



ANTI DISCRIMINATION
COMMISSION QUEENSLAND

**CONFLICT OF
INTEREST**

HR 02/07

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TABLE OF CONTENTS

INTRODUCTION	3
OBJECTIVES.....	3
AUTHORITY	4
DEFINITIONS	4
CONFLICTS OF INTEREST	5
Complaint Handling & Investigations	5
Contracts.....	5
Consumer Advice.....	5
Court Actions	6
Staff Recruitment & Selection	6
Accepting Gifts & Benefits	6
Private Employment.....	6
Non-Remunerated Activities	7
ADDRESSING CONFLICTS OF INTEREST	7
PROCEDURE FOR DECLARING INTERESTS – Proactive Approach	8
What Information Will Be Required?.....	8
PROCEDURES FOR DECLARING CONFLICTS OF INTEREST – Reactive Approach.....	9
GIFTS & BENEFITS	10
APPROVAL.....	11
BREACHES	11
GRIEVANCES	11
TRAINING.....	11
REVIEW.....	11
FURTHER INFORMATION AND ASSISTANCE	11
ATTACHMENT 1: Declaration of Interests Form	12

INTRODUCTION

Conflict of interest occurs when the private interests of an employee or the offer of benefits to an employee, may affect, or appear to affect, decisions made by that employee in the workplace. Where an officer makes decisions of a commercial or contractual nature and/or they have an active involvement and decision making role with respect to individuals, community groups or community affairs, there may be potential for conflict of interest to arise.

Declaring a conflict of interest, be it real or potential, is essential for maintaining the integrity of and community confidence in the Anti-Discrimination Commission Queensland (ADCQ).

Mechanisms for the declaration of conflicts of interest are currently provided for under existing public sector legislation, policies, codes, regulations and directives. Their aim is to protect public sector employees, the ADCQ's reputation, clients and the community from the potential consequences of conflict of interest.

The purpose of this policy is to raise awareness of the different types of conflict of interest (both real and potential), the inherent risks involved and to describe procedures for addressing those conflicts both before and after they occur.

All employees should formally disclose interests or affiliations that conflict or have the potential to conflict with their official duties.

OBJECTIVES

Effective implementation of Government legislation, policy and procedures for declaring real or potential conflicts of interest will protect staff and the ADCQ, prevent needless investigative processes and result in the following outcomes for staff, the ADCQ, clients and the community.

Benefits in protecting staff:

- protection from negative consequences of conflict of interest, eg. disciplinary action;
- increased understanding of what constitutes a conflict of interest;
- safeguarding of employees' integrity;
- ensuring accountability; and
- the ability to anticipate and prevent conflicts of interest.

Benefits in protecting the ADCQ:

- staff are responsible and accountable;
- commercial and contractual decisions are based on fair and equitable practices;
- positive reputation as a service provider;
- increased organisational effectiveness and efficiency; and
- reduced occurrence of nepotism and cronyism.

Benefits for ADCQ clients and the community:

- fairness and impartiality in the delivery of services
- accountability and fair treatment by ADCQ employees

AUTHORITY

Existing Public Sector provisions provide a framework to both prevent and address conflict of interest situations through assigning responsibilities to public service employees as well as chief executives.

Through management and employees working in partnership and adopting a proactive approach to conflict of interest, the public service principles contained in the Code of Conduct, particularly those of accountability and integrity, will be embraced and applied within the Anti-Discrimination Commission Queensland (ADCQ).

The legislative provisions and procedures described in this policy are based on the following:

- *Public Service Act 1996*
- *Public Sector Ethics Act 1994*
- Directive 1/07 – Declaration of Interests: Chief Executives
- Directive 8/96 – Declaration of Interests: Public Service Employees (other than Chief Executives)
- ADCQ Code of Conduct
- *Financial Administration and Audit Act 1977*
- Gifts and Benefits Policy – Office of Public Service Merit and Equity

DEFINITIONS

Conflict of Interest

Involves a conflict between an employee's duties and responsibilities in serving the public interest, and the employee's private interests. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage, financial or otherwise.

Declaration of Interests

A listing of an employees relevant personal interest, and possibly those interests of individuals closely related to the employee where the interests may cause a conflict of interest.

Non-Pecuniary Interests

Do not have a financial component but may arise from personal or family relationships or involvement in sporting, social, community or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias your judgement or decisions.

