## Policy Statement

TASMANIAN STATE SERVICE POLICY
MANAGING CONFLICTS OF INTEREST IN RECRUITMENT
June 2018

The Tasmanian community is entitled to have confidence that all employment decisions in the Tasmanian State Service are based on merit, and that recruitment processes are carried out in an impartial, ethical, efficient and professional manner.

Conflicts of interest, whether perceived, real or potential, will occur. Where a conflict of interest exists, at any stage in the recruitment process, that conflict must at all times be identified, declared, documented and effectively and transparently managed, so that there is no question about the merits of the outcomes and principles applied.

The approach to managing conflict of interest is based on the following principles:

* Conflicts of interest, where they exist, even where small and considered inconsequential, are to be disclosed as soon as practicable.
* Disclosures of all real, potential and perceived conflicts are to be transparent and documented.
* Conflicts of interest in themselves are not necessarily wrong or unethical, however identifying and managing the conflict is critical to upholding the State Service Principles.
* Conflicts of interest cannot always be avoided and, for recruitment processes, this may not always be practical, however the conflicts of interest must be appropriately and efficiently managed.
* The existence of a conflict of interest does not over-ride an employee’s/officer’s obligation to perform their duties.
* A declared conflict of interest (and steps taken to manage it) must be documented and noted in the recruitment selection report.
* Employees have a responsibility to minimise creating or entering into situations which may result in a conflict for themselves, or other people. However, no person should be excluded from the opportunity to apply for a position because it may create a conflict of interest.

**Application**

This Policy applies to all people involved in the appointment and/or promotion of persons to vacancies in the Tasmanian State Service, whether full-time, part time or fixed term including casual, and also applies to recruitment from approved employment registers and external recruitment companies.

This includes, but is not limited to, selection panel members, selection panel chairs, delegate, scribes, recruitment companies and any other people involved closely in the recruitment process who either have, or may be seen to have, influence in the decision-making process.

Agency specific policies and procedures may be developed by Heads of Agencies to support the implementation of this Policy and to refine practices for that agency.

**Defining conflicts of interest**

Conflicts of interest arises from a conflict between the performance of a public duty, and a private or personal interest.

A personal interest includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, such as relatives, friends or antagonists.

A conflict of interest may be actual, perceived, potential or an apprehension of bias.

* Actual: an actual conflict of interest occurs when there is a conflict between a person’s official duties and responsibilities in serving the public interest, and their personal interest.
* Perceived: a perceived conflict of interest occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case.
* Potential: a potential conflict of interest occurs where a person has a personal interest that could conflict with their official duties in the future.

Personal interests may be pecuniary or non-pecuniary:

* Pecuniary: refers to an actual or potential financial gain or loss for the person, their family, friends or close associates.
* Non-pecuniary: refers to an interest that is not financial or monetary but arises from such things as personal relationships, beliefs or involvement in social, cultural, religious or sporting activities.

**Apprehension of Bias**

The concept of apprehension of bias is wider than conflict of interest. It is drawn from circumstances or by the outward appearance of the decision-making process. Apprehension of bias may occur when a fair-minded person might reasonably think that a decision-maker might not bring an impartial mind to the decision, noting the difference between an actual impartial mind and one that is seen to be impartial.

**The recruitment process**

The recruitment and selection process includes all stages of the recruitment process where it might be perceived that an applicant has an unfair advantage or that a participant in the decision-making process will be biased towards or against a particular outcome. This includes stages such as job design, advertising, shortlisting and interviewing.

**Stages of managing a conflict**

The stages of managing a conflict are:

1. **Identifying** that there may be an actual, perceived or real conflict of interest and/or apprehension of bias.
2. **Declaring** the conflict of interest to the other decision makers prior to assessment process starting, or as soon as a conflict is identified.
3. **Documenting** the conflict of interest and/or apprehension of bias.
4. **Managing** the conflict of interest through management strategies approved by the delegate, to effectively and transparently manage that conflict so that the perception and risk to the decision making is eliminated or significantly reduced. Where the conflict sits with the delegate, then the delegate is to ensure that they have in place appropriate mechanisms to manage the conflict.

**Association to applicants**

If an association exists between an applicant and someone involved in the recruitment process, then that relationship needs to be declared, documented and managed. Association includes but is not limited to:

Work association – no regular contact/ relationship

Is or has been a direct supervisor of applicant

Referee for applicant

Workplace friendship

Relationship involving social activity outside work

Family member

Close relationship

The closer the nature of the association, and the degree to which this will be perceived to potentially or actually bias decision-making, will inform the appropriate management strategy to be implemented.

