

PARLIAMENTARY COUNSEL

Policy No. 2.11 Conflicts of interest and proper use of Commonwealth resources and information

Document release 4.0

Reissued June 2022

Next review: June 2025

Contents

Part 1—Introduction	1
Part 2—Policy	2
Part 3—In practice	3
Conflict of interest	3
Disclosure	3
Conflict of Interest register	4
FPC’s role in managing conflicts of interest.....	4
Material personal interests	5
Disclosure	5
Interests of immediate family members.....	5
Form of disclosure and confidentiality of records	5
Paid or unpaid outside employment.....	6
The use of Commonwealth resources, information and position	6
Post separation employment	7
Gifts or benefits	8
Gifts and benefits that can be accepted without approval.....	8
Obtaining FPC Approval	8
Register of gifts and benefits	9
Declining gifts or benefits.....	9
Frequent flyer or reward programs	9
Official hospitality	10
What is official hospitality	10
What is not considered official hospitality	11
Implications of FBT	11

Part 1—Introduction

1 The public is entitled to have confidence in the integrity of their public officials, and to know that an Australian Public Service (APS) employee's personal interests do not conflict with their public duties.

2 The APS Code of Conduct (the Code) requires employees to take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their employment¹.

¹ Subsection 13(7)(a) of the *Public Service Act 1999*

3 The Code also requires APS employees to behave both honestly and with integrity and with care and diligence in connection with their employment². Under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), employees are obliged to exercise their powers, perform their functions and discharge their duties honestly, in good faith and for a proper purpose³.

4 A **real** conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.

5 An **apparent** conflict of interest occurs where it appears that an employee's personal interests could improperly influence the performance of his or her duties but this is not in fact the case.

6 The appearance of a conflict can be just as damaging to public confidence in public administration as a conflict which gives rise to a concern based on objective facts.

7 Conflicts of interest, real or apparent, cannot always be avoided. Where this is the case, the Code requires employees to disclose details of any material personal interest of the employee in connection with their employment⁴. This obligation is analogous to the general duty of officials to disclose interests under section 29 of the PGPA Act.

8 The Code⁵ and the PGPA Act⁶ require that APS employees do not improperly use information, or their position, duties, status, power or authority, in order:

- (a) to gain, or seek to gain, a benefit or advantage for themselves or for any other person; or
- (b) to cause, or seek to cause, detriment to OPC, the Commonwealth or any other person.

9 Other relevant rules include:

- (a) section 1043A of the *Corporations Act 2001* (insider trading); and
- (b) subsection 142.2(1) of the *Criminal Code* (misuse of information to obtain a benefit).

Part 2—Policy

10 OPC will maintain and make employees aware of policies and procedures to support employees to avoid and manage real and apparent conflicts of interest, and to support employees to act with integrity.

11 All employees must disclose to FPC a potential conflict of interest (either real or apparent) arising in relation to their APS employment as soon as possible after becoming

² Subsection 13(1) and 13(2) of the *Public Service Act 1999*

³ Section 26 of the *Public Governance, Performance and Accountability Act 2013*

⁴ Subsection 13(7)(b) of the *Public Service Act 1999*

⁵ Subsection 13(9) and 13(10) of the *Public Service Act 1999*

⁶ Sections 27 and 28 of the *Public Governance, Performance and Accountability Act 2013*

aware of the potential conflict of interest. This is in addition to a disclosure of material personal interests (see paragraph 13).

12 Employees must make a new disclosure to FPC as soon as possible after becoming aware of a significant change relevant to their employment that occurs in relation to an interest that they have disclosed.

13 All Statutory Office Holders and employees of OPC must complete a disclosure form relating to material personal interests:

- (a) on appointment or re-appointment;
- (b) annually in July;
- (c) if there is a change in their responsibilities or in the issues or subjects in relation to the performance of their duties that causes the previous disclosure to be no longer current;
- (d) if there is a change in their personal circumstances that could impact on the performance of their duties.

