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# Conflict of Interest

## Procedural Instruction

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## 1. Purpose

This Procedural Instruction (PI) provides a framework for declaring and managing conflicts of interest. It outlines how to declare and record:

- potential and perceived conflicts of interest
- the receipt of a gift or benefit.
- agency head and SES Annual financial or other interest declarations.

## 2. Scope

### 2.1. In scope

This PI applies to Immigration and Border Protection (IBP) workers as defined in section 4 of the *Australian Border Force Act 2015*. This term includes:

- all APS employees in the Department;
- secondees from other government agencies, foreign governments or international bodies;
- other persons authorised to be an 'officer of Customs' under the *Customs Act 1901* or an 'officer' under the *Migration Act 1958*;
- contractors and consultants, and their employees and subcontractors, who are:
- performing services 'in-house' (that is physically located in premises that are owned, managed, controlled, leased, contracted by or operated by the Department); or
- who are otherwise performing services that require non-public access to Department assets.

### 2.2. Out of scope

This PI does not apply to Locally Engaged Staff (LES) at overseas posts. LES are subject to the Department of Foreign Affairs and Trade (DFAT) Conflict of Interest policies.

## 3. Procedural Instruction

### 3.1. Introduction

The Department and its employees have a broad range of powers and responsibilities as well as access to a significant amount of personal and sensitive information, which if used incorrectly could have serious consequences to the safety, security and prosperity of our nation.

To manage these risks, it is critical that the Department's workforce adheres to the highest standards of integrity and ethical behaviour.

Conflicts can and do occur in the normal course of duties or performance of services. They may be innocent or accidental, however steps must be taken to manage them. Identifying and declaring a conflict of interest in and of itself does not indicate wrongdoing or misconduct. Rather, a culture of strong conflict of interest reporting indicates a healthy ethical culture, which recognises where the public interest can overlap with an individual's private and personal interests.

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Section 13 of the *Public Service Act 1999* (Public Service Act) requires that an APS employee must take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest in connection with their APS employment. In addition, employees must not make improper use of inside information, or their duties, status, power or authority in order to gain, or seek to gain a benefit or advantage for themselves, or for any other person. Contractors must behave similarly in accordance with provisions in their contracts.

For APS employees or public office holders, a conflict of interest arises in a variety of circumstances including, but not limited to circumstances where an individual has private interests, which improperly influence, or may be perceived to influence, the performance of their official duty to serve the public interest.

For contractors and consultants, a conflict of interest arises where there is any matter, circumstance, interest or activity affecting them (including their personnel), which may, or may appear to, impair their ability to provide the services to the agency diligently and independently.

### 3.2. Types of conflicts

There are three types of conflicts of interest:

1. **'Real' or 'actual'**: For APS employees, government officials and other public office holders, this means a direct conflict between an individual's current duties and responsibilities, and other existing interests.

For contractors and consultants, this term means any matter, circumstance, interest or activity affecting them (including their personnel) which impairs their ability to provide the services to the agency diligently and independently.

2. **'Potential'**: For APS employees, government officials and other public office holders this means if an individual has other interests that could conflict with their official duties in the future.

For contractors and consultants, this term means any matter, circumstance, interest, or activity affecting them (including their personnel) which may impair their ability to provide the services to the agency diligently and independently.

3. **'Perceived' or 'apparent'**: For APS employees, government officials and other public office holders this means if it could be perceived, or appears, that an individual's other interests could improperly influence the performance of their duties (whether or not this is the case).

For contractors and consultants, this term means any matter, circumstance, interest, or activity affecting them (including their personnel) which could be perceived or appear to impair their ability to provide the services to the agency diligently and independently.

Conflicts of interest may be either **pecuniary** (where there is the potential to benefit financially) or **non-pecuniary** (involving influence or relationships).

The list below provides examples of circumstances which may give rise to a conflict of interest. This list is not exhaustive and it is not assumed that these circumstances will necessarily give rise to a conflict of interest in every case. These examples are provided to enable IBP workers to consider a broad range of issues when assessing their own personal circumstances.

A conflict of interest may arise where an IBP worker has:

- interests in a family or other private business.
- a secondary employment or voluntary commitment that conflicts with the purpose and the mission of the Department.
- responsibilities as a visa or citizenship decision maker and has received an application from someone they know.

