

CONFLICT OF INTEREST POLICY

March 2019 | Version 2

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Policy author: Senior Manager, Risk and Assurance
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Policy owner: Senior Manager, Risk and Assurance
Policy sponsor: General Manager Corporate Services

Document management plan

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|-------------------------------------|--|
| Signed off by policy owner | Senior Manager, Risk and Assurance, 14 February 2019 |
| Signed off by policy sponsor | General Manager Corporate Services, 20 February 2019 |
| Signed off by Board | 18 March 2019 |
| Policy lifecycle | This policy is to be reviewed every two years |

Keywords

Conflict of interest, risk, probity, integrity, impartiality, transparency, procurement

Change record

| Version | Description of change | Date | Updated by |
|---------|--|---------------|--|
| 1.1 | Designations following several changes | January. 2012 | SAC |
| 1.2 | Designations changes | August 2013 | SAC |
| 1.3 | Designations changed; update to reflect new naming conventions | July 2014 | KA |
| 1.4 | Designations changes | May 2016 | KA |
| 1.5 | Updated declaration form – now requires action to be taken when conflict arises | June 2017 | MM |
| 1.6 | Updated document to align with new organisational structure and updated links to related documents | November 2017 | MM |
| 1.7 | Updated to new template and minor wording changes | October 2018 | Helen Rickerby |
| 1.8 | Minor changes incorporated from Richard Leverington | December 2018 | Helen Rickerby |
| 1.9 | Section about procurement updated on advice of Procurement team | January 2019 | Richard Leverington |
| 1.10 | Minor updates | February 2019 | Helen Rickerby and Richard Leverington |
| 1.11 | Updated scope to note that the Board has its own conflict of interest policy. | March 2019 | Helen Rickerby |
| 2 | Policy published | 27 March 2018 | Helen Rickerby |

Purpose

This policy sets out the rules and responsibilities for NZ Transport Agency employees around disclosing and managing actual and perceived conflicts of interest. It is intended to protect employees from potential perceptions or allegations of bias or preferential treatment, and will also assist the Transport Agency to operate in a transparent manner.

Scope

This policy applies to all Transport Agency employees, including permanent staff members (full-time and part-time), temporary staff and contractors, collectively referred to in this policy as 'employees'. The Transport Agency Board has its own *Conflicts of interest guidelines for NZ Transport Agency Board*, which Board members must follow.

Definition of terms

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| Interest | An 'interest' arises when an employee has a financial, familial or any other private/personal interest in a matter that could give rise to an appearance of bias. (A full definition of what it means to be 'interested' in a matter is included on page 2 of the <i>Declaration of interests form</i>). |
| Conflict of interest | <p>A conflict of interest is a situation in which the activities of an employee outside their employment obligations lead, or may lead, to benefit to the employee concerned, either directly or indirectly (eg through a family member, associated entity, or external agency). It also includes situations which may create the perception of a conflict, even if no actual conflict exists.</p> <p>Conflicts of interest can be generally grouped into two categories: financial and non-financial.</p> |
| Financial interests | <p>Financial conflicts arise where a decision to act could reasonably give rise to an expectation of financial gain or loss to an employee.</p> <p>A Transport Agency employee who has a financial interest, directly or indirectly, in a matter related to the Transport Agency's role must declare the interest. Most commonly, this will arise where an employee has a financial interest in another person or entity that is involved in the matter (eg a shareholding in a related company).</p> <p>A Transport Agency employee shall not give advice nor participate in decisions relating to matters in which they have a financial interest.</p> |
| Non-financial interests | <p>A non-financial conflict of interest does not have a financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or conduct or beliefs that indicate prejudice or pre-determination.</p> <p>An employee who has a non-financial interest in a matter must declare the interest. This does not include, however, any interest which is so remote or insignificant so as not to influence the employee's decision making.</p> |
| Actual conflict | An actual conflict exists when an employee is in a position to be influenced by their private interests when doing their job. |
| Perceived conflict | A perceived conflict arises if a reasonable person in possession of the relevant facts may consider that an employee is in a position where they can be influenced by their private interests when doing their job. |
| Potential conflict | A potential conflict exists when the employee is in a position where they may be influenced in the future by their private or public interests when doing their job. |

Policy statements

Impartiality and transparency are essential to maintaining the integrity of the public sector. The Transport Agency operates in a public environment, with high expectations of the honesty and integrity of employees from its many stakeholders and customers.

