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Ethics, Integrity and Professional Standards Policy Manual

Corporate publications

Protocol Guidelines

DFAT Corporate Plan

Ethics, Integrity and Professional Standards Policy Manual ×

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Chapter 5: Conflicts of Interests

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This chapter sets out the Department's policy on avoiding, disclosing and managing conflicts of interest. It also sets out the Department's policies on outside employment and substantive voluntary work, employment after separation and dealing with lobbyists.

Employees should contact the Ethics, Integrity and Professional Standards Section (EES) at coi@dfat.gov.au (mailto:coi@dfat.gov.au) if they require clarification on the contents of this chapter or if they are uncertain about the ethical implications of a proposed course of action.

5.1 What is a Conflict of Interest?

5.1.1 A conflict of interest arises where a public official has private interests which may or do improperly influence the performance of their official duties and responsibilities. Conflicts can include not only the interests of individual employees and contractors, but also the interests of their immediate family (such as spouses, children or other dependents) and the interests of their business partners or associates.

5.1.2 Conflicts of interest are either real or apparent:

- **Real**: A real conflict of interest relates to a personal interest belonging to you and/or your immediate family members that could influence your decisions, actions or advice given in the course of your public or official duties. A conflict of interest does not have to exist at present for it to be real. A real conflict of interest might arise where your personal interests are not yet in, but could come into, conflict as a result of your official duties.
- **Apparent**: An apparent conflict of interest relates to a personal interest belonging to you and/or your immediate family members that could be seen to influence your decisions, actions or advice given in the course of your public or official duties, even though this is not in fact the case. An apparent conflict of interest differs from a real conflict of interest in that there is no actual conflict that could arise, although the nature of the person's public duties are such that there is, or may be, a reasonable perception by the public that a conflict of interest could in fact arise.

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Employee Obligations

5.1.3 All employees (APS employees, LES and contractors) have an important duty to uphold and promote the good reputation of Australia, the government, the Department and the post. This reputation can be compromised by a real or apparent conflicts of interest. For this reason, there are direct and indirect references to conflicts of interest in the *APS Code of Conduct*, the standard LES Code of Conduct and the duties of officials set out in the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

5.1.4 The *APS Code of Conduct* requires APS employees to:

- Behave honestly and with integrity in connection with APS employment.
- Take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment.
- Disclose details of any material personal interest of the employee in connection with the employee's APS employment; and
- Not improperly use inside information or the employee's duties, status, power or authority:
    - to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
    - to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

Contractors must act in a manner that is consistent with the *APS Code of Conduct* as set out in their contractual obligations.

5.1.5 The LES Code of Conduct requires LES employees to:

- Behave honestly and with integrity in connection with their employment with the Embassy, High Commission, Consulate or Business Office.
- Disclose, and take reasonable steps to avoid, any conflict of interest, either real or apparent, in connection with their employment in the Embassy, High Commission, Consulate or Business Office, including in relation to any outside employment and/or business activities; and
- Not make improper use of inside information, or 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, including the acceptance of gifts, sponsored travel, hospitality, accommodation, hire car costs; and entertainment.

5.1.6 *The PGPA Act 2013* (https://www.legislation.gov.au/C2013A00123/latest/text) sets out the duties of officials (APS employees, LES and certain contractors), which include to:

- Act with care and diligence.
- Act in good faith and for a proper purpose, including to manage or use public resources in an efficient, effective, economical and ethical manner.
- Not make improper use of inside information or their position to gain an advantage for themselves or another person, or cause detriment to DFAT or another person; and
- Disclose material personal interests.

5.1.7 All employees (APS employees, LES and contractors) must take reasonable steps to avoid situations where their private, financial or other interests (or those of immediate family members, such as spouses/partners, children or other dependents) and the interests of their business partners or associates could or could be perceived to conflict with their official duties. They must not allow these interests to influence the decisions they make, the actions they take or the advice they provide in connection with their official duties. If their interests and duties are in conflict, or could be perceived to be in conflict, they must disclose any such conflict to the Department.

5.1.8 The *National Anti-Corruption Commission Act 2022* (NACC Act) requires the Department to make certain mandatory referrals in relation to corruption issues. As outlined in section 5.2.12 below, a conflict of interest may not automatically constitute corrupt conduct. However, corrupt conduct can arise when a conflict of interest is concealed/unreported, understated, mismanaged or abused. For this reason, full and frank conflict of interest declarations by all employees are central to the Department's ability to effectively manage conflicts of interest and its obligations under the NACC Act. Dishonesty or mismanagement around conflicts of interest declarations which may or do lead to a breach of public trust or misuse of office; misuse of information gained in a person's capacity as a public official; or which may or do cause a public official to behave dishonestly or in a biased way when they carry out their official duties could engage the Department's obligations under the NACC Act.