Pecuniary Interest

Involves an actual or potential financial gain or loss. It may result from the employee or related party owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Money does not actually have to change hands for an interest to be pecuniary.

Perceived Conflict of Interest

Exists where it appears that an employee's private interests could improperly influence the performance of their duties – whether or not this is the case.

Potential Conflict of Interest

Arises where an employee has private interests that could conflict with their official duties in the future.

Secondary employment

When an employee works for the ADCQ but also does paid part-time or casual work for another organisation. It includes operating a business and providing paid consultancy services to another person or organisation.

CONFLICTS OF INTEREST

A conflict of interest can occur when an employee has, or is seen to have, a private interest - either pecuniary or non-pecuniary - which conflicts or may conflict with the discharge of the employee's duties and the subsequent decisions of the ADCQ as authorised by the employee. Private interests include those of a dependant or spouse (including de facto spouse).

Conflicts of interest, be they perceived, actual or potential, can have damaging consequences for staff, the ADCQ and/or the community. Conflicts can involve pecuniary or non-pecuniary interests and can take several different forms.

Examples of some are as follows:

Complaint Handling & Investigations

Dealing with complaints or investigating the operations/activities of an individual with whom you have a close association or of a company in which you or a dependant or spouse have a private pecuniary or non-pecuniary interest (where your dependants or spouses interests are known to you) would present a conflict of interest.

If asked to perform such an investigation, the private interest should be declared to your manager and the task is to be assigned to another officer.

If you are constantly handling complaints or performing investigations, it may be useful to declare your interests to your manager to avoid such an assignment/situation occurring.

Contracts

Where you are in a position to seek tenders for contracts and one of the tenderers is a company/organisation/person in which you or a dependant or spouse has a private interest (where your dependants or spouses interest is known to you) or - in the case of a person - is a close friend or relative of you or your family, this has significant potential to present a conflict of interest, particularly where you are the sole decision maker or have a major influence on the outcome of the tender.

In such situations, the matter is to be reported to your manager and you should withdraw from involvement in the tendering process.

Again, if involvement in tenders forms a significant proportion of your duties, you may wish to declare your interests to your manager to avoid such an assignment/situation occurring.

Consumer Advice

Where your role involves providing a referral or advisory service to clients and you refer them to a company/organisation in which you or a dependant or spouse have a private interest (where your dependants or spouses interest is known to you) this situation could be deemed a conflict of interest.

Any such referral should be avoided, but if it does occur, it should be reported to and discussed with your manager.

Court Actions

Where you are involved in any form of legal proceeding for the ADCQ and you or a dependant or spouse have a private interest (where your dependants or spouses interests are known to you) in one of the parties to the matter, you should immediately declare that interest to your manager and withdraw yourself from involvement in the matter to avoid a conflict of interest.

Staff Recruitment & Selection

Participating in a decision to employ a person who is either related to you or a close personal friend is deemed to be a conflict of interest.

If asked to participate in a selection exercise and one of the applicants is related to you or is a close personal friend, the relationship must be declared to the Chair of the panel (or, if you are the Chair, to your manager) and you should absent yourself from the selection panel. This also applies to the recruitment of temporary and casual staff.

As an additional precautionary measure, it would be advisable for the chair of the panel to canvas the panel members during initial panel discussions regarding any relationships or friendships they may have with the applicants.

Accepting Gifts & Benefits

The acceptance of any benefits other than incidental gifts, customary hospitality, or benefits of a nominal value may be deemed a conflict of interest.

You should ask your self whether an informed and reasonable bystander would consider that the benefit creates a conflict of interest or is otherwise improper. If the answer is `yes' or `possibly', the offer of the benefit is to be reported to your manager, even if the benefit is not accepted.

The following questions (included in the *Code of Conduct*) will also be helpful in determining for yourself the acceptability of the gift:

- What is the purpose of the gift? Is it simply to thank you for a job well done or does the giver expect something in return?
- Will there be further or repeated contact with the giver and if so, will accepting the gift affect future dealings?
- What type of gift or benefit is it? Is it a token gift of negligible worth or is it valuable?
- Will there be adverse effects for the ADCQ and/or State Government if you do not accept the gift or benefit? (This is a very important consideration when dealing with individuals whose culture and/or customs may differ from ours).

Private Employment

Private employment is permitted outside of our normal working hours, providing there is no actual or potential conflict of interest between our private employment and our official duties.