As a public agency, the Transport Agency has a statutory and ethical responsibility to be fair and impartial in all circumstances, and avoid the appearance of, or actual, preferential treatment, bias or discrimination.

The Transport Agency *Code of conduct* establishes clear principles of behaviour and provides examples of conflicts of interests.

Key accountabilities and responsibilities

Executive Leadership team (ELT)

The ELT is responsible for:

- determining which employees, or [designated positions](#), shall annually or on appointment complete a declaration identifying any private interests that may cause conflict with Transport Agency interests
- disclosing, at the beginning of each ELT meeting, any interests they may have in relation to items on the agenda
- resolving those conflicts prior to discussion of the relevant agenda items.

How conflicts disclosed during the meeting are resolved will depend on the significance of the conflict. It may be that the relevant ELT member is asked to leave the room when the item is discussed, or they may be present but not allowed to participate in the conversation or any decisions made in relation to that item. ELT members' conflicts of interest will be disclosed to the Transport Agency Board.

Employees

Employees are responsible for:

- disclosing to their manager any potential, perceived or actual conflict of interest, as well as any changes, as soon as practicable after they become aware of them, and completing a [Declaration of interests form](#)
- resolving, in consultation with their manager, any conflicts where possible (refer to Appendix 1 for a checklist for identifying conflicts of interest)
- ensuring that, where a conflict of interest exists that is unable to be resolved, they do not make or participate in Transport Agency decisions relating to matters in which they have a personal interest.

As part of the recruitment process, all new employees will be required to declare any conflict of interests.

Managers of employees who have a conflict of interest

Managers of employees who have a potential, perceived or actual conflict of interest are responsible for:

- taking appropriate action to address the conflict of interest (refer to Appendix 2 for possible resolution actions)
- recording the conflict of interest and actions taken to address it in the employee's personal file.

Employees involved in procurement and contract decisions

The Transport Agency has specific procedures for the declaration and management of conflicts of interest within procurement:

- Employees involved in procurement activities, eg in a planning, advisory or contract management role, may be required to complete a [Conflict of interest declaration](#) specific to that procurement or contract. This may be required even if no actual or potential conflict exists – in which case a nil return should be signed. Holders of designated positions may also be required to complete a specific declaration form for procurement probity purposes.
- Members of tender evaluation teams are required to complete a [Conflict of interest declaration](#) before evaluation begins.

More detailed [procurement guidance](#) is available on OnRamp.

Risk & Assurance team

Risk & Assurance is responsible for:

- providing advice and guidance to Transport Agency employees and their managers on conflict of interest matters
- liaising with the Legal team and the People Group on conflict of interest matters as needed
- maintaining the register of designated employee declarations.

Interests register

Purpose

The Transport Agency's interests register supports transparency and proper management when an employee may be interested in a matter. The register holds declarations by employees of their personal interests.

Designated positions

The Office of the Auditor General's [good practice guide](#) suggests that relevant managers and employees should also complete an annual declaration of personal interests.

The Transport Agency's Executive Leadership Team has determined that employees in [designated positions](#) must complete an annual declaration of interests. The declaration is to be reviewed by the employee's manager before it is forwarded to Risk & Assurance for safekeeping.

Any new appointee to a designated position must also complete a declaration of interests.

Annual renewal

All declarations are to be updated or confirmed to Risk & Assurance before 1st July each year. Potential conflicts are to be resolved through the employee's manager before the register of interests is updated.

Confidentiality

Risk & Assurance will maintain the register of declarations in a restricted-access InfoHub folder.

Further guidance

Related policies and guidance:

- [Code of conduct](#)
- [Procurement policy](#)
- [Managing conflicts of interest: guidance for public entities \(Office of the Auditor-General\)](#)

Relevant legislation and regulations

- [Crown Entities Act 2004](#)
- [State Sector Act 1988](#)

Contact

For further information about this policy, contact the Risk and Assurance team or email csrandaallstaff@nzta.govt.nz.

