

# Conflicts of Interest Policy and Procedures (incorporating Declarable Associations)



New South Wales  
Crime Commission

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## POLICY

### 1. Objective

This policy and procedure document provides officers of the NSW Crime Commission (Commission officers) direction for identifying, reporting, managing and resolving conflicts of interest, including declarable associations.

Conflicts of interests must be strictly managed to avoid accusations of bias, misconduct or corruption that would damage the Commission's reputation.

### 2. Scope/Application

This policy is binding to all Commission officers including a person engaged by the Commission as a consultant, contractor or a police officer under the *Crime Commission Act 2012*.

The following Commission officers have a responsibility to manage a conflict of interest:

- Staff affected by a conflict of interest and the relevant Manager/Supervisor
- Senior officers (Executive Director, Chief Audit, Risk & People Officer, Assistant Commissioner (Legal))
- People & Culture Manager
- Commissioner

Information related to officer responsibilities is outlined in the '*Procedures*' section of this document.

### 3. Definitions

A **conflict of interest** exists when a reasonable person<sup>1</sup> might perceive that a public official's personal interest(s) could be favoured over their public duties.

A **declarable association** exists when an individual is associated with a person, group or organisation (to varying degrees), who are involved in (or perceived to be involved in) activity that is incompatible with the Commission. Such associations create a conflict of interest between the individual's duty to the Commission and his or her personal interests.

**Non-pecuniary interest** is an interest with no financial component.

**Pecuniary interest** is where there is a potential financial gain or loss from a private interest.

**Personal interest** refers to the interests that arise from an individual's private or non-work life that can bring financial or other material benefits or result in disadvantages to the public interest or to other people. Personal interests include the interests of an individual's close connections, including family connections and/or the interests of associates.

**Public duty** means a power, authority, duty or function that is conferred on a person as the holder of public office, and includes a duty to serve the public interest, the agency and the public in an ethical manner.

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<sup>1</sup> The NSW Independent Commission Against Corruption publication '*Managing Conflicts of Interest in the NSW Public Sector April 2019*' defines a 'reasonable person' as a fair-minded and informed observer, p. 5.

## **4. Policy Statements**

### **4.1 Avoiding a Conflict of Interest**

Commission officers are expected to avoid conflicts of interest, and especially declarable associations, wherever possible. In practice there are situations in which conflicts of interest cannot be wholly avoided and need to be managed in a way that will reduce the risk to an acceptable level and withstand external scrutiny.

### **4.2 Disclosing a Conflict of Interest**

Clause 8 of the *Crime Commission Regulation 2012* (the Regulation) requires a conflict of interest to be reported to a Manager/Supervisor promptly in writing once a Commission officer becomes aware of the conflict.

Commission officers in senior roles are also required to disclose to the People & Culture Manager certain relevant personal interests when they arise even if they do not presently conflict with their public duty.

A Commission officer must disclose in writing to their Manager/Supervisor a conflict of interest no matter how minor the conflict is regarded. Any new or changed personal interests or conflicts of interests must also be reported to a Manager/Supervisor immediately.

Clause 4 of the Regulation also requires a Commission officer, or an applicant for a position as a Commission officer, to furnish a statement of personal particulars and a statutory declaration concerning the relevant person's association (if any) with known or alleged criminals.

### **4.3 Managing and Monitoring a Conflict of Interest**

The Manager/Supervisor to whom the officer has disclosed a conflict of interest must notify their Executive Director or an appropriate senior officer and the People & Culture Manager in writing. Commission staff are required to report any changes in relation to their personal particulars and/or associations to the People & Culture Manager as and when their circumstances change. The Manager/Supervisor is ultimately responsible for implementing and monitoring the response to the conflict of interest, and must work with their senior officer and officer who has disclosed the conflict to this end.

Details of any conflicts and declarable associations received by the People & Culture Manager should then be notified by the People & Culture Manager to the Personnel Security Team, unless it is inappropriate to do so in any particular case.

