family relationships or involvement in sporting, social or cultural activities
 - Any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias their judgement or decisions.
- *Official duties* The work done by a public official as defined by relevant or governing legislation (and regulations), the official's position description or lawful directions given by a Manager.
- *Pecuniary interest* A situation where there is the potential for financial gain or loss as a result of staff holding a public position. Staff do not need to directly experience the financial gain or loss to give rise to pecuniary conflicts of interest. They will remain conflicts of interest if a family member, associate or someone with some proximity to staff has the pecuniary interest.
- *Staff* Collective term which refers to a person whether remunerated or not, working on the department's behalf including ongoing, temporary, term, casual, seconded staff; private contractors and consultants.

Legislation

- *Crimes Act 1900 (NSW)*
- *Government Sector Employment Act 2013 (NSW)*
- *Government Information (Public Access) Act 2009 (NSW)*
- *Independent Commission Against Corruption Act 1988 (NSW)*

- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Public Interest Disclosures Act 1994 (NSW)*
- *State Records Act 1998 (NSW)*

Related policies

- Code of conduct [IND-P184]
- Enterprise risk management [IND-I-207]
- Fraud and corruption prevention [IND-P-188]
- Government information public access [IND-I-178]
- Human resources manual of authority [INT16-27439]
- Internal reporting - public interest disclosures [IND-I-200]
- Private or secondary employment [IND-P-194]
- Private interest disclosures [IND-P-176]
- LGNSW Probity framework

Other related documents

- [NSW Public Service Commission: Code of Ethics and Conduct for NSW government sector employees](#)
- [NSW Independent Commission Against Corruption's *Identifying and managing conflicts of interest in the public sector*](#)
- [NSW Ombudsman: Recognising and managing conflict of interests](#)
- [NSW Ombudsman: Good Conduct and Administrative Practice Public Service Agencies](#)
- [NSW Department of Premier and Cabinet: NSW Government Boards and Committees Guidelines](#)
- [NSW Department of Premier and Cabinet: Conduct Guidelines for Members of NSW Government Boards and Committees](#)
- [NSW Procurement Policy Framework](#)

Further information

For further advice and information on managing conflicts of interest, please contact:

Position	Business Unit	Contact Details
Manager, Corporate Governance	Corporate Governance Unit, Corporate Strategy	E: corporate.governance@industry.nsw.gov.au

Superseded documents

- Conflicts of interests – NSW Trade & Investment TI-P-142 v1.0

Revision history

Version	Date effective	Reviewed By	Changes made
1.2	26/04/2017	Manager, Corporate Governance	Temporary scope exclusion - LGNSW staff to continue to comply with LGNSW probity framework. Exclusion sunsets 30/07/2017.
1.1	17/02/2017	Manager, Corporate Governance	Scheduled policy review. Updated to reflect introduction of online form for declaring conflicts of interest.
1.0	19/03/2016	Project Officer, Corporate Governance	Policy updated to reflect new Department of Industry, legislative and position title changes