**Management Strategies**

Management strategies are the actions or approach that is taken to manage the conflict of interest. The strategies can range from:

**Removing** the person’s involvement in the recruitment process.

**Restricting** the person’s involvement in the recruitment process. Restrictions may include excluding involvement in part of the process, part of a discussion or limiting access to information.

**Recruiting** an independent or third party to oversee or review the decision-making.

In selecting the most appropriate approach, consideration should be given to the importance and relevance of the person in the recruitment process, apprehension of bias and the effectiveness of the strategies to reduce the risk.

**Roles and responsibilities**

Head of Agencies or delegates are to ensure that:

* Policies and procedures for managing conflicts of interest for all recruitment processes in their agency are communicated to all employees/officers.
* Restructures and job design are open and transparent processes.
* Selection panel members have the capability and knowledge to participate effectively in State Service selection processes.
* All parties involved in recruitment processes are aware of their obligations and identify and manage their conflicts of interest.
* All recruitment processes have well documented conflict of interest declarations and management strategies consistent with this Policy.
* They and employees/officers with delegation to approve an appointment/promotion are satisfied that the strategies to manage any conflicts of interest are appropriate, effective and transparent, and that the conflict of interest has not influenced the selection panel’s recommendation.
* Employees/officers with delegation to approve an appointment/promotion are aware of their duties to ensure that conflicts of interest have been appropriately managed before approving recommendations from a selection panel.

Delegates are to ensure that they:

* Are cognisant of their duties to ensure that conflicts of interest have been appropriately managed before approving recommendations from a selection panel/recruitment company.
* Take into consideration the entire recruitment process from job design to the panel’s recommendation(s).
* Are satisfied that the requirements under this Policy are met.

Panel chairs are to ensure that:

* They are aware of their obligations under this Policy, and related agency specific policies.
* The conflicts of interest have been identified, declared, documented and processes are in place that effectively and transparently manage those conflicts.
* All parties involved in the recruitment process are aware of the declarations and strategies of the other parties.
* Conflict(s) of interest have not influenced the panel’s recommendation(s).
* They report any actual, perceived or potential conflict of interest that they observe immediately or as soon as practical.

Selection panel members are to ensure that:

* They are aware of the obligations under this Policy, and related agency specific policies.
* They report any actual, perceived or potential conflict of interest that they observe immediately or as soon as practicable.
* Conflict(s) of interest have been identified, declared, and documented in writing and processes are in place that effectively and transparently manage their conflict(s).
* They are aware of and satisfied that the other parties involved in the selection process have appropriate strategies in place to manage the conflict, and that the panel’s recommendation(s) has not been influenced by the existence of any known conflicts.
* They seek advice from the vacancy manager/HR and/or delegate as required.

Vacancy managers/HR are to ensure that:

* Potential applicants are, as far as practicable, not involved in the job design and preparation of the statement of duties and selection criteria.
* There is no preferential treatment to any applicant or access to additional information that is not available to the broader potential applicant pool.
* They report any actual, perceived or potential conflict of interest that they observe as soon as practical.

Referees are to:

* Provide a statement of their personal and professional relationship to the applicant.
* Where they are also a panel member agreed strategies are in place to manage the conflict which have been agreed to by the panel before the selection process has commenced, or as close as possible to the selection process having commenced.

**Legislative basis**

The Code of Conduct in Section 9 of the *State Service Act 2000* requires that an employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.

Recruitment practices and procedures must also comply with relevant Employment Directions, Treasurer’s Instructions, and policies, practices, procedures and standards issued under the authority of the State Service Act.

**Associated documents**

Attached to this Policy are supporting information and tools to assist in the implementation of this Policy. Heads of Agencies may develop their own policies and procedures and templates to support this Policy.

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| Approval and Review | Details |
| Approval Authority  | Issued under Section 15(1)(b) of the *State Service Act 2000* |
| Authorised by | Jenny Gale, Head of the State Service |
| Date of Authorisation  |  June 2018 |
| Date of Last Review  | New policy |
| Date of Next Review | June 2020 |

Conflict of Interests – Supporting Tools

These tools have been developed to assist Tasmanian State Service agencies implement the Policy: Managing Conflicts of Interest in Recruitment. The use of these tools is optional, and should be adapted to meet agency specific requirements.