Private employment which uses ADCQ resources, information or contacts constitutes a conflict of interest and is to be avoided or reported to your manager. This includes ADCQ vehicles, equipment and human resources. Failure to report such usage may result in disciplinary action.

Any private employment will be viewed by the ADCQ as secondary employment and any conflict should be resolved in favour of your employment with the ADCQ. For example your work hours with your secondary employer should not prevent you working your required hours with the ADCQ.

Non-Remunerated Activities

A non-remunerated activity such as membership of a professional or other group that uses ADCQ resources, information or contacts constitutes a conflict of interest and is to be avoided or reported to your manager. This includes ADCQ vehicles, equipment and human resources.

Note: *The ADCQ Code of Conduct provides additional information with respect to conflict of interest - please consult that document as well as your manager before making any judgements or decisions on the issue.*

Conflicts of interest must be resolved in favour of the public interest rather than in favour of an employee's interest. When in doubt, any perceived or actual conflict of interest is to be reported to your manager.

ADDRESSING CONFLICTS OF INTEREST

The *Public Service Act 1996* provides two separate approaches to addressing the issues of conflict of interest and stresses that the responsibility for resolving conflicts lies with both employees and the Anti-Discrimination Commissioner.

Proactive Approach

The *proactive* approach is for employees who hold positions of particular authority (e.g. significant pecuniary or decision making authority) to register all pecuniary and non-pecuniary interests (see Attachment 1 for specifics of information required) which could give rise to a real or apparent conflict of interest and provide those details to the Anti-Discrimination Commissioner.

Within the Anti-Discrimination Commission only the Anti-Discrimination Commissioner, the Deputy Commissioner, and the State Director (Complaint Management) are required, as a matter of course, to complete a *Declaration of Interests Advice Form*.

Other employees may consider that they have personal interests which at some point could affect their role as an investigator or decision maker and to avoid that situation they may choose to declare those interests to their manager.

The Anti-Discrimination Commissioner also has the discretion to request employees in particular positions to register their private interests (including those of dependants and spouses where these interests are known by the employee). The Anti-Discrimination Commissioner is thereby kept informed of any interests held by ADCQ officers which may impact on their duties or the decisions of the ADCQ (refer to section 83 of the *Public Service Act 1996*).

Reactive Approach

The other method of addressing conflict of interest is *reactive* and requires the recognition and reporting of any conflict of interest - whether real, potential or apparent - to your manager who will then determine the action required (refer to section 84 of the *Public Service Act 1996*).

PROCEDURE FOR DECLARING INTERESTS – Proactive Approach

What information will be required?

The following information will be required if a decision or request is made for private interests to be declared:

Pecuniary

- ownership of shares in public and private companies (where value exceeds \$5,000);
- bonds, debentures and similar investments (where value exceeds \$5,000);
- directorships and/or employment with companies or other organisations;
- partnerships;
- liabilities (where value exceeds \$5,000); and
- any other assets or liabilities which may present a conflict of interest.

Non-pecuniary

- membership of organisations eg. community groups (other than political, professional or industrial);
- any position of office bearer in an organisation whose functions are relevant to those of the employing authority; and
- any other assets or liabilities which may present a conflict of interest.

Updated information

Where a declaration of interests is made to the Anti-Discrimination Commissioner or delegate and any of the following changes occur in an employee's private interests or employment, a revised statement is to be provided.

- a significant change occurs in the amount or value of an interest which has been included in a statement made to the employee's chief executive;
- any change occurs in the interests about which information is required to be given in a statement made to the employer, including by way of acquisition or divestment;
- a significant change occurs in the duties of the employee; and/or
- a significant change occurs in the functions of the employing authority.

All information to be declared is included in the attached declaration form (Attachment 1). Where you have private interests which may conflict with your duties and responsibilities and yet the form does not include that category of interest, you are to include such information in an attachment.

Responsibilities of Employees

All employees are to think carefully about any private interests they may have which have the potential to affect decisions made in the course of their duty and, if unsure, discuss the matter with their manager. Employees are responsible for formally disclosing all conflicts of interest they may have according to the procedures established by the policy.

All information declared is to be true and accurate in accordance with the principles of integrity and accountability which are defined and discussed in the ADCQ *Code of Conduct*.

Responsibilities of Managers

Managers are responsible for complying with the policy with respect to their own actual and potential conflicts of interest. Managers are also responsible for carefully considering whether any positions under their supervision are vulnerable to potential conflicts of interest and discussing the matter with their employees. Any discussions regarding declaration of interests by employees are to be treated in the strictest of confidence. Managers should also keep in mind their privacy obligations under Information Standard 42 - Information Privacy.