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5.2 Avoiding, Disclosing and Managing Conflicts of Interest

Declaring Conflicts of Interest

5.2.1 All employees (APS, LES and Contractors) must acknowledge that they understand their obligations and responsibilities around conflicts of interest by completing the Annual Acknowledgement of Conflicts of Interest through the Diplomatic Academy online Training platform, Lumi (https://lumi.dfat.gov.au/view_course/1048). This is a mandatory requirement and must completed on an annual basis in addition to the Essentials Suite.

5.2.2 In addition to the Lumi acknowledgment, (https://lumi.dfat.gov.au/view_course/1048) all employees who have a conflict of interest to declare must complete Form A: Declaration of Conflicts of Interest and/or Outside Employment Request (/form/declaration-test) and have it approved by the appropriate designated approver as listed in Schedule A. (/about-us/publications/corporate/ethics-integrity-and-professional-standards-policy-manual/forms-and-schedules) Once Form A has been approved, a copy **must** be sent to coi@dfat.gov.au (mailto:coi@dfat.gov.au).

5.2.3 SES employees (including EL2 heads of mission/post and EL2 employees acting in an SES position in Australia for three months or longer) are also required to complete the Annual Acknowledgement of Conflicts of Interest through Lumi (https://lumi.dfat.gov.au/view_course/1048). However, agency heads and Senior Executive Service (SES) employees are subject to a specific regime that requires them to submit, at least annually, a written declaration of their own and their immediate family's financial and other material personal interests. SES who have no interests to declare must complete a NIL declaration as part of their Lumi acknowledgment (https://lumi.dfat.gov.au/view_course/1048) and this will count as their annual written declaration. SES with interests to declare will be required to complete Declaration of Conflicts of Interest and/or Outside Employment Request. (/form/declaration-test)

5.2.4 Employees with conflicts to declare must complete an updated Form A: Declaration of Conflicts of Interest and/or Outside Employment Request annually and in any of the following circumstances:

- Within fourteen days of commencing a new position at the SES level within the Department.
- Within fourteen days of commencing an acting position at the SES level for three months or more within the Department, or commencing HOM/HOP posting at the EL2 level.
- Within fourteen days of announcement by the Minister for Foreign Affairs of their HOM/HOP position
- Within fourteen days of any change in personal or family circumstances that could involve a new real or apparent conflict of interest, or where a previously declared conflict no longer exists.

What Type of Interests Do I Need to Declare?

5.2.5 Employees only need to provide information about private, financial and other interests that **could, or could be seen to, influence** their official duties. Other interests do not need to be disclosed.

5.2.6 While not exhaustive, the types of interests that may need to be disclosed include:

Financial interests such as:

- Outside employment.
- Real estate investments.
- Shareholdings, trusts or nominee companies.
- Company directorships and/or partnerships.
- Other significant sources of income.
- Significant liabilities and gifts.

Non-financial interests such as:

- Personal friendships/relationships with lobbyists.
- Personal friendships/relationships with media.
- Intimate relationships with other DFAT employees (including LES).
- Family relationships where there is a connection with DFAT or DFAT related programs.
- Personal relationships formed through work or engagement with the local community, including sporting, social, cultural or voluntary activities.
- Volunteer, board and advisory roles.
- Political affiliations and memberships

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5.2.7 Due to the complex and diverse nature of DFAT's work, employees should seek advice from EES about conflicts of interest via coi@dfat.gov.au (mailto:coi@dfat.gov.au). EES is located on the ground floor of 44 Sydney Avenue, Barton.

Interest Disclosures for Immediate Family Members

5.2.8 Where an employee discloses information about private, financial or other interests of an immediate family member, the individual should seek the consent of that family member to disclose the information and should declare that they have done so in the *Form A Declaration of Conflicts of Interest and/or Outside Employment Request.* (/form/declaration-test)

Managing Conflicts of Interest

5.2.9 While avoiding conflicts is generally preferable, in practice there may be some situations where a conflict of interest cannot be avoided and needs to be managed in a way which maintains confidence that the decisions made, the actions taken or the advice provided in connection with official duties has not been influenced.

5.2.10 As outlined above, a conflict of interest does not automatically constitute corrupt conduct. However, corrupt conduct can arise when a conflict of interest is concealed, understated, mismanaged or abused. Managing a real or apparent conflict of interest should consider the circumstances of the individual, including the role and responsibilities that the person performs for the Department and the nature and extent of the conflict.

These could include:

- Seeking the person's agreement to divest themselves of conflicting interests.
- Altering the person's duties so they are no longer performing the role which may potentially put them in a conflict situation; and
- Allowing the person to continue in the same role but for the Department to implement appropriate safeguards which address the real or apparent conflict of interest.

5.2.11 Designated approvers (as listed in Schedule A (/publications/corporate/ethics-integrity-and-professional-standards-policy-manual/forms-and-schedules)) must review Conflict of Interest Declarations Forms and consider whether a real or apparent conflict of interest exists. Approvers, in collaboration with the individual, are responsible for identifying strategies to manage the conflict. EES is available to employees wanting to seek advice on management strategies. Declarations made by SES employees will be sent directly to EES. EES will then collate declarations and provide to designated approvers for final sign off.