SUPPORTING TOOLS

MANAGING CONFLICTS OF INTEREST
IN RECRUITMENT

June 2018

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###### Actual or apprehension of bias in selection decisions explained

Selection panel members must also consider whether there may be an actual or an apprehension of bias against any applicants for a selection.

In the case of selection panels, this is whether a fair-minded person might reasonably think that a member of a selection panel might not bring an impartial mind to the selection decision, noting the difference between an actual impartial mind and one that is seen to be impartial.

It is recommended that where there has been or there is an outstanding complaint or grievance against a panel member by an applicant then consideration should be given to replacing the panel member to avoid an apprehension of bias application.

Sometimes in a selection process an applicant may waive their right to claim actual or apprehended bias if they do not raise the issues prior to the selection proceeding. In a recent selection review where this issue was considered the applicant conceded they knew the constitution of the panel before interview and did not raise the issue of any bias. It was also determined that the applicant could not establish that there would have been any adverse issues arising if they had made the claim and therefore they had waived their right to claim bias.

However, it will not always be the case that an applicant who knows of issues which might give rise to the apprehension of bias and does not raise the issue has waived the right to raise the issue later. It will all depend on the facts of the each process and circumstance.

As a good practice it may be worth advising applicants of the constitution of the panel prior to the commencement of the process so that any issues can be raised and dealt with before the selection process starts. It also provides applicants with the opportunity to raise any concerns and, should they not raise concerns, they may then have waived their rights to raise them later.

###### Suggestions and checklists for responsible people in the recruitment process

**Suggestions for a Head of Agency**

* Set a clear expectation for selection panel chairs and members about the importance of their role and the requirements to uphold merit and manage conflicts of interest
* Ensure appropriate training is available for panel members
* Be satisfied that those with delegation to approve appointments have a clear understanding of their role and obligations, and are capable of effectively managing conflict of interest risks
* Include conflict of interest templates in selection panel reports

**Checklist for the Chair of a selection panel**

* Panel members have been asked about any conflicts of interest prior to assessing applications
* Panel members’ conflicts of interest are reviewed once the applicants are known
* Conflicts of interest are documented as part of the selection process
* There are agreed management strategies in place for any conflicts of interest
* The management strategies have been effective to manage the conflicts of interest
* Satisfied that the panel members can adequately manage the conflicts of interest and that the panel membership does not need to be changed
* Satisfied that any internal applicants have not been unreasonably advantaged by their involvement in the design of the vacancy
* Referees have disclosed their relationship to the applicant
* Management strategies implemented where the panel considers that the referee has a conflict of interest which may put the selection process at risk

###### Strategies and options for managing a conflict – selection panels

Strategies should be implemented which either remove the conflict of interest or minimise the risk of that conflict biasing, either actual or real, the decision-making process.

Possible strategies include:

* Replace the panel member with the conflict of interest with someone who does not have a conflict with the applicant.
* Ensure at least one independent person is on the selection panel.
* The panel member with the conflict makes comments about the applicant after the other panel members have made an assessment.
* Where a panel member is a referee:
	+ Replace with an alternative panel member; or
	+ Provide referee reports/comments prior to seeing the applications and the interview process; and/or
	+ Seek alternative or additional referees from the applicant
* Where the panel member is the applicant’s supervisor:
	+ Replace the person with another panel member; or
	+ Have another panel member lead questions specifically about the workplace; and
	+ The panel member be extra mindful of containing their comments to only the information in the process and not extraneous information.
* Use an internal or external probity advisor or independent observer.
* Ensure selection panel reports are well written, transparent and comprehensive and clearly demonstrates how conflicts have been managed and the decision reached is objective and objectively considered and reasoned.

###### Job design process

The following considerations should apply when reviewing vacant positions, restructuring or redesigning work units/roles:

* Avoid potential applicants for roles taking a lead in design/redesign of the roles.
* Ensure there is separation between the final recommendations on a new/redesigned role and current employees and/or potential applicants.
* Ensure all employees have the opportunity to have input into restructures and job designs.
* Make use of an independent person, such as a HR person, to assist in the job design process.
* Ensure that, at a minimum, employees in the immediate work area have equal access to information about the redesigned role.
* Ask anyone involved in the design/redesign process to declare any conflicts of interest such as relationship with potential applicants or employees/officers who may be assigned those duties.

###### Common questions – myth dispelling

**I can’t chair a selection panel, or be on a selection panel for a vacancy I supervise because there will be internal applicants?**

No. It will be unavoidable that workplaces will have internal applicants for vacancies. It is appropriate in the majority of these cases that the vacancy’s supervisor is a key person in the selection process.

