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Circular No 2007/1: Declarations of personal Interests: Revised Policy Guidelines

Note: the Section on Declarations of Interest in the publication *APS Values and Code of Conduct* on this site has been updated to incorporate this circular

The purpose of this circular is to advise changes to APS-wide policy on the requirement for some APS employees to submit written declarations of their financial and other personal interests.

Current policies on declarations of financial interests by SES employees are set out in *APS Values and Code of Conduct in Practice*. They require all SES employees to submit annually a written declaration of their financial interests and those of their immediate family in areas such as real estate, share holdings, trusts or nominee companies, company directorships/partnerships, other investments, assets, sources of income, gifts and liabilities. It also covers personal relations that could involve a conflict of interest. The requirement applies to all agencies staffed under the *Public Service Act 1999*, and agency heads are responsible for ensuring that declarations remain confidential. Agency heads are required to make a similar declaration to their Ministers.

Issues with the current policy

While it is essential that public sector decision makers maintain an appropriate level of transparency about their own personal interests, concerns have arisen about how the current system operates, including:

- the collection of broad information on personal assets and other possessions, some of which has little relevance to real or perceived conflict of interest or other probity issues;
- concerns that the system encourages an annual 'tick and flick' approach that may not capture relevant ongoing changes in employee circumstances;
- the need to clarify SES/agency head responsibilities for identifying and monitoring areas of sensitivity covered in declarations;
- debate as to whether and how declarations policy should be extended to staff beyond the SES;
- concerns about the privacy aspects of the requirement to declare the interests of immediate family.

An amended declarations policy

In response to these challenges, the Commission, in consultation with Portfolio Secretaries, has reviewed and amended the declarations policy and a copy is attached. These guidelines replace the advice contained in *APS Values and Code of Conduct in Practice*.

Further information on the matters raised in this circular is available from the APS Commission's Employment Policy Adviceline—by phone on (02) 6202 3859 or e-mail employmentadvice@apsc.gov.au. It may be appropriate for more complex or sensitive queries to be dealt with in writing.

Georgia Tarjan
Group Manager
Policy Group

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Attachment: Declarations of Personal Financial and Other Interests

These guidelines set out Australian Public Service (APS) policies on the declaration of personal financial and other interest by agency heads, Senior Executive Service (SES) employees and staff in sensitive positions.

Principles and Background

The Code of Conduct at s13 of the *Public Service Act 1999* requires that an APS employee must:

- behave honestly and with integrity in the course of APS employment;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- not make improper use of (a) inside information, or (b) the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

The requirement to be aware of and to avoid or manage real and perceived conflicts of interest applies to all APS employees. Agencies should have procedures in place that:

- help all employees to understand the importance of avoiding real and apparent conflicts of interest in public employment;
- require all employees to notify managers about private interests, both financial and personal, where they could present a real or apparent conflict with their official duties;
- provide guidance to managers and employees on strategies and good practice in avoiding or managing conflicts of interest.

Further information on the concept of conflict of interest and how it can be managed is set out in the Commission publication *APS Values and Code of Conduct in Practice: A Guide to Official Conduct for APS employees and Agency Heads*.

The Origins of the Declarations Policy

While all APS staff are required by the Code of Conduct to behave with integrity and to avoid or manage conflicts of interest in their employment, agency heads and SES employees are subject to a specific regime that requires them to submit, at least annually, a written declaration of their, and their immediate family's financial and other interests, that could involve a real or apparent conflict of interest.

The requirement to submit a declaration of interest arose from a decision in 1983 by the then government. This decision required all Ministers, Senators and Members of Parliament to submit an annual written declaration of their private interests as well as those of their immediate family – spouse and dependent children. The then government also decided that senior public servants, statutory office holders, senior staff of statutory authorities and all Ministerial staff would be required to furnish a statement of their private interests similar to the public statement required by parliamentarians.