5.2.12 In reviewing Conflict of Interest Declaration Forms, EES may consult Legal Division, the Counter Fraud and Anti-Corruption Section, and/or other relevant areas in the Department.

Special Envoy

5.2.13 Special Envoy appointments are either undertaken by APS employees as part of their regular duties or by individuals who are employed solely as representatives for a specific function and who are not considered APS employees. Any proposed Special Envoy must complete a Conflict of Interest Declaration prior to commencement of those duties for review by EES prior to approval. Approval of Special Envoy Conflict of Interest Declarations should be completed by the CPO, the relevant Deputy Secretary, or the Secretary. Business areas utilising special envoy arrangements should contact EES via coi@dfat.gov.au (mailto:coi@dfat.gov.au) for advice.

5.3 Outside Employment and Voluntary Work

What is Outside Employment?

5.3.1 Outside employment is defined as any paid or unpaid work undertaken with an organisation other than the Department while still employed by the Department. This includes during periods of paid and unpaid leave, including when at Post as an accompanying spouse.

5.3.2 Outside employment also includes appointments to non-government boards and directorships, as well as undertaking study where an employee receives funding or financial support from an external organisation. In accordance with APSC Guidance (https://www.apsc.gov.au/working-aps/integrity/aps-conflict-interest-management/guidance-employees-and-managers/secondary-outside-employment-and-conflict-interest), it further includes business ownership and volunteer work.

5.3.3 All forms of secondary or outside employment **must** be declared and are subject to review and approval by the employee's supervisor, including during any period of leave from the Department.

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5.3.4 The Department's policy on outside employment applies to both APS employees and LES. Contractors are not required to obtain approval from the Department for outside employment. However, any outside employment that presents as a real or apparent conflict of interest must be declared in the contractor's Conflict of Interest Declaration.

5.3.5 Employees may apply for leave without pay when applying to undertake outside employment during the nominated period of leave. This can be completed by submitting a *Declaration of Conflicts of Interest and/or Outside Employment Request.* (https://www.dfat.gov.au/form/declaration-test) Upon submission, the form will be automatically sent to EES for review and progression to the appropriate delegate(s) for approval.

Employment as LES at DFAT-Managed Posts

5.3.6 APS employees on leave without pay wishing to work as LES at DFAT-managed overseas posts are not required to seek prior approval to do so. However, they must inform EES via coi@dfat.gov.au (mailto:coi@dfat.gov.au) (for non-SES employees) or the CPO (for SES) at the earliest opportunity that they have accepted an offer of employment as an LES at a DFAT-managed overseas post. They must separately contact Security Clearances and Investigations Section (SCI) should they require re-activation of their security clearance to undertake this work.

Voluntary Work

5.3.7 Voluntary work is considered outside employment. APS employees and LES employees must obtain approval **before** engaging in voluntary work. Some types of voluntary work can conflict with, or adversely affect the performance of, official duties in similar ways to paid outside employment, for example, where the relevant voluntary organisation has interests or aims in relation to or in conflict with policies or programs of the government or the Department; or where the number of hours and frequency of the voluntary work are substantial.

Directorships and Appointments to Non-Government Boards

5.3.8 Directorships and appointments to non-government boards (including private sector, academic and charitable organisations) are considered outside employment regardless of whether the positions are paid or unpaid. APS employees and LES employees **must** obtain approval before accepting such positions.

5.3.9 In examining requests to assume directorships and appointments to non-government boards, approvers will consider whether the relevant non-government organisation:

- is in a contractual relationship with the Department.
- has received or is likely to receive financial assistance from the Commonwealth.
- has a primary role to lobby ministers or government.
- is regulated by a government agency
- would otherwise present a real or apparent conflict of interest that could not be managed.

5.3.10 Where a conflict of interest is found to be material but manageable, a documented plan to manage the real or apparent conflict of interest must be developed in consultation with the employee's supervisor.

5.3.11 Ex-officio appointments to boards (i.e. appointments to boards which follow directly from the official positions employees may hold) need to be carefully assessed before approval is granted. Senior employees (notably HOMs/HOPs) are often invited to take up roles as honorary directors or board members with charitable, educational institutions, or business bodies. The Department recognises that these roles create goodwill and make a positive contribution to relations with host countries or to other Departmental objectives. Where approval is granted, there are several ways in which a conflict of interest relating to a board appointment may be managed, including removing the employee from any decision-making role in relation to any financial relationship the Department has or may have with the organisation; and restricting the employee's access to certain relevant information.

Appointments to Government Boards

5.3.12 Employees who sit on Department-related foundations, councils and institutes should be guided on conflict of interest issues by the *APS Code of Conduct* (https://www.apsc.gov.au/working-aps/integrity/integrity-resources/code-of-conduct) and the *DFAT Code of Conduct for Overseas Service* (https://icnprod01.sharepoint.com/sites/DFATIntranet/SitePages/human-resources/integrity-respect/ethics-integrity-and-professional-standards.aspx#code-of-conduct-for-overseas-service). Employees who sit on other government boards and committees should consult EES for further advice if required.