### **4.4 Breaches and Confidentiality**

If an officer fails to disclose a conflict of interest in accordance with this policy or if their conduct in dealing with the conflict is corrupt, criminal or otherwise calls their integrity into question, Management will take disciplinary action in line with the *Misconduct and Unsatisfactory Performance Policy and Procedures*.

Information related to the conflict of interest is to be held in the strictest of confidence by all parties and is not to be divulged to anyone uninvolved in the management of the matter.

#### **4.5 Audits of the Conflicts of Interest Reporting Process**

The reporting process may be audited from time-to-time to address the accuracy of disclosures and the appropriateness of any related action taken by Management.

### **5. Related Legislation and Documents**

The following relevant legislation and documents apply to this policy:

- *Crime Commission Regulation 2012*
- New South Wales Crime Commission Code of Conduct
- Independent Commission Against Corruption's '*Managing Conflicts of Interests in the NSW Public Sector April 2019 publication*'

## PROCEDURES

### 1. Avoiding a Conflict of Interest

The best form of managing a conflict of interest is to avoid it completely. Commission officers should take the following steps to avoid a conflict of interest arising:

- restricting the extent to which a private interest could compromise or be seen to compromise impartiality, including avoiding associating with criminals;
- abstaining from involvement in official decisions and actions that conflict with private interests, affiliations and associations;
- avoiding activities where they could be seen to benefit from having access to restricted information;
- avoiding any situation where the functions of the Commission may be impacted by a perceived conflict of interest, even if the officer is acting lawfully.

### 2. Identifying and Reporting a Conflict of Interest

Any conflict of interest that could be perceived as having the potential to adversely impact on a Commission investigation must be reported to the Commissioner as soon as is practicable. All reports to the Commissioner are to be made through the People & Culture Manager.

In every other case, a Commission officer who has a conflict of interest is responsible for identifying and disclosing it to their immediate Manager/Supervisor in writing. Commission officers should use the following four questions to help them identify whether a conflict of interest exists:

1. Does the Commission officer have a personal interest?
2. Does the Commission officer have a public duty?
3. Is there a connection between the personal interest and the public duty?
4. Could a reasonable person perceive that the personal interest might be favoured?

Examples of potential conflicts of interest may include:

- awarding a contract to a supplier who may be related to the officer or a personal friend;
- being on an interview panel and knowing one of the applicants in a personal or private capacity and not declaring that fact to the convenor;
- recognising a voice on a telephone intercept, or recognising a phone number on an operational report as belonging to someone associated with the officer;
- investigating persons known to the officer, or being aware that the Commission is investigating persons known to the officer;
- declarable associations, which could include, for example, having a relationship with a person or persons working in the media; a person or persons with a history of criminal convictions; and former Commission employees who were dismissed or resigned while under investigation; and
- socialising at venues owned, operated or frequented by Commission persons of interest or other criminals, for example, certain nightclubs or gyms.

An officer observing a possible conflict of interest that involves another Commission officer must also report it to their Manager/Supervisor. If a Commission officer observes a conflict of interest relating to their direct Manager/Supervisor, the officer should write directly to their Executive Director, the People & Culture Manager, the Chief Audit, Risk & People Officer, or Assistant Commissioner (Legal).

### **3. Managing a Conflict of Interest**

Where an officer has a conflict of interest that could be perceived as having the potential to adversely impact on a Commission investigation, the Commissioner will be the sole arbiter of how to manage the conflict.

In all other cases, the Manager/Supervisor must assess the risk of the conflict in order to determine on appropriate action and must notify their Executive Director, or a more senior officer, in writing. Risk factors a Manager/Supervisor must consider include:

- the activities of the division or unit;
- the particular project, transaction or activity involving the officer;
- the extent of the officer's involvement and influence;
- the nature of the officer's personal interest; and
- the impact on the Commission's reputation and potential for legal action.