As part of the selection process that person must declare and document their interests including their relationship with the applicant, including apprehension of bias. In all cases there must be management strategies in place that the selection panel and delegate are satisfied are sufficiently managing the risk.

***Scenario***

***Gary heads up the payroll team. The senior payroll clerk position is vacant and it’s likely that three of the payroll team will apply for the vacancy. At least two of the team are likely to ask Gary to be his referee as they have worked in the area of a long time and don’t have another suitable person who can comment on their current work performance.***

***As the manager of the team, Gary has carriage for its overall performance and it is important that the person selected for the role best meets the criteria and will complement the existing team. Therefore Gary stays on the panel as chair. He declares in writing to the delegate and the selection panel that he has potential conflicts of interest, and proposes the following management strategies:***

* ***Prepares his referee statements before sighting any of the applications.***
* ***The panel reviews the questions to ask of the applicants to ensure they aren’t ‘leading’***
* ***Other panel members present their evaluation of the individual applicants before Gary comments to avoid undue influence.***
* ***Ensure that at least one other referee is contacted for each of the applicants that Gary is a referee for.***

**An individual should not be prevented from working in any business area because they are related to another employee in that area?**

No. If a friend or family member applies, steps need to be taken throughout the recruitment process to avoid real and perceived conflict of interest.

If they are successfully appointed, further steps need to be put in place in relation to their ongoing employment to avoid potential conflict of interest.

***Scenario***

***Aisha’s sister, Rani, works in the Policy Team, and Aisha is interested in a vacancy they have. Rani has been asked to be on the selection panel.***

***Aisha has a right to apply for the role and submits an application. She lets the contact officer (the panel chair) know that she is related to a work colleague as she wishes to avoid a conflict of interest.***

***Rani recognises that being on a selection panel for a role her sister is intending to apply for would be a direct conflict of interest.***

***Rani raises the matter with the panel chair. The chair agrees that it would not be appropriate for Rani to be on the panel as there is an obvious conflict of interest, and also recognises that there are other suitable panel members. The chair and Rani agree that Rani should not be involved in the selection process, and a new panel members is found. As the chair has a good working knowledge of Rani, an external panel member is selected to provide an objective view, and to ensure that Rani’s work performance does not bias the chair’s assessment of Aisha.***

***Aisha is successful for the role. Once in the role, Aisha and Rani discuss with their supervisor how they should operate in the workplace so that they don’t create perceived conflicts of interest, such as being overly supportive of each others’ work and choosing each other to work together. The supervisor starts off by not having Rani and Aisha working on projects together, so that Aisha can form strong working relationships with the other colleagues.***

**If a selection panel member knows an applicant, they only need to disclose this if the applicant is shortlisted for interview?**

No. They have identified a potential conflict of interest. They should report their knowledge of the applicant at the earliest possible opportunity so that no part of the process can be tainted by any real or perceived conflict of interest.

***Scenario***

***Di and Chris use to work together and still regularly catch up for lunch.***

***Chris applies for a job for which Di is on the panel. While Di respects Chris, she does not believe this is the right role for Chris. Di should declare the conflict as soon as she is aware that Chris is an applicant, as her comments about Chris in the shortlisting process may positively or negatively impact on the panel members’ assessment of Chris’ application.***

**I am part of a team looking at the structure and the redesign of job in my area. Does that mean I can’t apply for any jobs I am involved in restructuring?**

No, you can still apply, however you should declare to your manager that there is a potential conflict of interest in the work you are doing. Your manager should put in place strategies to minimise the conflict which may involve anything from taking you off that part of the design process or having an independent person review the job design.

***Scenario***

***Pat has been the Director of a business unit for several years and has a strong understanding of how the work interacts with other areas, and also has insights into how the work of another unit can be integrated with her business unit.***

***Because of Pat’s knowledge and experience, Pat has been asked to develop a draft structure. Under the draft structure the Director role has broader and more senior responsibilities which could lead to a reclassification. Pat recognises that this is a potential conflict of interest as Pat would like to be considered for the new Director role.***

***Pat discusses the issue with the Deputy Secretary and the following actions are implemented: Deputy Secretary to take the lead of the role design, and with HR prepare the Statement of Duties (SOD). HR liaise with Pat and colleagues in both business units about the core duties of the role to assist with informing the Deputy Secretary’s consideration about the final SOD including selection criteria. HR and the Deputy Secretary provides, as part of the information pack about the vacancy, background information on the redesign so that Pat, and other colleagues, cannot be seen as having an unfair advantage.***

**I work in HR, and from time to time close friends apply for jobs in the division I provide HR business support to. Does this policy mean I can’t provide HR support in these cases?**

No – if you are involved in the selection process, and either have a direct influence over the selection process, or it could reasonably be perceived that you could, then you must declare that interest and with your manager and the chair of the selection process to determine what strategies need to be implemented. The strategies may range from no action through to having another person in HR support the process depending on the extent of your role in the process and the nature of the conflict.