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Seeking Approval for Outside Employment

5.3.13 APS employees and LES wishing to engage in outside employment must obtain approval before engaging in that employment and abide by conditions attached to that approval. This ensures the employee, and the Department can take steps to avoid or manage any conflicts of interest arising out of the proposed outside employment. In circumstances where identified conflicts present unacceptable risks to the Department, the proposed outside employment will not be approved. Outside employment must not adversely affect the performance of the employee's official duties – as the main employer, the Department has first call on their availability to perform work.

5.3.14 Employees that wish to apply for outside employment must complete Declaration of Conflicts of Interest and/or Outside Employment Request. (https://www.dfat.gov.au/form/declaration-test) Once completed the form will be automatically sent to the nominated approver who will then forward to EES for review.

5.3.15 Employees who have been approved to engage in outside employment must complete a Change of Circumstances Form (http://dfatintranet.titan.satin.lo/support-services/security/Pages/scms.aspx) via the Security Clearance Management System on the DFAT Intranet. For more information on the Security Management System please contact (Security.Clearances@dfat.gov.au (mailto:Security.Clearances@dfat.gov.au))

5.3.16 Where the prospective employer is in, or is about to enter into a contractual, financial or other relationship with the Commonwealth, the applicant should seek a statement from an SES officer in the line area of the Department with primary responsibility for managing the relationship with the prospective employer. The statement must provide an assessment of whether the proposed outside employment is likely to give rise to a real or apparent conflict of interest with the applicant's work. This statement should be included in the applicant's request for outside employment and also reflected in their conflict of interest declaration.

5.3.17 Employees who have been approved to engage in outside employment must inform the delegate and EES of any changes to the nature or circumstances of that employment, or of any changes to their official duties that could give rise to a real or apparent conflict of interest. Where an employee moves to a different work area, they must inform their new supervisor and relevant SES officer of the nature of their outside employment.

5.3.18 Approval to engage in outside employment may be withdrawn where a real or apparent conflict of interest arises, or where the outside employment adversely affects the employee's ability to perform their official duties (for example, fatigue or limited availability).

Guidance for Approvers of Applications for Outside Employment

5.3.19 In deciding whether it is appropriate for an employee to engage in outside employment, a balance needs to be struck between the interests of the Department and those of the employee. The overriding principle is the need to maintain public confidence in the integrity and administration of the government, the Department and post.

5.3.20 Approvers must consult with EES in considering whether the proposed employment presents any real or apparent conflict of interest with official duties, whether the conflict can be managed and whether it will adversely affect the performance of official duties. An approver must consider:

- The nature of the employee's role in the Department.
- The effort and/or time required to undertake the proposed employment, and whether this could adversely affect the performance of official duties.
- Whether the proposed employment will be undertaken during normal work hours (https://icnprod01.sharepoint.com/sites/DFATIntranet/SitePages/human-resources/work-arrangements-pay-superannuation/working-hours-timesheets.aspx) (unless special circumstances exist, this will not be approved – during work hours an employee's responsibility is to concentrate on their role as a DFAT employee).
- Whether the proposed employment will be undertaken during a period of paid or unpaid leave.
- The potential for the proposed employment to damage the reputation of the Department; and the nature of the outside employer and its relationship to the Australian government, Department or post. In particular, whether the outside employer concerned is in, or is entering into, a contractual or funding relationship with the Australian government.
- Whether undertaking the proposed employment in conjunction with official duties may be perceived to, or does, lead to a breach of public trust or misuse of office; misuse of information gained in a person's capacity as a public official; or whether the proposed employment could cause the official to behave dishonestly or in a biased way when they carry out their official duties.

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5.3.21 Australian Public Service Commission (APSC) guidance states that an inherent conflict exists between the interests of the Department and those of a company or organisation with which it has a contractual or funding relationship. A common example for DFAT is where officers on leave without pay (for example, accompanying spouses) seek approval to work for contractors that are delivering Australian funded development programs.

5.3.22 While the interests of the Department and the company or organisation may align for the purposes of delivering the contract or funded project, generally the interests of the Department and those of the company or organisation will be different. This means that the duties an employee owes to the Department as a public servant, and those they may owe to an outside employer in a contractual or funding relationship with the Department may conflict.

5.3.23 Applications for approval to undertake outside employment with a company or organisation which has, or is about to enter into, a contractual or funding relationship with the Department will generally **not be approved**.

5.3.24 Designated approvers may grant approval to undertake outside employment with conditions (for example, with a requirement to limit the number of hours or the times at which work is undertaken, or with undertakings to not assist the outside employer with any procurement process involving the Australian Government).

5.4 Employment after Leaving the Department

5.4.1 Conflicts of interest can arise when APS employees choose to leave the APS and accept employment or establish a business in a non-government sector. Employees and agencies each have a role in ensuring such conflicts are declared and appropriately managed prior to separation.

5.4.2 APSC guidance states that APS employees should disclose offers of employment that could give rise to a real or apparent conflict of interest. This also includes any offers of employment that an employee is not inclined to accept.

