

# Recording Conflict of Interest Declarations - Guidelines for Agencies

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Guidelines to assist State Service Agencies comply with requirements regarding the recording of conflict of interest declarations in relation to procurement activities.

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## Introduction

As State Service employees, the public places a great deal of trust in us to ensure that our activities are conducted in the best interests of the State and that public funds are spent wisely. We must behave honestly and with integrity while carrying out all our duties, and when undertaking procurement activities we particularly need to avoid any situation which may impinge, or might be deemed to impinge, on impartiality.

One such situation to be avoided would be a participant in a procurement process having either an actual or perceived conflict of interest in relation to the procurement activity. This situation could seriously undermine confidence in the integrity of Government activities.

Accordingly, to reassure the community and those wishing to do business with the Government that procurement processes and outcomes can be trusted, it is important that agencies have in place a process that allows for the recording of conflict of interest declarations which includes details on the action taken to manage the conflict.

## Purpose

The aim of this document is to provide information to assist agencies comply with the requirements of Treasurer's Instructions 1101 and 1201 regarding the establishment of a process for recording conflict of interest declarations in relation to procurement activities. This document has been developed as a guide only, and agencies may tailor their process to suit their own requirements and circumstances.

## Application

This Guide has been developed for the use of Tasmanian Government inner-Budget Agencies and those instrumentalities required to comply with the Treasurer's Instructions issued under the authority of the *Financial Management and Audit Act 1990*. The requirement to record conflict of interests applies to all procurement activity not just formal quotation or tender processes.

## Relevant Legislation

### **State Service Act 2000**

The State Service Code of Conduct, which is contained in Section 9 of the *State Service Act 2000* (the Act) establishes standards of behaviour and conduct that apply to all employees, including officers and Heads of Agencies. Section 9(8) of the Act provides that "an employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment".

Commissioner's Direction No. 5 establishes procedures for the investigation and determination of whether an employee has breached the Code of Conduct and is binding on all officers and employees. Alleged breaches of the Code of Conduct by Heads of Agencies are dealt with in accordance with section 18(1)(f) of the Act.

## ***Financial Management and Audit Act 1990***

Treasurer's Instructions are issued under the authority of the *Financial Management and Audit Act 1990* (FMAA) and apply to all inner-Budget agencies and to the bodies referred to in Schedule 2 of the FMAA.

Treasurer's Instructions 1101 and 1201 detail the principles upon which government procurement is based, one of which is compliance with ethical standards and observing the procurement code of conduct. These Treasurer's Instructions provide that:

- Government buyers must complete a conflict of interest declaration and take steps to avoid involvement in any procurement activity where any conflict of interest (actual or perceived) may arise; and
- Agencies must develop and maintain a process for the recording of conflict of interest declarations. Records kept must:
  - include details of the action taken to manage the conflict of interest, and
  - be auditable.

## **Establishing an Effective Recording Process**

Government procurement is a particular area of activity that could be considered as high risk for possible conflict of interest situations which could give rise to perceptions and allegations of preferential treatment. Accordingly, it is important that extra care be taken in this area to ensure that conflicts of interest are declared in a timely manner and that auditable records are kept in relation to the matter including the action taken to manage the conflict of interest.

For a process for the recording of conflict of interest declarations to be effective, everyone needs to be clear on what a conflict of interest is and what everyone's responsibilities are.

### ***What is a conflict of interest?***

A conflict of interest arises where the private interests of an employee conflict with an activity that the employee is involved in. Private interests are interests that can bring benefits or disadvantages to the employee or to others that the employee may wish to see benefit or disadvantaged such as relatives, friends, associates or even enemies.

Conflicts of interest can be actual or perceived. An actual conflict of interest is where there is a direct conflict between an employee's private interests and the procurement activity that he/she is involved in. For example, a member of the Evaluation Committee has shares in a company which tenders for a contract with the Agency; or an Administrative Assistant is regularly required to organise catering for meetings and he uses a catering business that is owned by his family.

A perceived conflict of interest is where a conflict of interest between an employee's private interests and the procurement activity that he/she is involved in might reasonably be thought to exist by others – whether this is actually the case or not. For example, a member of the Procurement Review Committee reviews the evaluation of a procurement that recommends the awarding of a contract to a company that her husband is employed with.

## **What are everyone's responsibilities?**

### **Agencies**

For conflicts of interest to be handled effectively, it is important that agencies develop appropriate procedures for managing conflicts of interest that clearly outline what is required of employees, supervisors/managers and/or any other persons in relation to identifying, declaring, managing and documenting conflicts of interest when they are involved in a procurement activity.

To comply with the requirements of Treasurer's Instructions 1101 and 1201, agencies must develop and maintain a process for the recording of conflict of interest declarations, and records kept must include details of the action taken to manage the conflict of interest and be auditable.

Conflicts of interest should be managed fairly and consistently and treated sensitively.

### **Supervisors/Managers**

Depending on the situation, and the content of the agency's procedures, it would be expected that supervisors/managers would play a particularly important role and would lead by example when their own conflicts of interest arise. They would need to make sure employees are familiar with the procedures, know how to identify a conflict of interest and also be very clear on what steps they need to take if a conflict of interest arises. In addition, it is their responsibility to communicate to any staff involved in procurement what is expected of them.

Agency procedures in relation to the recording of conflicts of interest will need to clarify who will have responsibility for reviewing declarations. Depending on the circumstances of the procurement activity this may include supervisors/managers, Chair of the Evaluation Committee, Procurement Review Committee or another employee within the agency that is deemed responsible for managing conflicts of interest.

### **Individuals**

While agencies are responsible for maintaining a process for the recording of conflict of interest declarations, the actual identification of a conflict of interest is each individual employee's responsibility. As the person who knows most about their own private interests, it is important that employees take responsibility for identifying and declaring any actual or perceived conflict of interest as soon as possible. In most instances, the early disclosure of a conflict will allow for the situation to be resolved before the integrity of the procurement activity is compromised. If an employee is not quite sure about a possible conflict of interest, he/she should discuss the situation with the appropriate supervisor/manager.

The Treasurer's Instructions provide that employees must complete a conflict of interest declaration and take steps to avoid involvement in any procurement activity where any conflict of interest (actual or perceived) may arise. In addition, the State Service Code of Conduct provides that an employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.

## **Managing Conflicts of Interest**

If an employee verbally raises the issue of a possible conflict of interest with a supervisor/manager the details should be documented as soon as possible to allow it to be formally recorded. The employee will need to provide sufficient detail to allow an informed decision to be made on the most appropriate way to manage the situation.

Depending on the circumstances of the disclosed conflict of interest, there may be instances where the supervisor/manager, Chair of the Evaluation Committee or another employee within the agency that is responsible for managing conflicts of interest considers that the conflict is extremely low-risk, that no action beyond the disclosure is required and that the employee should continue with his/her role in the procurement activity. It would be expected that this option would only ever be taken where the agency fully assesses the situation and considers that it could not reasonably be thought by others that the private interest of the employee could affect his/her impartiality and compromise the integrity of the procurement activity.

In most cases, in circumstances where an actual conflict of interest does exist, or it could be reasonably thought by others that a conflict exists, the employee should have no involvement in the procurement activity.

In instances where a conflict of interest becomes apparent part way through a procurement process, the agency may wish to consider the engagement of a probity adviser to review the process.

In all cases, records need to be kept on disclosures including how the matter was considered and what action was taken to manage the conflict. These records will need to be kept in such a manner that they are auditable.

Given that conflict of interest declarations may contain personal, sensitive and confidential information, associated documentation will need to be carefully managed, with agencies also needing to give consideration to information privacy issues.