14 All employees must seek approval from FPC before engaging in paid or unpaid employment in addition to their APS employment.

15 All employees must use Commonwealth resources and information and positional authority in a proper manner and for a proper purpose, and must not use Commonwealth information inappropriately following separation from OPC.

16 All employees must obtain FPC's written approval prior to accepting any offer of a gift or benefit valued at \$100 or more (excluding GST), except those described in paragraph 52.

17 All employees must obtain FPC's oral approval prior to accepting any offer of a gift or benefit valued at under \$100 (excluding GST), except those described in paragraph 52.

18 All official hospitality provided by OPC must be approved by FPC. Official hospitality should only be provided by OPC if it furthers the conduct of public business. Expenditure on official hospitality must be publicly defensible on the basis that the primary purpose of the event is work-related.

Part 3—In practice

Conflict of interest

Disclosure

19 A disclosure to FPC regarding a potential conflict of interest must be made in writing using the form available on the [Avoiding Conflicts of Interest](#) intranet page. This may follow an oral disclosure to FPC.

20 Guidance on what might constitute a potential conflict of interest is also available on the [Avoiding Conflicts of Interest](#) intranet page.

21 People Services team will place the disclosure on each employee's file marked Personal: Sensitive and it will be made available only to the employee, FPC and the relevant General Manager.

22 Employees should also disclose to team members (including supervisors) if there is a conflict of interest relevant to a current team or individual project. This is a best practice requirement.

Conflict of Interest register

23 People Services team will maintain a system for registering interests in order to support FPC, Second Parliamentary Counsel and General Managers to properly manage them. The register will:

- (a) be managed in accordance with the *Privacy Act 1988*; and will only be made available in full to FPC. Relevant parts of the register will be made available to Second Parliamentary Counsel, General Manager, Publishing and General Manager, Corporate;
- (b) ensure that disclosures are retained in accordance with the *Archives Act 1983*;
- (c) use internal controls to monitor disclosures to ensure they remain current. An annual request for employees to update their disclosed conflicts will occur at the same time as the annual disclosure of material interests; and
- (d) support General Managers to bring any serious real or apparent conflicts of interest to the attention of FPC.

FPC's role in managing conflicts of interest

24 If FPC is aware that there is a potential conflict of interest, FPC will decide whether there is, or could be, a conflict of interest and, if so:

- (a) whether an employee should continue to work on a particular project; and
- (b) whether to take any other action.

25 Other action that FPC might take could include:

- (a) allocating or re-allocating a particular project to another employee;
- (b) for a drafting project—informing the instructing agency that the conflict of interest exists (but only with the employee's consent).

26 If FPC decides that an employee has a conflict of interest in relation to their employment, FPC will inform the employee of that decision and provide an opportunity to discuss the matter.

Material personal interests

Disclosure

27 Employees and officials are required to disclose details of any material personal interest that the official has that relates to the affairs of OPC⁷ in accordance with instructions given by FPC⁸. This requirement is in addition to the requirement to disclose potential conflicts of interests as they arise (see paragraphs 11 to 12).

28 Guidance about material personal interests that may arise in connection with APS employment or that otherwise relate to the affairs of OPC may be found on the [Avoiding Conflicts of Interest](#) intranet page.

29 FPC and General Managers may use information contained in a disclosure for the purposes of allocating work.

Interests of immediate family members

30 Employees must disclose any personal interests or relationships of their immediate family that are known to them, where they consider that these interests influence, or could be seen to influence, the decisions they are taking or the advice they are giving. The term 'immediate family member' applies to partners and dependent children. It may also apply to any other relatives and close friends who live with the employee or with whom the employee has a dependent relationship.

31 It would be necessary in those circumstances for OPC 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*.

32 However, if the immediate family member does not consent to the disclosure of details of his or her interest, FPC must be informed of this fact and reasonable steps taken to avoid any situation where the interest of the immediate family member may conflict, or may reasonably be thought to conflict, with the employee's official duties.