5.4.3 To enable the Department to effectively manage real or apparent conflicts of interest arising from post-separation employment notifications, the following actions **must** be undertaken:

APS Employees

- Inform EES immediately in writing to coi@dfat.gov.au (mailto:coi@dfat.gov.au) of offers or applications for jobs presenting conflict of interest with official duties.
- Not disclose, use or keep official information after leaving DFAT.
- Refrain from working on, or advising in relation to, a contract or grant agreement to which DFAT is, or is proposed to be a party, for a period of nine months post separation, unless DFAT has approved the engagement.

LES

- Complete the APS Employees process
- Inform HOM/HOP immediately in writing of offers or applications for jobs presenting conflict of interest with official duties
- Not disclose, use or keep official information after leaving post.
- Refrain from working on, or advising in relation to, a contract or grant agreement to which DFAT is, or is proposed to be a party, for a period of nine months post separation, unless DFAT has approved the engagement.

Contractors

- Complete the APS Employees process
- Inform DFAT contract delegate immediately in writing of offers or applications for jobs presenting conflict of interest with official duties
- Not disclose, use or keep official information after leaving DFAT.
- Refrain from working on, or advising in relation to, a contract or grant agreement to which DFAT is, or is proposed to be a party, for a period of nine months post separation, unless DFAT has approved the engagement.

SES

- Complete the APS Employees process

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- Meet obligations under the Lobbying Code of Conduct for 12 months after leaving the Department.
- Comply with paragraph 5.4.9 of this Manual.
- Refrain from working on, or advising in relation to, a contract or grant agreement to which DFAT is, or is proposed to be a party, for a period of nine months post separation, unless DFAT has approved the engagement.

5.4.4 Delegates responsible for contracts should seek advice from EES if they believe there is a real or apparent conflict of interest.

5.4.5 If EES or the delegate responsible for the contract believes a real or apparent conflict of interest exists, the Department will implement a plan to manage access to official information and resources pending a decision by the relevant employee on the employment offer, the outcome of the application process and/or the separation by the employees from the Department or the post.

5.4.6 There are clear provisions under law that protect the disclosure and use of official information after an employee has left the APS.

5.4.7 It is an offence under Division 122 of the *Criminal Code Act 1995* (https://www.legislation.gov.au/C2004A04868/latest/text) for 'Commonwealth officers' (which for the purposes of Division 122 includes APS employees, LES and contractors) to publish or communicate without authorisation, official information which comes to their knowledge or possession by virtue of employment or engagement with the Department. It is also an offence for former APS employees, LES and contractors to publish or communicate without authorisation, official information which came to their knowledge or possession by virtue of employment or engagement with the Department.

5.4.8 While all employees must be aware of their obligations post separation from the Department, the level of risk differs depending on their last substantive role and so the additional points below also apply.

Engaging in Lobbying after Separating from the Department or Post

5.4.9 Under the government's Lobbying Code of Conduct (https://www.ag.gov.au/integrity/publications/lobbying-code-conduct), SES employees and equivalents (EL2 HOM/HOPs, EL2 employees paid as SES and EL2 employees acting as SES for 12 months or longer) must not **engage** in lobbying government representatives on any matters on which they have had official dealings as public servants over their last 12 months of employment with the Department. This restriction also extends to former employees in the offices of ministers or parliamentary secretaries under the *Members of Parliament (Employee) Act 1984* (http://www.austlii.edu.au/au/legis/cth/consol_act/mopa1984254/) (MoP(S) Act).

5.4.10 The temporary restriction on senior APS employees and MoP(S) Act employees applies only to those who work as lobbyists. It does not apply to those who separate and then work as in-house lobbyists (i.e. lobby the government on behalf of the company which employs them).

5.5 Dealing with Lobbyists

Employees

- Ensure lobbyists are registered, identify their clients' interests, in compliance with the Lobbying Code of Conduct. (https://www.ag.gov.au/integrity/australian-government-register-lobbyists/lobbying-code-conduct)
- Otherwise decline to participate in discussions involving lobbyists.

Lobbying Code of Conduct and Register of Lobbyists

5.5.1 Because lobbying of government representatives can create real or apparent conflicts of interest for those representatives, the Australian government has a Lobbying Code of Conduct and a Register of Lobbyists (https://lobbyists.ag.gov.au/register), both of which are available at on the Attorney Generals Department website (https://www.ag.gov.au/integrity/australian-government-register-lobbyists). The central aim of the *Lobbying Code of Conduct* and the Register of Lobbyists is to allow and require government representatives to establish the interests a lobbyist represents when the lobbyist seeks to influence government policy or decisions.

5.5.2 The Lobbying Code of Conduct applies to government representatives. APS employees and contractors in the Department are defined as government representatives for the purposes of the Lobbying Code of Conduct and must comply with the Lobbying Code of Conduct.