Where a manager is unsure whether they or an employee should be declaring their private interests (or what interests they should be declaring), they are to check the matter with the Deputy Commissioner. In raising conflict of interest issues on behalf of a staff member, managers should either seek the consent of the concerned staff member, or raise the matter in a way that does not identify the staff member.

Managers are to record the receipt of disclosures of conflicts of interest reported to them by staff and advise staff about appropriate ways to manage conflicts. Please note that in all cases, the ultimate decision-maker with respect to conflict of interest matters will be the Anti-Discrimination Commissioner.

Processing Declarations

Senior Executives shall provide their declarations of interests to the Anti-Discrimination Commissioner who shall retain that information in a secure place.

All declarations of interest from other staff are to be forwarded through the relevant Manager to the Anti-Discrimination Commissioner who shall retain that information in a secure place.

All declarations of interest will be treated as private and confidential documents and access to the information will, apart from exceptional circumstances, be limited to:

- the senior officer to whom the original declaration was made; and
- the employee who provided the information.

Exceptional circumstances include:

- where access to the information is required or permitted under a statutory provision;
- where access is required as part of a disciplinary or misconduct investigation; or
- where the Anti-Discrimination Commissioner otherwise authorises access.

Like most Government documents, the register of declarations is subject to the *Freedom of Information Act 1992* (FOI). If any FOI application is received requesting access to your information concerning a conflict of interest matter, you will be consulted over the release of the information as an affected third party.

PROCEDURES FOR DECLARING CONFLICTS OF INTEREST – Reactive Approach

Responsibilities of Employees

When do I declare?	You should report a conflict of interest situation as soon as you recognise that the potential or perception may exist. This may arise in the routine discharge of the duties relating to your position. The sooner the issue is addressed, the more chance the conflict can be avoided and/or addressed.
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Why should I declare?	<p>You should declare any conflict of interest, whether perceived, potential or real, to maintain your personal integrity and that of the ADCQ, as well as the public's interest.</p> <p>The consequences of not declaring a conflict of interest may result in disciplinary action in accordance with the provisions of the <i>Code of Conduct</i>.</p>
What should I declare?	<p>You should declare as much information as is necessary to allow the matter to be assessed and/or investigated to determine whether a conflict exists.</p>
How should I declare?	<p>You should declare any possible or perceived conflict of interest to your manager on the <i>Declaration of Interests Advice Form</i> (Attachment 1). Your manager will assess the situation and seek advice where necessary to determine the appropriate action. You may also be required to provide a written report outlining the situation.</p> <p>Gifts and benefits should be reported to the Manager, Support Services, and entered into the <i>Gifts & Benefits Register</i>.</p>

Responsibilities of Managers

Once the potential for conflict of interest is reported to the employee's manager, it will be the responsibility of that manager to determine whether a conflict of interest exists and make or seek a decision as to the action required to address the situation. Decisions are to be noted on the *Declaration of Interests Advice Form* and forwarded to the Anti-Discrimination Commissioner through the Manager, Support Services. If relevant, a file note outlining actions taken to address the potential conflict will be added to the file to which the conflict relates.

The overriding responsibility of all employees is to avoid perceived or actual conflicts of interest situations where possible and declare them where they occur.

Declarations must be made in writing on the form provided at Attachment 1. In all cases, the ultimate decision maker with respect to conflict of interest matters will be the Anti-Discrimination Commissioner.

GIFTS & BENEFITS

Where a gift or benefit is other than an incidental gift, customary hospitality, or is a benefit of a nominal value, or you are in any doubt about the appropriateness of accepting it, you should report the matter to your manager prior to acceptance of the benefit.

Gifts with a market value greater than \$250 shall be reported. In circumstances where a client or supplier provides a gift within 1 year of the date on which the same provider gave the first or subsequent gift(s), and the combined current market value of such gifts exceeds \$250, the employee accepting the gifts must fully disclose the receipt of these gifts.

Please note that receipt of a gift or benefit does not always constitute acceptance - they can always be returned and the reason explained if necessary. However, where an element of doubt exists, all efforts should be made to avoid receipt of gifts which may constitute a conflict of interest. Additional information regarding gifts and benefits is included in the ADCQ *Code of Conduct*.