Form of disclosure and confidentiality of records

33 A disclosure of material personal interests should be made on one of the two relevant forms available on the [Avoiding Conflicts of Interest](#) intranet page, and a scanned copy of the signed form sent by all employees to #Personnel as well as the following:

- (a) drafters and General Managers to FPC; and
- (b) Corporate Services staff to the General Manager Corporate Services; and
- (c) Publications staff General Manager, Publishing; and
- (d) Second Parliamentary Counsel to FPC and to the other Second Parliamentary Counsel; and

⁷ Section 29 of the *Public Governance, Performance and Accountability Act 2011*; 13(7)(b) of the *Public Service Act 1999*

⁸ Section 16 of the *Public Governance, Performance and Accountability Rule 2014*; Office Procedural Circular No. 2.1—Accountable Authority Instructions

- (e) FPC to the Attorney-General and each Second Parliamentary Counsel.

34 People Services team will place the disclosure on each employees' file marked Personal: Sensitive and it will be made available only to the employee, FPC and the relevant General Manager. Other recipients of the disclosures will destroy the disclosure after reviewing it. Material personal interests will be included on the Conflict of Interest register.

Paid or unpaid outside employment

35 Approval from FPC to engage in paid or unpaid employment (including directorships of an organisation) in addition to their APS employment may be sought by an email which outlines:

- (a) The nature of the employment and the employer, and consideration of any potential conflicts of interest;
- (b) The expected hours of work, and an assurance that the employee will work safely avoiding the risk of fatigue⁹.

36 Approval from FPC is required so that they can undertake a (or review the employee's) risk assessment. FPC must retain the ability to protect the reputation of OPC and the APS should they believe that the outside employment would put it at intolerable risk.

37 Where FPC declines to approve an application the reasons for the decision will be given to an employee in writing.

38 If the outside employment could, or could be seen to, impact on work responsibilities or otherwise relate to the affairs of OPC, it must also be disclosed in the disclosure of material personal interests (see paragraph 27).

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

The use of Commonwealth resources, information and position

40 Commonwealth resources and information and positional authority must be used in a proper manner and for a proper purpose.

41 OPC will take seriously, and will assess as potential suspected misconduct, reports of the use of resources, information, position, duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for an OPC employee or for any other person; or in order to cause, or seek to cause, detriment to OPC, the Commonwealth or any other person.

42 This includes the use of sensitive or privileged Commonwealth information to mitigate risks and increase returns in the trade of financial products (insider trading).

⁹ Refer to OPC Fatigue Guidelines

Post separation employment

43 This part applies to an OPC employee who proposes to leave APS employment to work in private employment.

44 If the private employer deals with the Commonwealth government in any of the following areas:

- purchasing and procurement;
- contractual relationships;
- issuing of licences or concessions;
- knowledge of confidential procedures;
- knowledge of government intentions;

then a possible conflict arises between the interests of the Commonwealth and the new employer.

45 An OPC employee offered employment where a conflict of interest could arise must:

- inform FPC as soon as possible;
- outline any relationship between the job offered and their official duties;
- describe any possible conflict of interest that the offer raises.

46 FPC will then consider:

- the importance and sensitivity of the employee's current position;
- the nature of the new appointment and its relationship to the current position;
- the relationship between the proposed employer and the Commonwealth—for example, if the proposed employer is a regular supplier of services or equipment to the Commonwealth or could benefit from knowledge of government policy intentions;
- the period during which information gained or contacts made would continue to be of value to the employee and their new employer.

47 FPC should discuss with the employee what immediate steps should be taken to avoid any conflict of interest. The steps may include:

- re-allocation of the employee's duties;
- temporary movement to a different work area;
- taking leave until the new appointment commences.