A Manager/Supervisor must work with the officer with the conflict of interest on a strategy to avoid or manage the conflict. A Manager/Supervisor is entitled to request further information to assist with the assessment of the conflict including for example, documentary evidence or a statutory declaration. Possible outcomes may include, but are not restricted to:

- a. no action, where it is determined that the risk of an actual conflict is remote and any effect would be minor;
- b. limiting access to information relating to the conflict;
- c. recruiting an independent third party to participate, or to oversee the process, or to review the integrity of the decision making process;
- d. removing the person involved in the conflict from duties related to the conflicting interest and/or involving other officers in certain parts of the duties;
- e. relinquishing the conflicting interest (e.g. withdrawing from an investigation that involves an associate known to have been involved in related criminal activity or, if supervising a family member, having a more senior person manage that staff member); and
- f. if the conflict is extremely serious and if all methods of managing or resolving the conflict have been unsuccessful, the officer resigning from their employment at the Commission.

The Commissioner/Manager/Supervisor is to advise the officer with the conflict of interest in writing on the proposed strategy to handle the conflict. The officer must provide their agreement by written reply. The Commissioner/Manager/Supervisor then emails this agreement to the People & Culture Manager who places this correspondence in the employee's confidential personnel file and also places a record in the Conflict of Interest Register (see below). Details of any conflicts and declarable associations received by the People & Culture Manager should also be notified by the People &

Culture Manager to the Personnel Security Team, unless it is inappropriate to do so in any particular case.

#### **4. Recording a Conflict of Interest**

Once disclosed to an Executive Director or a more senior officer, a conflict of interest must be reported to the People & Culture Manager, who is to record the conflict in as much detail as possible in the *Conflicts of Interest Register* (Appendix A). The Register documents the following:

- Date on which the conflict was identified;
- Date from which the conflict may have existed (if different to the date on which it was identified);
- Officer reporting the conflict;
- Officer with the conflict (if different to the officer reporting the conflict);
- The nature of the conflict (provide as much detail as possible);
- Person to whom the officer reported the conflict;
- Person/s responsible for working with the officer to resolve the conflict;
- Conflict management actions taken to mitigate the conflict; and
- Conflict management outcomes.

The People and Culture Manager is to place all relevant correspondence related to the conflict of interest in the Human Resources File Plan and a file note on the relevant employee's record.

#### **5. Ongoing Monitoring and Breaches**

The Manager/Supervisor is to monitor the conflict of interest and associated risks on an ongoing basis depending on the nature of the conflict and/or its seriousness. For example, if the conflict arises again, the Manager/Supervisor is to complete the risk assessment detailed in procedure 2 and make the necessary amendments to manage the conflict.

It is the responsibility of the officer with the conflict of interest to comply with Management direction regarding management of the conflict. This also includes reporting any changes in circumstances relating to a declarable association and/or personal particulars in accordance with the Commission's *Change of Circumstances notification*. If a Manager/Supervisor discovers non-compliance with an agreed management strategy, the People & Culture Manager will be contacted for further investigation. If such non-compliance is considered serious, the Commissioner will be notified and the matter treated as potential misconduct. Appropriate action will be taken according to *the Misconduct and Unsatisfactory Performance Policy and Procedures*.

## Version Control

Version	Effective date	Update comments	Author
1.0	31Jul14	Initial version	Governance Team
2.0	6Jan20	Significant rewrite to align with current Commission practices and ICAC definitions. Deletion of the process map.	Governance Team
2.1	9Apr20	Revision to incorporate information relating to 'declarable associations' and amendment to procedure.	Governance Team

## Publication Information

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Related documents	<i>Crime Commission Regulation 2012, New South Wales Crime Commission Code of Conduct, ICAC Managing Conflicts of Interest in the NSW Public Sector April 2019, Misconduct and Unsatisfactory Performance Policy, New South Wales Crime Commission Change of Circumstances notification form</i>



# Conflicts of Interest Register

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## Annexure A

Date on which the conflict was identified	Date from which the conflict may have existed (if different to the date on which it was identified)	Officer reporting the conflict	Officer with the conflict (if different to the officer reporting the conflict)	The nature of the conflict (provide as much detail as possible)	Person to whom the officer reported the conflict	Person/s responsible for working with the officer to resolve the conflict	Conflict management actions taken to mitigate the conflict	Conflict management outcomes