APPROVAL

The Anti-Discrimination Commissioner will have ultimate approval with respect to all conflict of interest matters, including:

- whether to pursue a particular action based on the information presented regarding perceived or actual conflict of interest; and/or
- the acceptance of gifts or benefits.

BREACHES

A breach of the procedures in this document which results in a conflict of interest situation occurring may have serious consequences, particularly for the employee.

One consequence may be disciplinary action as detailed in the ADCQ *Disciplinary Policy*. Managers who identify a conflict of interest situation occurring should discuss the matter with the employee, report the situation to their manager, refer to the policy on discipline for more information and contact the Manager, Support Services.

GRIEVANCES

Employees aggrieved by a decision with respect to a conflict of interest matter/situation may lodge a grievance. For information on grievances refer to the ADCQ *Grievance Resolution Policy*.

TRAINING

Training on identifying and managing conflicts of interest will be provided to all staff annually.

REVIEW

This policy will be reviewed 2 years from the date of approval by the Anti-Discrimination Commissioner.

FURTHER INFORMATION AND ASSISTANCE

Employees requiring further information about this policy should contact the Manager, Support Services.

Declaration of Interests Advice Form

This form is to be completed by all employees to advise the ADCQ of any private or personal interests held by themselves and/or by a dependant or spouse (including de facto spouse) that may have an influence on how the employee carries out official duties.

Directive 8/96 issued pursuant to s.83 of the *Public Service Act 1996* states that the information about the interests of a public service employee which the employee may be directed to give to the chief executive from time to time shall be as follows:

- identifying information in relation to all significant pecuniary interests of the employee and, where known to the employee, any significant pecuniary interests of a dependant or spouse (including *de facto* spouse) of the employee, including where applicable the income earned from, and the value of, those interests; and
- identifying information in relation to all relevant non-pecuniary interests of the employee and, where known to the employee, any relevant non-pecuniary interests of a dependant or spouse (including *de facto* spouse) of the employee.

The types of change in the interests of a public service employee, the occurrence of which would require the employee to give to the chief executive a revised statement of interests, shall be as follows:

- a significant change in the amount or value of an interest which has been included in a statement made to the employee's chief executive.
- any change in the interests about which information is required to be given in a statement made to the employee's chief executive, including by way of acquisition or divestment.
- a significant change in the duties of the employee.
- a significant change in the functions of the employing authority.

Enquiries regarding the *Declaration of Interests Advice Form* can be directed to the Manager, Support Services.

Name: _____

Work Unit: _____

Date of Declaration: _____

Ownership of Shares in Public and Private Companies (where value exceeds \$5,000)

	Name of Company
Employee	
Spouse	
Dependants	

Bonds, Debentures and Like Investments (where value exceeds \$5,000)

	Type of Investment	Investment Body
Employee		
Spouse		
Dependants		

Any Directorship in a Public or Private Company

	Name of Company	Position Held
Employee		
Spouse		
Dependants		

Any Employment by a Public or Private Company, or by Organisation

	Name of Company or Organisation	Position Held
Employee		
Spouse		
Dependants		

Partnerships

	Name of Partnership
Employee	
Spouse	
Dependants	

Liabilities (where the liability is other than a mortgage over the employee's principal place of residence and value exceeds \$5,000)

	Name of Liability	Creditor
Employee		
Spouse		
Dependants		

Other Relevant Pecuniary Interests

	Type of Interest
Employee	
Spouse	
Dependants	

SIGNIFICANT NON- PECUNIARY INTERESTS**Membership of any organisation (other than an industrial or professional organisation or political party)**

	Name of Organisation	Type of Membership Held
Employee		
Spouse		
Dependants		

Any position as an office-bearer in any organisation whose purposes are relevant to the functions of the employing authority.

	Name of Organisation	Position Held
Employee		
Spouse		
Dependants		

Other relevant non-pecuniary interests

	Name of Organisation	Position Held
Employee		
Spouse		
Dependants		

Employee Certification

I certify that:

- the information provided in this statement properly reflects as far as I am aware, all my interests and all the interests of my dependants and spouse that are known to me; and
- the information provided is in accordance with Section 83 of the *Public Service Act 1996* and Directive No 8/96.

_____/ /
Signature **Date**

Anti-Discrimination Commissioner Certification

I certify that I have familiarised myself with the information contained within the attached disclosure of interests.

_____/ /
Signature **Date**

Management Actions (if applicable):

_____/ /	_____	_____
Signature	Title	Date