The Purpose of the Declaration

The purpose of the declaration is to ensure that heads of agencies are aware of any private interests or relationships of APS employees in leadership or other sensitive positions which could or could be seen to influence the decisions the employees are taking or the advice they are giving. These could include personal interests and relationships that could involve a real or potential conflict of interest in terms of the employee's responsibilities. The completion of a declaration of interests also provides employees with the opportunity to consider whether any of their financial or personal interests might give rise to a real or perceived conflict with their duties and take action to remove or minimise the potential for that to occur.

Declarations of interests and security clearances

Agencies may apply security clearance requirements to jobs that deal with sensitive information and issues. The security vetting process may require employees to provide information on their personal financial and other interests that could make them vulnerable to outside pressure.

While there may be some overlap between the personal information collected as part of a security vetting and the personal information required to be declared under the declarations policy, the purpose of the security vetting process is to identify personal circumstances or relationships that could make an employee vulnerable to improper influence or otherwise compromise an employee's integrity or ability to manage sensitive information.

Who is required to make a declaration?

Because of their leadership and decision-making roles, all agency heads and all SES employees, including those acting in SES jobs for longer than three months, are covered by the declarations of interests policy.

Many agencies will also have staff at non-SES levels whose responsibilities also require them to be particularly transparent about their private financial and personal interests. Agencies may also have professional staff who, while not specifically SES employees, are at similar levels and have similar decision making responsibilities.

Where practicable, agencies should also apply the declarations policy to these types of employees.

The extent to which the policy is applied to non SES employees in each agency will depend on assessments of the sensitivity of the work, the administrative and resource implications and the risks involved. It is important to remember that all employees are required to identify and manage conflicts of interest, irrespective of whether they are required to make a declaration.

Given the agency head's responsibilities for managing his/her agency's declarations process, it will be important that he/she has some ongoing control over the application of the policy to individual positions. It should therefore be the responsibility of the agency head to decide those non SES positions to which the declarations requirements should apply.

If this is not practicable in a large agency, then the approval process could be delegated to a senior employee, for example a Deputy Secretary, the Head of Corporate Services or an Area or State Manager, who would keep the agency head informed.

What should be covered in the Declaration

There is no standard list of items that must be included in a declaration. Rather, it is the responsibility of employees to whom the declaration policy applies to consider and declare these private interests or relationships that could or could be seen to impact upon the decisions they are taking or the advice they are giving.

Factors to be taken into account in considering what to disclose include:

- the particular roles and responsibilities of the employee's agency and its probity concerns;
- the particular roles and responsibilities of the employee.

Examples of organisations and situations where transparency and openness about private and personal financial interests are particularly important include:

- agencies, organisations and positions undertaking an investigatory or regulatory role;
- agencies, organisations and positions that allocate contracts or disperse Australian Government funds;
- agencies, organisations and positions that are responsible for the protection and management of sensitive policy, commercial or personal information.

The types of interests and relationships that may need to be disclosed include:

- real estate investments;
- shareholdings;
- trusts or nominee companies;
- company directorships or partnerships;
- other significant sources of income;
- significant liabilities;
- gifts;
- private business or social/personal relationships;
- paid, unpaid or voluntary outside employment

that could or could be seen to impact upon the employee's responsibilities.

On the other hand, ownership of personal assets such as an unencumbered personal or family home, works of art, jewellery, furniture, antiques etc are most unlikely to have any real or perceived impact on an employee's responsibilities and would not normally need to be declared, since their possession is unlikely to involve a conflict of interest or any other threat to an employee's probity, except in the case of people working in these fields.

Outside Employment and declarations

The APS has policies on paid or unpaid outside employment that apply to all APS staff and which are set out in detail in *APS Values and Code of Conduct in Practice: A Guide to Official Conduct for APS employees and Agency Heads*. The basic principle underlying these policies is that employees should be able to take up paid or unpaid employment outside the APS, provided that it does not conflict with or adversely affect their duties. Agencies are required to have processes in place to manage outside employment, and most agencies require employees to seek permission to engage in outside employment.