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5.5.3 The Lobbying Code of Conduct also applies to all lobbyists operating in Australia, including foreign lobbyists based in Australia and overseas-based lobbyists visiting Australia to lobby government representatives. It defines a lobbyist as "any person, company or organisation that conducts lobbying activities on behalf of a third-party client".This excludes people or businesses lobbying on their own behalf. Additionally, the *L*obbying Code of Conduct does not apply to charitable or religious organisations or to associations or organisations constituted to represent the interests of their members such as peak industry groups, trade unions and professional organisations. The Lobbying Code of Conduct also excludes non-profit organisations such as NGOs, members of trade delegations visiting Australia and individuals making representations on behalf of relatives or friends about their personal affairs.

5.5.4 The Lobbying Code of Conduct defines 'lobbying activity' as any communication a lobbyist has with a government representative which aims to influence a government decision, such as a change to legislation, policy, programs, funding arrangements, grants or contract decisions. Exclusions from the definition of lobbying activities are outlined in Clause 3 of the Lobbying Code of Conduct.

Responsibilities under the Lobbying Code of Conduct

5.5.5 Under the Lobbying Code of Conduct, APS employees and contractors must only deal with registered lobbyists. Before any lobbying activity commences, a lobbyist must confirm that they are on the Register of Lobbyists and must advise the name of the client represented and the nature of the matter the client wants to convey. APS employees and contractors must attempt to check whether a lobbyist is on the Register of Lobbyists before meeting that lobbyist.

5.5.6 APS employees and contractors must not knowingly and intentionally be a party to lobbying activities by:

1. A lobbyist who is not on the Register of Lobbyists; or
    a. A person employed, contracted or engaged by a lobbyist to conduct lobbying activities whose name does not appear in the registration details noted on the Register of Lobbyists in connection with the lobbyist
    b. A lobbyist or person employed, contracted or engaged by a lobbyist who, in the opinion of the Government representative, has failed to observe any of the requirements included in *Section 12 of the Lobbying Code of Conduct*. (https://www.ag.gov.au/integrity/publications/lobbying-code-conduct).
2. A Government representative who becomes aware of a breach of this Code by a lobbyist or a person employed, contracted or engaged by a lobbyist must report details of the breach to the Secretary.

5.5.8 The Lobbying Code of Conduct recognises that contact with lobbyists may occur during informal/social settings. In these situations, it is appropriate to accept statements by lobbyists that they and their clients are properly registered and to ascertain the issues they want to raise on behalf of their client. At the first available opportunity, APS employees and contractors must check whether a lobbyist is on the Register of Lobbyists. By following these procedures, APS employees and contractors should not be in breach of the Lobbying Code of Conduct.

5.5.9 The Attorney-General's Department administers the Lobbying Code of Conduct (the Code) and the Register of Lobbyists (the Register). For more information, please see Obligations of Government Officials included in the Lobbying Code of Conduct. (https://www.ag.gov.au/integrity/publications/lobbying-code-conduct)

Dealing with Lobbyists at Posts Overseas

5.5.10 The Lobbying Code of Conduct does **not** apply to overseas-based lobbyists engaged in lobbying government representatives overseas. Lobbyists operating in these circumstances are not required to register on the Register of Lobbyists. However, all employees at posts overseas should comply, to the extent possible, with the spirit of the Lobbying Code of Conduct. They should find out the interests a person who lobbies the post represents.

5.6 Conflict of Interest Case Studies and Possible Remedies

5.6.1 The following are case studies on conflict of interest issues. The advice contained is for illustrative purposes only, EES can provide specific advice on individual circumstances.

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Interest Type	Details	Reason for Conflict	Possible Determination	Possible Remedy
Shareholdings	Currently own 5000 Telstra shares	I am currently assisting Telstra expand its business overseas.	High Risk Requires immediate remedy	Employee required to (a) sell shares and cease trading and (b) sign a declaration not to purchase shares while in current position, or recuse themselves from relevant decisions or duties.
Private business	Family owns a language training centre overseas	My family own and operate a language training centre in my posted country. The Department uses the training facility. I hold a policy position at post and have no involvement with the company.	Medium – High Risk Requires Remedy	Employee to show clear separation of interest. Post to be aware and manage any information accordingly. Employee to sign undertaking to declare future conflicts when they arise.
Employment	Possibly employing a contractor as a DFAT employee	I have had a contractor working in my section for the past two years. The contractor is now applying for a position with DFAT and I am chairing the selection panel.	High Risk Requires Remedy.	There is current Departmental and APSC policy guiding conflicts of interest in relation to recruitment. While it may be acceptable to remain on the panel, good practice would suggest that an alternative chairperson is appointed.

