

CONFLICT OF INTEREST: QUALITY ASSESSORS

Section Regulatory Policy

Identification No POL-ACC-0040

Responsibility Executive Director Operations, Regional Directors, Assistant Directors and Quality Assessors

Approved by Director Regulatory Policy

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1 PURPOSE

1.1 This policy outlines the requirements for quality assessors to disclose any real or apparent conflicts of interest and for Regional Directors and Assistant Directors to manage those conflicts in order to protect the integrity of the Aged Care Quality and Safety Commission (Commission).

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2 OBJECTIVE

2.1 The policy aims to ensure quality assessors, as representatives of the Aged Care Quality and Safety Commissioner (Commissioner) and if applicable, as employees of the Australian Public Service (APS), are aware of their obligations to disclose any conflicts of interest and to ensure conflicts are effectively managed.

3 SCOPE

3.1 This policy applies to all quality assessors, including permanent APS employees, casual APS employees and external contractors.

4 LEGISLATIVE REQUIREMENTS

4.1 The *Public Service Act 1999* (Public Service Act) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) set out the legislative requirements for APS employees to identify, disclose and manage real and apparent conflicts of interest.

4.2 Section 13 of the Public Service Act sets out the APS Code of Conduct. Subsection 13(7) of the Code requires APS employees to:

- 4.2.1 take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment
- 4.2.2 disclose details of any material personal interest of the employee in connection with the employee's APS employment.

4.3 Similarly, section 29 of the PGPA Act requires an official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity to disclose details of the interest.

4.4 In accordance with section 92(1)(a) of the Aged Care Quality And Safety Commission Rules (Rules) a quality assessor must comply with obligations as notified to them. Obligations include adhering to the Quality Assessor Code of Conduct and taking reasonable steps to avoid any conflict of interest, real or apparent, and disclose details of any material personal interests which could influence, or could reasonably be seen to influence, the decisions they take or the advice they give. Obligations are notified during every registration period.

4.5 The Quality Assessor Code of Conduct reflects these legislative requirements by requiring assessors to:

- 4.5.1 Disclose to the Commission any current or prior working or personal relationships that may be seen as a conflict of interest or that may influence my judgment.



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4.5.2 Not enter into any activity which may be in conflict with the best interests of the Commission or that would prevent the performance of my duties in an objective manner.

4.6 Subsection 32(2) and 71(2) of the Rules require decision makers to consider real and apparent conflicts of interest when appointing assessments team by prescribing that the Aged Care Quality and Safety Commission must not appoint a person to an assessment team for a site audit or a review audit of a residential care service or a flexible care service through which short term restorative care is provided if:

4.6.1 at any time during the 3 year period preceding the proposed appointment, the assessor was employed by, or provided services to, the approved provider of the service; or

4.6.2 the assessor has a pecuniary or other interest that could conflict with the proper conduct of the audit.

5 DEFINITIONS

5.1 A reference to Assistant Director refers to an Assistant Director in a regional office.

Quality assessor

5.2 Section 7 of the *Aged Care Quality and Safety Commission Act 2018* defines a quality assessor as a person registered as a quality assessor under the Rules.

What is an interest?

5.3 An *interest* is anything that can have an impact on an individual or group. The impact can be beneficial or detrimental.

5.4 A *material personal interest* is an interest of a type that can give rise to a real or apparent conflict of interest.

5.5 There are two main types of interest – *pecuniary* and *non-pecuniary*.

5.5.1 A pecuniary interest involves a real financial loss or gain. For example, an employee or family member holding shares or a position in company which receives government funding to provide aged care services. Money does not have to actually change hands for an interest to be pecuniary.

5.5.2 A non-pecuniary interest does not have a financial component. It may arise from personal relationships or associations and may result in a tendency towards favour or prejudice, biasing an employee's judgement or decisions.



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What is a conflict of interest?

- 5.6 *Conflict* means a serious incompatibility between two or more opinions, principles, or interests.
- 5.7 The Australian Public Service Commission (APSC) defines two types of conflict of interest – real or actual, and apparent or perceived.
- 5.7.1 A real or actual conflict of interest occurs where there is a direct conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.
- 5.7.2 An apparent or perceived conflict of interest occurs where it appears that an employee's personal interests could improperly influence the performance of his or her duties but this is not in fact the case.

6 KEY RESPONSIBILITIES

- 6.1 Quality assessors, Regional Operations staff, Regional Directors and Assistant Directors have responsibilities in the identification, declaration and management of conflict of interest in accordance with this Conflict of Interest Policy.
- 6.2 Responsibilities of quality assessors include:
- 6.2.1 ensuring awareness and compliance with this policy, and relevant legislation
- 6.2.2 identifying and disclosing conflicts of interest
- 6.2.3 only accepting assignments with no conflict of interests
- 6.2.4 where a real or apparent conflict of interest is identified after scheduling, including during an assessment, immediately bringing the conflict to the attention of their Regional Director or Assistant Director
- 6.2.5 complying with a direction regarding the management of a disclosed conflict.
- 6.3 Responsibilities of Regional Operations staff include:
- 6.3.1 ensuring awareness and compliance with this policy, and relevant legislation
- 6.3.2 registering quality assessor conflict of interest disclosures on the Better Business Program (BBP)
- 6.3.3 maintaining all documentation in accordance with the *Privacy Act 1988* and the *Archives Act 1983*

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6.3.4 where known, scheduling activities to prevent conflicts occurring.