48 OPC will take seriously, and will refer to the police, any credible report that a previous OPC employee has used information the previous employee obtained in the course of their APS employment with the intention of dishonestly obtaining a benefit for himself or herself or for another person; or dishonestly causing a detriment to another person.

Gifts or benefits

49 A gift or benefit is anything offered to an employee (or their family member or associate), either free or at a reduced cost as a result of their employment with OPC. More information about what is considered a gift or benefit is available on the [Avoiding Conflicts of Interest](#) intranet page and the [APSC website](#).

50 Any employee in doubt as to whether they are being offered a gift or benefit, or what is the appropriate action to take, should discuss the matter with FPC or their General Manager.

51 The gift or benefit may be made available during or outside work hours. It is not permissible to circumvent these procedures by utilising leave (of any kind) to attend an event which would be considered a gift and/or benefit.

Gifts and benefits that can be accepted without approval

52 There are limited circumstances where minor, incidental gifts and benefits are being offered, but approval from FPC is not required. These are:

- gifts from overseas government officials that have a low monetary value. These gifts that may have cultural meaning should be on general display in OPC;
- gifts from APS organisations or APS employees, e.g. instructors, that have a low monetary value;
- lunches or drinks provided by instructors. However, approval needs to be sought from FPC if the lunch or drinks are paid for by a non-APS person or organisation, e.g. a consultant lawyer working on a project;
- simple working breakfasts/lunches, refreshments or small items (e.g. pens, stationery) offered in conjunction with presentations or services.

Obtaining FPC Approval

53 Approval for gifts or benefits can be requested orally from FPC who may require further information in writing (for gifts or benefits valued at **below \$100** (excluding GST)).

54 The information about the gift or benefit that may be required by FPC includes:

- the name of the organisation/person providing the benefit;
- whether or not an employee has previously received gifts or benefits (or offers of gifts or benefits) from the same source;

- a description of the relationship or dealings with the organisation/person providing the gift or benefit (e.g. a current procurement exercise involving that organisation/person);
- a description of the gift or benefit and an estimate of the value of the gift or benefit; and
- the reasons why acceptance of the gift or benefit should be approved.

55 Prior to accepting any offer of a gift or benefit valued at **\$100 or more** (excluding GST) **written** approval from FPC must be obtained by providing the information outlined in the paragraph above in writing to FPC and requesting approval.

Register of gifts and benefits

56 Business Operations team will maintain the OPC Gift Register which records all offers of gifts and/or benefits valued at \$100 (excluding GST) or more that are approved by FPC in writing. The register must be updated within 28 days of an employee receiving a gift or benefit.

57 The OPC Gift Register, including the names of the recipients of gifts and benefits, will be published every quarter on OPC's website, and link provided to the Australian Public Service Commission (the Commission) for publication on the Commission's website.

Declining gifts or benefits

58 There will be times when it is obviously inappropriate to accept gifts or benefits, and FPC's approval to decline a gift or benefit is not required.

59 In declining an inappropriate gift or benefit, an employee should advise the organisation or person concerned of OPC's policy and request that no further offers of a similar nature be made to employees of OPC.

60 If the return of a gift is not warranted or not practical (e.g. difficulty in establishing the return address of an unsolicited gift), consideration should be given to donating the gift to a charity. Any recommendation for this action should be forwarded to FPC for approval.

61 Employees involved in a tender, procurement or contract management process should be particularly sensitive to the offer of gifts or benefits during and after the process. It is essential that employees do not give the impression of favouring one supplier over another. During these processes, all offers of gifts or benefits from entities with an interest in the process should be declined.

Frequent flyer or reward programs

62 Airlines and other companies operating "reward" schemes may offer special promotions for using particular services. Employees are reminded that any benefits arising out of official expenditure are considered to belong to OPC.

63 Competitions or commercial promotions should not be entered, or should be declined where possible. If a benefit is received from a competition or promotion, the employee must

advise FPC as soon as possible. FPC will determine the appropriate action to be taken on a case-by-case basis.