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Interest Type	Details	Reason for Conflict	Possible Determination	Possible Remedy
Voluntary work	Spouse/partner volunteers for a local NGO	I am the SAO at post and my spouse/partner is volunteering for a domestic violence education program funded by DFAT. As SAO I have no direct contact with NGOs or the funded program.	Low Risk Record and monitor	There is no current conflict of interest. If the SAO's duties were to change and they had direct contact with the NGO in question or the funded program, there may be a need to re-assess the situation.
External employment offer	Over the past year I have been managing a Departmental contract with an Australian company. The project is nearing completion, and the company has offered me a job.	I have access to official and in-confidence information that would be of great benefit to the company who has offered me the position. In addition, I am recognised as an expert in my field and have conducted independent research on this subject matter. I have also made a significant contribution to relevant professional associations.	Medium – High Risk Misuse of official information	The employee should declare the offer of employment immediately regardless of their intention to accept or decline. The Department will implement a plan to manage access to official information pending a decision on the job offer. If the offer is accepted, the employee will continue to have their access to information monitored and be de-briefed prior to leaving the Department. Contact with Department after resignation should be monitored and incidents reported.

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Interest Type	Details	Reason for Conflict	Possible Determination	Possible Remedy
Outside employment	I am on LWOP outside Australia and have been approached by an NGO to design a tender application to be put to DFAT. I have never worked on a tender process within DFAT nor in administering aid funding. The contract is paid work. Would this be approved?	Clear conflict of interest due to a current DFAT employee assisting an external organisation to bid for DFAT funding. Tenderers themselves are also prohibited from seeking the assistance of current or former DFAT employees in the preparation of their proposal/bid.	Unlikely to be approved	Requires consultation with EES
Outside employment	I am on LWOP accompanying my spouse on posting and have been offered employment with an NGO in their corporate team.	Even though there is a contractual/funding relationship between the NGO and the Australian Government, given that this relationship is at a global (not program-specific) level, and that the applicant has not engaged with the NGO during the course of his/her official duties, there may be a sufficient separation of interests to allow this proposed outside employment to proceed	Dependent on deeper assessment of facts of the case	Requires consultation with EES

Department of Foreign Affairs and Trade

R.G. Casey Building
John McEwen Crescent
Barton ACT 0221 Australia

Phone: +61 2 6261 1111
ABN: 47 065 634 525

Contact us (/Pages/contact-us.aspx)

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DFAT official use of Social Media Policy

s 22(1)(a)(ii)

s22(1)(a)(ii) - pages 14-17 are irrelevant and the following pages have been removed

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s 22(1)(a)(ii)

3.2 HOM, SES and staff use of personal social media

DFAT's policy on acceptable personal use of social media set out in section 8.5 of the Ethics, Integrity and Professional Standards Policy Manual | dfat.gov.au.

The policy requires all staff to maintain a sharp distinction between personal and official social media accounts. This helps to ensure the department communicates through the one authoritative voice on social media and retains ownership of the content, following and intellectual property invested in its official social media assets. It also protects the privacy and security of staff and ensures personal use does not unintentionally compromise or disrupt the department's operations.

Departmental staff, particularly Heads of Mission/Post or SES officers, should be mindful that the public may not necessarily be able to separate a private identity from a role as a DFAT employee. This is particularly true when serving in the overseas environment, where what you say may be perceived as representing the Australian Government.

For more information on the specific conditions under which HOM/HOPs and SES may use personal social media to listen, engage and stay professionally informed, refer to Head of Mission and SES: Guide to Personal and Official Use of Social Media. The principles described for personal use of Facebook, X (formerly Twitter), Instagram and LinkedIn apply equally to WeChat and Weibo used by China posts, and other instant messaging apps such as Telegram.

4. Conduct, ethics and risk management

4.1. Conduct and ethics

It's important to remember that when you use social media in any capacity you are still bound by the Australian Public Service (APS) Code of Conduct, Values and Employment Principles and the DFAT Security Framework (OurSecurity) which expect you to uphold the integrity, good reputation and security of DFAT and the APS. DFAT Codes of Conduct also apply to locally engaged staff, employees on secondment to DFAT, employees on leave, non-ongoing employees and contractors. Under the Overseas Code of Conduct, an employee's household members are also expected to behave in a way that upholds the reputation of Australia and the department, and this includes in relation to social media use.

All staff are expected to take personal responsibility for whatever they do online. APS employees, LES employees and contractors must maintain the highest standards of

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professionalism, probity and accountability when engaging with social media and other online platforms. When sharing personal social media, DFAT staff must adhere to guidance in Chapters 8.4 (Making Public Comment) and 8.5 (Acceptable Personal Use of Social Media) of the Department's Ethics, Integrity and Professional Standards Policy Manual, which is underpinned by the Australian Public Service Commission's APS Values and Code of Conduct in practice | apsc.gov.au, and their publication, Social Media: Guidance for Australian Public Service Employees and Agencies | apsc.gov.au.

s 22(1)(a)(ii)

s22(1)(a)(ii) - pages 20-49 are irrelevant and the following pages have been removed

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Australian Government

Department of Foreign Affairs and Trade

MEDIA ENGAGEMENT AND PUBLIC COMMENT: POLICY GUIDANCE



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Media Engagement and Public Comment: Policy Guidance

This policy is effective from 20 September 2022 s 22(1)(a) and replaces s 22(1)(a)(ii)

It sets out principles and guidelines for **engagement with the media** by DFAT staff and by individuals and entities funded by departmental programs. It also sets out policy guidance and procedures for staff to make **public comments**, through speeches, publications, and other online platforms, including social media, in their **official capacity** and in their **private capacity**.