6.4 Responsibilities of Regional Directors and Assistant Directors include:

6.4.1 ensuring awareness and compliance with this policy, and relevant legislation

6.4.2 assessing a declared conflict in discussion with the quality assessor

6.4.3 making a decision and directing how a declared conflict will be managed

6.4.4 documenting conflict of interest management actions and decisions

6.4.5 maintaining all documentation in accordance with the *Privacy Act 1988* and the *Archives Act 1983*

6.4.6 reporting any breaches in the Conflict of Interest Policy to the Regulatory Policy area so that further actions regarding quality assessor registrations can be determined.

7 POLICY

Requirement to disclose

7.1 Regulating or monitoring of standards are identified by the APSC as activities which may involve a heightened risk of conflict of interest for employees.

7.2 Quality assessors are at particular risk of conflict of interest. As a result, the Commission requires quality assessors to submit an annual, written declaration of their own and their immediate family's financial and other material personal interests, in line with section 29 of the PGPA.

7.3 Requiring quality assessors to complete an annual declaration ensures Regional Directors and Assistant Directors are aware of and able to effectively manage real and apparent conflicts of interest.

7.4 Quality assessors are also required to immediately notify the Commission via a revised declaration whenever there is a change in their personal circumstances or work responsibilities that could involve a new real or apparent conflict of interest.

Matters to disclose

7.5 Quality assessors are responsible for identifying and disclosing their conflicts of interest. There is no definitive list of matters that must be disclosed. Quality assessors should consider both their role and responsibilities, and the role and responsibilities of the Commission, when determining what to disclose.



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- 7.6 Quality assessors must disclose interests and relationships that could influence, or be seen to influence, their duties as a quality assessor. This is particularly relevant where the quality assessor is working in or providing services to the aged care sector; the quality assessor has family or other personal relationships with people working in or providing services to the aged care sector; or where they have a family member, close relative or friend in receipt of aged care services.
- 7.7 The types of interests and relationships that quality assessors may need to disclose include:
- 7.7.1 Employment history, including prior paid work for an approved provider of aged care, including consultancy services.
 - 7.7.2 External or secondary employment, such as current paid work for an approved provider of aged care, including consultancy services.
 - 7.7.3 Financial interests, including private businesses, company directorships or partnerships, shareholdings, real estate investments, trusts or involvement in self-managed superannuation funds, other significant sources of income and significant liabilities. For example, having shares in an approved provider of aged care's company.
 - 7.7.4 Personal and social relationships, including family relationships, sexual relationships or relationships formed through work or engagement with the local community, including sporting, social, cultural or voluntary activities. For example, family members and friends receiving care and service services from an approved provider of aged care and/or working for an approved provider of aged care.
 - 7.7.5 Memberships of organisations, particularly aged care sector bodies and lobby groups.
 - 7.7.6 Voluntary activities, such as unpaid work for an approved provider of aged care.
- 7.8 Quality assessors must also disclose any personal interests or relationships of an immediate family member, close personal friend or associate which they consider may create a conflict of interest for them.
- 7.8.1 Immediate family members include spouses, dependent children and any other relatives or close friends who live with the quality assessor, or with whom the quality assessor has a dependent relationship. For example, a partners' company provides contracted cleaning, catering and laundry services to one or more approved providers of aged care.
 - 7.8.2 A close personal friend is someone with whom the quality assessor has social contact on a regular and sustained basis, noting this contact may or may not have occurred over or for a long period of time.
 - 7.8.3 Associates or associations include past or present interactions or affiliations the quality assessor, their partner, immediate family members or close personal friends may have with people in clubs, societies and other organisations. This

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can also include identifiable links with people and/or groups via electronic media such as Facebook or Twitter.

7.9 The appearance of a conflict can be just as damaging to public confidence as a conflict which gives rise to a concern based on objective facts. Quality assessors should therefore disclose matters where they are unsure whether a potential conflict exists.

Gifts and benefits

7.10 Quality assessors must not demand, request or accept any inducement, commission, gift or benefit in conjunction with their Commission work. This includes gifts or benefits for other people.

7.11 Accepting a gift or benefit that is connected with a quality assessors work for the Commission can create a real or apparent conflict of interest. At the extreme, it could be perceived as a bribe. Accepting a bribe is an offence under the *Commonwealth Criminal Code Act 1995* and a breach of the APS Code of Conduct.

7.12 The acceptance of a gift or benefit by an immediate family member may create a material conflict of interest for the quality assessor and is to be declared to the Commission.