***Scenario***

***Jo works in HR. Part of Jo’s role is to support and provide advice to the Policy Division on all HR matters, including approaches to recruitment and reviewing the selection reports prior to the delegate viewing.***

***Jo notices that one of the applicants for the role is a close friend. Jo immediately makes a note for the panel chair of the conflict. Jo also notes that she has not spoken to the friend about the role, and believes that there is no conflict. Jo’s friend has not been nominated for the role.***

***As Jo reads the selection report she is concerned that the report on her friend does not reflect her knowledge of her friend’s skills and experience. The report focuses just on the interview and does not reflect the information provided in her friend’s application. Jo feels conflicted and also considers the possibility she is unfairly using her knowledge of the applicant to question the selection report’s validity.***

***Jo provides the written conflict of interest statement to her HR manager and discusses the best way to handle the issue. Jo and the HR manager agree that Jo feels conflicted in providing advice on the report, and the HR manager assigns another person to review the report.***

***A note is made about the conflict including the action taken, and is included with the selection report.***

***Scenario***

***Jose, HR Consultant, is working with the Manager of Facilities Services to finalise the SOD for a new role. Jose’s partner, Maria, is very interested in the role and Jose believes she would be good at it.***

***Because Jose has direct influence in designing the role, there is a perceived conflict of interest, as he can influence the selection criteria in such a way that matches Maria’s skills and ability.***

***Jose declares this interest to his HR Manager. They agree that as there could be a perceived bias and that, as Maria’s partner, Jose could be perceived as having a pecuniary interest in Maria being successful, and he should no longer be involved in the job design and recruitment process. Another person in HR is assigned to support the Facilities Branch Manager.***

***A note of the conflict and the actions taken to address is included with the selection report.***

###### Other Resources

The Integrity Commission (Tasmania) website provides tools and guidelines which may be of use to agencies in developing internal procedures for manage their conflicts of interest.

###### Sample Conflicts of interest templates

The following is a sample template based on those currently in use by some agencies. Agencies may use this version, modify this version or create their own template to include in the selection process and report. As a minimum conflicts of interests statements and selection reports must include:

* Declaration of all conflicts by panel members and other persons involve in or perceived to have influence in the selection process, and the nature of that conflict
* Documented management strategies agreed to by the panel chair and supported by the delegate.
* Documented conflicts of interest and any management strategies by the delegate.

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| **SUMMARY OF CONFLICTS OF INTEREST WITH APPLICANTS** |
| Nature of association for all applicants (note that more than one relationship may exist with an employee)1. No association – NO ACTION REQUIRED
2. Work association – no regular contact/ relationship - NO ACTION REQUIRED
3. Is or has been a direct supervisor of applicant
4. Referee for applicant
5. Workplace friendship
6. Relationship involving social activity outside work
7. Family member
8. Close relationship
 |
| **Candidate**  | **Chair - Panel**  | **Panel mem 2** | **Panel Mem 3** | **Scribe**  | **Delegate** |
|  |  |  |  |  |  |
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|  |  |  |  |  |  |

(add other columns to include other persons involved in the selection panel process as needed)

|  |
| --- |
| **CONFLICTS OF INTEREST STATEMENT – <*PANEL MEMBER NAME*>** |
| **Who: Applicant 1.**  |
|  |  |
| **Description of the conflict** (Please provide a summary of why you believe conflict of interest(s) exists)  |  |
| **Management Strategy** |  |
| **Who: Applicant 2** |
|  |  |
| **Description of the conflict** (Please provide a summary of why you believe conflict of interest(s) exists)  |  |
| **Management Strategy** |  |
| **SECTION 2 – CONFLICT OF INTEREST DECLARATION** |  |
| I, the individual named on this form, declare that I have read and understood the Policy: Managing Conflicts of Interest in Recruitment, and that this declaration complies with that Policy. |  |
| **Signature: …………………………………………….. Date: ………………..** |
| **Panel Chair** |
| **Signature: …………………………………………….. Date: ………………..** |