DFAT staff are not authorised to engage with the media on any official matters except as expressly stated in these guidelines. Unauthorised engagement with the media may constitute a breach of the APS Code of Conduct in the *Public Service Act 1999*.

Principles

Engaging the media is a key element of the department's strategic communications and can enhance domestic and international understanding of what we do. The department's approach is guided by the following key principles:

- The department's portfolio ministers have primary responsibility for speaking about foreign, trade and development policy to the Australian public.
- The department engages with the media and the public to communicate our role, the services we provide, and how this benefits Australia. We do this as part of an APS that is open and accountable to the Australian community and in a manner that ensures the protection of information, staff and assets
- The department takes a proactive and carefully coordinated approach to media engagement in Australia to ensure consistent messaging across the department and government.
- Heads of Mission (HOMs) and relevant senior executive staff posted overseas have a mandate to engage with local media in their countries of accreditation in support of post objectives.

Obligations

The APS Code of Conduct requires staff to be apolitical and ethical. APS staff are also bound to protect official information in accordance with regulation 2.1 of *the Public Service Regulations 1999*, and comply with obligations under the *Privacy Act 1988.*

DFAT staff are not authorised to engage with the media on any official matters except as expressly stated in these guidelines. Unauthorised engagement with the media may constitute a breach of the APS Code of Conduct in the *Public Service Act 1999*.

When making public comments, APS staff must ensure that their behaviour is consistent with the APS Code of Conduct, Values and Employment Principles, as well as the DFAT Security Framework and the Ethics, Integrity and Professional Standards Policy Manual. DFAT Codes of Conduct also apply to locally engaged staff, employees on secondment to DFAT, employees on leave, non-ongoing employees and contractors. Staff must also consider the personal security and physical security implications of information they disclose publicly.

Staff should treat social media in the same way they would in relation to making any public comment. The Ethics, Integrity and Professional Standards Policy Manual sets out DFAT's policy on acceptable personal use of social media and includes case studies. The Australian Public Service Commission publication Social media:

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Guidance for Australian Public Service Employees and Agencies and the DFAT Guide to Official Use of Social Media provide further practical information on the standards of behaviour expected of staff. This policy provides guidance to staff in relation to public comment in both an official and private capacity.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

5. Guidelines for public comment in a private capacity

As stated in the Social media: Guidance for Australian Public Service Employees and Agencies, Australian Public Service (APS) employees have a right to participate in online society, just as they have rights as citizens of Australia to engage in community life. APS employees are entitled to private lives, personal views and political opinions.

At the same time, the unique nature of APS employment means expressing our views can reflect not only on us as individuals, but on our agencies and the APS as a whole. Our personal behaviour can ultimately affect the confidence of the Australian community and the Government in the integrity of the APS as an institution. This is why some of our obligations as public servants extend into our private lives, and must be balanced with our rights as citizens.

All APS employees are bound by the APS Values, Employment Principles and Code of Conduct set out in the *Public Service Act 1999*. This means that APS employees' behaviour outside work is subject to the Code of Conduct to the extent that:

- it could reasonably be viewed as failing to uphold the integrity and good reputation of the employee's agency or the APS, or
- it could reasonably call into question the employee's capacity to comply with the Values and Employment Principles in their work – for example, their capacity to be impartial or respectful.

The risk of damage to public confidence will always depend on the circumstances of each case. The APSC has identified three risk factors that can increase or mitigate the risk in making public comment online: the employee's seniority, the relationship between the topic and the employee's work, and how extreme the expression of their view is.

DFAT staff in Australia or overseas, including HOMs/ HOPs, contractors, other A-based staff and locally engaged staff must consult Assistant Secretary, Communications Branch (AS CMB) if they wish to make speeches, publish material, or make public comment to the media in their private capacity.

AS CMB will make a decision based on the APS Values, Employment Principles and Code of Conduct set out in the *Public Service Act 1999* and, where appropriate, the factors set out in the APSC guidance. AS CMB will also take into account the requirements for all APS staff to protect official information, and the guiding principles on public comment set out in the Ethics, Integrity and Professional Standards Policy Manual.

AS CMB will reach a decision in consultation with relevant line areas and other parts of department, including deputy secretaries and ministers' offices where appropriate. Staff must consider contact reporting and conflict of interest reporting obligations where they are engaging with media representatives in a private capacity.

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If a speech, publication or public comment in a private capacity draws unanticipated media coverage after the fact, staff must inform AS CMB and MLS (media@dfat.gov.au). AS CMB and HOM/HOP should also be made aware of any private dealings staff have with the media which may reasonably become public in circumstances capable of being interpreted as reflecting a departmental or post view

Annex C provides examples of request and likely outcomes of assessment. Approval may come with conditions, including disclaimers to clarify that the views represent the employee's personal views (see examples at Annex D).

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)