7.13 Gifts and benefits do not include accepting a refreshment or meal from a service while conducting a Commission assessment on site, if the acceptance is in accordance with POL-OPS-0007 Assessors meals during visits to homes.

Promoting other business interests

7.14 A quality assessor must not improperly use Commission information or their duties, status, power or authority to gain, or seek to gain, a benefit or an advantage for the quality assessor or any other person.

7.15 Quality assessor's must not represent any other business interests while conducting assignments for the Commission or use their registration as an assessor to promote any business in which they may have an interest.

7.16 Examples of this type of conflict include:

7.16.1 a quality assessor advising staff during a visit to an aged care service that they provide aged care advisory services

7.16.2 a contracted quality assessor who is employed with an approved provider of aged care acting as the person in charge during a Commission visit to one of the approved provider's residential aged care services



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7.16.3 a contracted quality assessor who is employed in a residential aged care service advising the approved provider of that service about changes to the Commission's internal arrangements regarding unannounced visits.

Managing disclosures

7.17 Conflicts of interest must be fairly, effectively and appropriately managed.

7.18 Decisions regarding a disclosed conflict of interest are to consider the following:

7.18.1 the type or size of the quality assessor's personal interest, real or apparent

7.18.2 the nature or significance of the activity being undertaken, and the quality assessor's involvement in the activity

7.18.3 the extent to which the quality assessor's personal interest could affect, or be affected by, the activity.

7.19 The length of time since a particular affiliation ended should not necessarily be seen as limiting the potential for a conflict of interest.

7.20 Where a conflict is identified appropriate management actions are determined and notified to the quality assessor. Actions may include:

7.20.1 Taking no further action because there is no real conflict.

7.20.2 Informing affected parties that a disclosure has been made and that it is the Commission's view that the potential for conflict is minimal.

7.20.3 Asking affected parties whether they object to the quality assessor being involved in the activity given the declared conflict.

7.20.4 Not assigning the quality assessor to activities where there is potential for conflict.

7.20.5 Withdrawing the quality assessor from an activity where a real or apparent conflict arises.

7.21 Whatever the outcome, the Regional Director or Assistant Director must document the identified conflict, decision taken and reasons for the decision, even if the decision is to take no further action because there is no real conflict.

Privacy

7.22 Documentation relating to conflicts of interest, such as Declaration of Interests Forms provided by quality assessors and actions put in place to manage conflicts, must be managed in accordance with the *Privacy Act 1988* and the *Archives Act 1983*.

7.23 If a disclosure contains the personal information of an immediate family member, the quality assessor should obtain the family member's consent for the collection of this



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information, consistent with the requirements of the Australian Privacy Principles contained in the *Privacy Act 1988*. If consent is not given, or can't be sought, the assessor should discuss their understanding of the conflict of interest with their Regional Director or Assistant Director, who will decide what action may need to be taken.

7.24 Information relating to conflicts of interest which is sensitive and/or Commercial-In-Confidence must only be used for the purposes of recording, reviewing, and managing conflict of interest issues and not for any other purpose. Access to such documents must be controlled and only granted to employees with a genuine need to know, in connection with reviewing conflict of interest issues.

Non-Compliance with this policy

7.25 A quality assessor may be in breach of this Policy if they:

7.25.1 fail to complete an annual conflict of interest declaration

7.25.2 fail to provide a revised declaration when there is a change in personal circumstances or work responsibilities that could involve a new real or apparent conflict

7.25.3 accept a gift or benefit

7.25.4 promote other business interests, as outlined in 7.14-7.16.

7.26 Breaches of the Policy may result in the Commission refusing to register a quality assessor for a further period or immediately cancelling the quality assessor's registration.

7.27 Quality assessors who are APS employees must also comply with the APS Code of Conduct. Breaches of the code will be managed in accordance with the Public Service Act.

8 REFERENCES

Archives Act 1983

Commonwealth Criminal Code Act 1995

Privacy Act 1988

Public Service Act 1999

Public Governance, Performance and Accountability Act 2013

Aged Care Quality and Safety Commission Act 2018

Aged Care Quality and Safety Commission Rules 2018



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Values and Code of Conduct in Practice, Australian Public Service Commission, August 2017

Quality Assessor Code of Conduct

PRO-CAH-0004 Complaints Procedure

FRM-ACC-0468 Quality Assessor Conflict of Interest Declaration and Management Form

FRM-ACC-0469 Quality Assessor Declaration of Interests Variation Form

POL-OPS-0067 Assessor meals during visits to homes

9 VERSION HISTORY

Date	Version	Author	Description of Change
29 June 2018	1.0	Regulatory Policy	Development of new policy.
13 July 2018	1.1	Regulatory Policy	Added definition of 'material personal interest'. Updated references to declaration forms.
1 January 2019	1.2	Regulatory Policy	Updated to reflect the transition to the new Commission

Note: For extensive information on document history, refer to the Assistant Director, Regulatory Policy. Ongoing history is maintained in QPulse.