64 Gifts, bonuses or special offers generated by private rather than official expenditure (e.g. points arising from private travel, expenditure of travel allowance) may be kept by employees.

Official hospitality

65 All official hospitality provided by OPC must be approved by FPC. Any proposal must be in writing and must include the following details:

- a description of the nature of the event (lunch, dinner, drinks etc) or benefit to be provided;
- the external parties involved (including names, official titles etc);
- the OPC employees involved;
- an estimate of the cost involved and the ratio of external/OPC employee costs (FBT liability is approximately equal to the amount to be spent on OPC employees); and
- a description of how the interests of OPC or the APS will be advanced by the event.

66 Before approving a proposal, FPC will consider the merits of the proposal, the direct cost of the proposal and any FBT liability that may accrue.

67 A copy of the proposal, approval and invoice/receipt (if available) must be provided to the Chief Finance Officer for Fringe Benefits Tax (FBT) reporting purposes.

What is official hospitality

68 Some of the events that are considered to be official hospitality are:

- taking a visitor or visitors to a restaurant/cafe for a meal;
- purchasing flowers or gifts for a visitor;
- hosting a cocktail party or reception for visitors or in celebration/promotion of an event;
- paying for almost any service provided to a visitor (movie tickets, tour tickets etc.).

69 As a rule, any expenditure relating to services of a personal or private nature could be construed as official hospitality.

70 Official hospitality is not to be used as a vehicle for rewarding OPC employees or providing any form of bonus outside the normal remuneration framework nor is it intended to be used to provide a benefit to other APS employees.

What is not considered official hospitality

71 Some events are clearly work-related. Expenditure in these circumstances is not covered by these guidelines and should be approved through normal purchasing procedures.

72 Some examples of this type of expenditure are:

- working lunches where meetings continue through normal meal times;
- morning/afternoon teas associated with meetings with external parties;
- catering for training courses or conferences;
- meals provided at conferences where the employee is on official travel¹⁰;
- providing copies of OPC publications to visitors;
- sponsorship or support arrangements for approved international visitors.

Implications of FBT

73 If an OPC employee receives a benefit as a result of an official hospitality event, OPC may be liable to pay fringe benefits tax on that benefit.

74 In some situations, OPC is required to notify the ATO of the “grossed-up” value of the benefits received in any FBT year (on an employee’s Payment Summary). The grossing-up process is designed to express the value of the fringe benefit in terms of the amount of pre-tax income an employee would need to be paid in order to purchase the same benefit.

75 The Chief Finance Officer can provide more information on FBT reporting requirements if required. However, employees should obtain independent advice on how reportable amounts may affect their individual financial position.

Related documents

76 The following documents are related to this policy:

- (a) Office Procedural Circular No. 2.1—Accountable Authority Instructions
- (b) OPC Fatigue Guidelines
- (c) APSC Guidance for Agency Heads - Gifts and Benefits
- (d) OPC No. 4.10—Domestic travel
- (e) OPC No. 4.11—International travel

¹⁰ Travel allowance for meals will not be provided in this case (see OPC No. 4.10—*Domestic travel* and OPC No. 4.11—*International travel*).

Review

77 This document will be reviewed at least every three years.

Meredith Leigh
First Parliamentary Counsel
June 2022

Document History		
Release number	Release date	Document number
1.0	24 March 2005	s04qm239.v05.doc
2.0	20 November 2007	s04qm239.v14.doc
3.0	30 October 2015	s04qm239.v24.docx
3.1 - renumbering only	May 2017	s04qm239.v27.docx
4.0	June 2022	S22ZD688.v08.docx

Note: Before May 2017, this policy was called Office Procedural Circular No. 105. In April 2022, this policy was renamed from Office Procedural Circular No. 2.11 Disclosing material personal interests and avoiding conflict of interests and incorporated Office Procedural Circular No. 2.12 Acceptance of gifts and/or benefits by employees, and official hospitality.