

National
Competition
Council



ACCC – NCC Protocol for managing conflicts of interest

March 2023

Version Control	
August 2018	The date this Protocol first commenced.
March 2023	Reviewed with minor amendments.

Background

Relationship of the Parties

1. The Australian Competition and Consumer Commission (ACCC) and the National Competition Council (NCC) entered into a Memorandum of Understanding (MOU) in relation to the provision of corporate and professional services in March 2014. The most recent version of the MOU was finalised in March 2023.
2. Under the MOU, the ACCC agreed to provide certain services to the NCC, including advice and support in relation to NCC recommendations, decisions and reports, and administrative services. These services will be provided to the NCC by ACCC staff.
3. The services include appropriately qualified officers of the ACCC designated to perform the duties of the NCC's:
 - a. Executive Director, and
 - b. Executive Officer
4. The ACCC and NCC have agreed to this Protocol for managing conflicts of interest under Clause 15 of the MOU. The Protocol seeks to ensure the proper management and response to real or perceived conflicts of interest in the provision of services to the NCC. It will be made publicly available.
5. At the time of writing this version, the ACCC's general approach to conflicts of interest for its employees and contractors is outlined in the Conflict of Interest Policy. Across the agency, the ACCC seeks to mitigate risks posed by conflicts of interest, including by
 - a. Ensuring all employees understand their obligations to disclose real, perceived or potential conflicts between private interests and official duties.
 - b. Requiring employees conduct a self-assessment at least once each financial year and to declare and establish an agreed plan to manage any identified conflict.
6. The ACCC's Conflict of Interest Policy is adopted by the NCC and applies to ACCC staff working on NCC matters, including the NCC Executive Director and the NCC Executive Officer.

Legal context

7. The APS Code of Conduct provides that an APS employee must:
 - a. behave honestly and with integrity in the course of APS employment.
 - b. disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
8. Alongside other general duties, the *Public Governance, Performance and Accountability Act* (PGPA Act) provides that ACCC officials (including employees, officers or members) must report relevant material personal interests in relation to the affairs of the ACCC.

9. The conflict of interest issues concerning persons engaged under a contract to supply services to the ACCC/AER are managed through the contractual terms of their engagement.

Operational Provisions

Types of conflict of interest

10. This protocol is concerned with two specific types of conflict of interest:
 - a. Where an ACCC staff member's personal, financial or other interests do or could be reasonably seen to compromise, influence or affect the performance of their official duties in performing services for the NCC (private conflict).
 - b. Where an ACCC staff member's responsibilities to the ACCC affect or could reasonably be seen to affect their ability to properly discharge their official duties in performing services for the NCC (organisational conflict).

Obligations and process in respect of private conflicts

11. An ACCC staff member who is providing services to the NCC will comply with the ACCC Conflict of Interest Policy in respect of any private conflict as if all references in the policy to the ACCC were also references to the NCC. This includes:
 - a. avoiding any private conflict if possible.
 - b. disclosing any private conflicts to their manager.
 - c. taking all reasonable steps to resolve or manage any private conflicts including any steps as directed by their manager.
 - d. maintaining a record of key information regarding the private conflict and the process undertaken in relation to it.
12. Without limiting their obligations under the ACCC Conflict of Interest Policy or any other relevant obligations, the ACCC officers performing the duties of the NCC's Executive Director and Executive Officer agree they will disclose any private conflict to the EGM Specialist Advice and Services Division (SASD) and the NCC President as soon as reasonably practicable. The EGM, SASD may seek advice from the ACCC General Counsel or Deputy General Counsel regarding the conflict and take all reasonable steps to resolve or manage that conflict. Per the Conflict of Interest Policy, reasonable steps will depend on the individual circumstances but are likely to include:

- a. The development of a management plan between the employee and their manager. Note that all SES employees must also have a general management plan in relation to their potential conflicts of interest.
- b. This management plan will respond to the particularities of any conflict or potential conflict. For example:
 - i. Where an employee has a close relationship with a supplier (e.g. a spouse or sibling), the plan may provide that the employee will not be involved in any procurement process involving that supplier, or any management of that supplier.
 - ii. Where an employee has a close relationship with a key officer of a company (e.g. a spouse or sibling), or their representative, they may not work on matters involving that company.

Obligations and process in respect of organisational conflicts

13. An ACCC staff member who is providing services to the NCC and who considers that an organisational conflict may arise or has arisen, will:
 - a. take all reasonable steps to avoid the situation
 - b. disclose the organisational conflict to their manager.
 - c. take all reasonable steps to resolve or manage the organisational conflict including any steps as directed by their manager; and
 - d. maintain a record of key information regarding the organisational conflict and the process undertaken in relation to it.
14. The ACCC officers performing the duties of the NCC's Executive Director and Executive Officer respectively agree they will disclose any organisational conflict to the EGM SASD as soon as reasonably practicable. The EGM SASD may seek advice from the ACCC General Counsel or Deputy General Counsel regarding the conflict. The EGM SASD will make the decision on how to manage the conflict and then notify the ACCC Chairperson and the NCC President regarding the organisational conflict and the steps decided to resolve or manage the conflict.
15. An ACCC manager with supervisory responsibility for any other ACCC staff member who is or is proposed to be providing services to the NCC (in addition to the Executive Director and the Executive Officer) will seek to avoid any potential organisational conflicts for their staff, and if such conflict cannot be avoided, will endeavour to identify and implement ways in which organisational conflicts may be managed or resolved, including where relevant through re-assignment of staff and/or duties. The ACCC manager with supervisory responsibility for the staff member in question will also be responsible for deciding the management plan for disclosed conflicts.

16. The ACCC officers performing the duties of the NCC's Executive Director will also seek to avoid any potential organisational conflicts for ACCC staff who are or are proposed to provide services to the NCC, and if such conflict cannot be avoided, will endeavour to identify and implement ways in which organisational conflicts may be managed or resolved, including where relevant through re-assignment of staff and/or duties. This responsibility to avoid and manage such conflicts may be discharged by seeking the advice of the ACCC manager with supervisory responsibility for the staff member in question. The ACCC manager with supervisory responsibility for the staff member in question will also be responsible for deciding the management plan for disclosed conflicts.