Appendix 1: Checklist for identifying conflicts of interest

Comment In assessing whether there is or may be a potential, perceived or actual conflict of interest the following questions could be asked.

Any question resulting in a 'Yes' answer should be discussed with your manager to determine an appropriate action.

| Question | Yes | No |
|---|-----|----|
| Would the employee or anyone associated with the employee benefit from, or be detrimentally affected by, the proposed decision or action? | | |
| Could there be benefits for the employee or any associate in the future that could cast doubt on their objectivity? | | |
| Does the employee have a current or previous personal, professional or financial relationship or association of any significance with an interested party? | | |
| Would the employee's reputation or that of a relative, friend or associate be enhanced or damaged because of the proposed decision or action? | | |
| Does a relative, friend or associate of the employee stand to gain or lose financially in some covert or unexpected way from the proposed action or decision? | | |
| Does the employee hold any personal or professional views or biases that may lead others to reasonably conclude that they are not an appropriate person to deal with the matter? | | |
| Has the employee contributed in a private capacity in any way to the matter that the organisation is dealing with? | | |
| Has the employee made any promises or commitments in relation to the matter? | | |
| Has the employee received any benefit or hospitality from someone who stands to gain or lose from the Transport Agency's proposed decision or action? | | |
| Is the employee a member of an association, club or professional organisation, or do they have particular ties and affiliations with organisations or individuals who stand to gain or lose by the proposed decision or action? | | |
| Could the situation have an influence on any future employment opportunities outside their current official duties? | | |
| Does the employee have any doubts about their independence in relation to a proposed decision or action? | | |
| Could involvement of the employee in this matter cast doubt on their integrity or on the Transport Agency's integrity? | | |
| If the employee continues to participate in this action or decision, would the Transport Agency be uncomfortable if other internal employees and/or the public became aware of their involvement? | | |

Appendix 2: Possible resolution actions

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| Comment | The following options are suggested for managing conflicts of interest. Although managers and employees are responsible for the management of conflicts of interest, the Senior Manager, Risk & Assurance may be contacted for further advice. |
| Register | <p>Details of the management of perceived, potential or actual conflicts of interest are to be recorded by managers in documentation relevant to the matter in hand, so that possible future enquiries may be satisfied.</p> <p>For very low-risk perceived or potential conflicts of interest, recording of the matter is sufficient. More significant or higher risk potential or actual conflicts of interest require more proactive management as set out below.</p> |

| Management strategy | When most suitable | When least suitable |
|--|--|---|
| Restrict Restrict the involvement of the employee in the activity causing conflict of interest | The employee can be effectively separated from parts of the process or decision-making The conflict is not likely to arise frequently | The employee is constantly unable to perform a number of regular duties because of conflict of interest issues The conflict is likely to arise more frequently |
| Recruit Recruit an independent third party to oversee part or all of the activity causing conflict of interest | It is not reasonable for the employee to remove themselves from the decision-making process In specialist areas where the particular expertise of the employee is necessary and is not easily replaced | The conflict is serious and ongoing meaning that ad hoc recruitment of others is unworkable Recruitment of a third party is not appropriate for the matters to be handled A suitable third party candidate is unable to be recruited |
| Remove Remove the employee from the activity causing conflict of interest (this may be initiated by the employee or required by the manager) | For ongoing serious conflicts where ad hoc restrictions or recruitment of others is not appropriate | The employee is prepared to relinquish their relevant private interest rather than change their work responsibilities or environment The conflict of interest and its perceived or potential effects are of low risk or low significance |
| Relinquish The employee relinquishes the private interest that is creating the conflict | The employee's commitment to Transport Agency duties outweighs their attachment to their private interest | The employee is unable or unwilling, for various reasons, to relinquish their relevant private interest |
| Resign The employee resigns from their position in the Transport Agency | Where no other options are suitable The employee cannot or will not relinquish their conflicting private interest and changes to their work responsibilities are not feasible The employee prefers this action as a matter of personal principle | The conflict of interest and its potential or perceived effects are of low risk or significance Other options exist that are workable for the employee and the Transport Agency |