Requests to engage in outside employment by employees covered by the declarations policy should normally be handled through these processes, although agencies would need to take into account the particular sensitivities of the employee's work in considering whether to approve the request. Even when outside employment has been approved, it should still be disclosed in the declaration if it could or could be seen to impact upon work responsibilities. While APS employees are not normally required to seek permission to undertake unpaid voluntary work, voluntary and community groups could have interests or aims in relation to APS policy development or programme implementation. Employees should disclose voluntary work or associations that could or could be seen to impact upon their work responsibilities.

Unpaid or voluntary outside employment can present the same potential for conflict of interest as paid outside employment. They should be treated with the same level of importance as paid outside employment in the context of conflict of interest considerations.

Personal Relationships

Employees may have family or other personal relationships with people engaged in activities that could have an interest in issues the employee is dealing with. Examples could include media, lobbyists or people who have business dealings with their agency. APS employees are, of course, perfectly entitled to have such relationships, but staff covered by the declarations policy should be open about them. They should therefore disclose the names and activities of family and other personal relationships that could or could be seen to impact upon the employee's responsibilities.

Agency Head Responsibilities

While it is the responsibility of employees to declare personal and private interests, it is the responsibility of the agency head to ensure that any conflict of interest or other threat to the integrity of the agency that is identified in the declarations is avoided or effectively managed.

This means that he/she will need to be appropriately aware of the contents of employee declarations.

In agencies with a large number of SES employees and/or those agencies where the declarations policy has been extended to non-SES employees in sensitive positions, it may not be logistically possible for the agency head to assess, review and retain every declaration. In these cases, the agency head may decide to put in place systems that give primary responsibility for reviewing and holding declarations to senior SES level staff, for example a Deputy Secretary, the Head of Corporate Services or an Area or State Manager.

Such systems and processes will need to:

- ensure the confidentiality of the declarations;
- bring any serious real or apparent conflicts of interest to the attention of the agency head.

How often should the declaration be made?

The declaration will remain relevant only if it is monitored and updated on an ongoing basis.

SES and other employees who are covered by the declarations policy are responsible for reviewing and

where necessary revising and resubmitting their declarations whenever:

- there is a change in their responsibilities or in the issue or subjects on which they are required to make decisions or give advice;
- there is a change in their personal circumstances that could impact upon the decisions the employees are taking or the advice they are giving.

Agencies should have systems in place that encourage and support an ongoing declarations policy.

All SES employees and all other employees to whom the agency head decides the declarations policy should apply are required to submit a declaration of interests at least annually.

Declarations by the Agency Head

Declarations made by agency heads are usually submitted to the Minister. If the statement discloses a conflict, the Minister and the agency head must take steps to resolve the conflict.

Interests of Immediate Family Members

The term "immediate family members" applies to spouses and dependent children. The previous policy required employees to declare all the personal interests and relationships of immediate family members that they were aware of.

Employees are no longer required to declare the personal interests and relationships of their immediate family. Rather, as part of their disclosure responsibilities, they will agree that they will declare any private interests or relationships of their immediate family that they are aware of, where circumstances arise in which they consider that these interests could or could be seen to influence the decisions they are taking or the advice they are giving.

It would be necessary in those circumstances for the agency to obtain the family member's direct consent to the disclosure in a manner that is consistent with the requirements of the Information Privacy Principles contained in the *Privacy Act 1988*. These requirements could be covered by the family member signing a notice to the declaration of their relevant interests as follows:

I am aware that my information has been collected for the purpose of identifying personal and other interests that could or could be seen to influence the decisions that the employee covered by the declarations policy is taking or the advice he/she is giving. I am aware of the Privacy Principles set out in the *Privacy Act 1988* which authorise the collection and the third parties to whom my personal information may be disclosed. I consent to the collection of my personal information by (the relevant agency).

If consent was not given, then the employee should discuss with his/her agency head, in general terms, that he/she believes that there is an actual or potential sensitivity. The agency head can then decide what action may need to be taken.

Declarations Template

Attached is a template which can be used by APS agencies as a basis for employee declarations. Agencies may add to or adapt the template to meet their particular requirements.

A similar format should be used for declarations by agency heads to their Ministers.

The template also contains a consent form for immediate family members should a declaration of their interests be considered necessary.