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- affiliations with for-profit and not-for-profit organisations, sporting bodies, social or cultural groups, clubs and associations which may conflict with the work or mission of the Department.
- affiliations with political or professional organisations (e.g. that conflict with an IBP worker's departmental duties), noting that individuals are free to become members of and hold office in any political party, and are not required to declare trade union membership to the Department.
- any link (however described) with lobbyists, migration agents, customs brokers or importers/exporters that are not as a result of, the IBP worker's employment in, or engagement with, the Department.
- significant financial and economic interests in an entity that has dealings with the Department, such as assets or debts.
- commitments to professional, community, interest groups, ethnic, family or religious groups that might conflict with the individual's professional role.
- accepted gifts, benefits or hospitality from private businesses, potential contractors, including a lobbyist, migration agent or customs broker.
- related to, in a relationship (romantic or domestic) or friendship with clients or staff working in a related organisation.
- in a relationship (romantic or domestic) with staff working in the Department.
- been appointed to an employment selection or tender evaluation panel and has a close friendship, familial (including through marriage) or social association with an applicant.
- future employment prospects or plans (that is, post-separation employment) that are a result of the role within the Department, for example, accepting a position as a migration agent when they have worked in a visa related role.

### 3.3. Identifying a conflict of interest

IBP workers should regularly assess their personal circumstances to identify whether any matter may give rise to a real or perceived conflict of interest. Personal circumstances should be assessed in relation to both the individual's work role and the mission of the Department and include consideration of:

- current and former relationships, family, friends, rivals and enemies
- social networking accounts, online dating sites, etc.
- close personal association with employees working or associated with organisations, whose values are inconsistent with the values of the Department and APS more broadly.

In circumstances where a conflict arises on a one-off basis, for example, being a decision maker for a citizenship application and having a close relationship with an applicant, the matter should be referred to and dealt with by the relevant work area. Section 3.4 of this procedural instruction provides further information and strategies on managing conflicts of interest arising in day-to-day business.

IBP workers should not be in an intimate or familial relationship with someone they supervise, or with someone where they can make decisions in regard to, such as the following circumstances:

- performance assessments
- promotion
- transfer
- work tasking, and
- approval of any funds expenditure, including travel.

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Where an individual is unsure whether there is a conflict of interest, the circumstances should be discussed with a supervisor or second line manager. The staff member, supervisor or second line manager must keep a written record of the discussion. Contractors and consultants must notify the relevant contact officer or contract manager in the Department, in accordance with their contractual obligations.

Where further guidance is required, the Integrity and Professional Standards (I&PS) Branch can provide assistance ([integrityawareness@homeaffairs.gov.au](mailto:integrityawareness@homeaffairs.gov.au)).

### 3.3.1. Conflicts of interest arising in a procurement process

For conflicts of interest relating to procurement processes, the Procurement Support and Contracts Branch (PSCB) must be consulted as soon as possible, as it may be necessary to terminate the process and re-commence the procurement. As these conflicts can also involve significant legal, procurement and probity risks Legal Group can also provide advice on these issues.

Procurement helpdesk: Submit a procurement enquiry through the [Procurement Enquiries and Services \(PES\) tool](#) in Connected Services.

Commercial Law: [corporate.legal@homeaffairs.gov.au](mailto:corporate.legal@homeaffairs.gov.au)

### 3.3.2. Conflicts of interest arising in a recruitment process

Governance arrangements are in place to ensure conflicts of interest arising in the course of recruitment processes are appropriately managed. All recruitment panel members and the Chair are required to complete a Declaration of Impartiality form prior to viewing candidate applications for all recruitment processes. Where selection committee members find they have a relationship with a candidate that may give a perception of bias, either positive or negative, they are required to complete a Declaration of Impartiality form and discuss with the Chair of the recruitment process whether they should withdraw from the panel. The delegate will consider the risk of any real or perceived conflicts of interest and will decide if the committee member should be excluded from the selection process. The Delegate is also required to complete a 'Delegate Declaration' form.

### 3.3.3. Conflicts of interest when receiving gifts or benefits (including hospitality)

Part 1 of the Accountable Authority Instructions (AAIs) issued by the Secretary contains instructions on the acceptance of gifts or benefits (including hospitality). All IBP workers must comply with the requirements in the AAIs, which include obligations in addition to the following conflict of interest requirements.

IBP workers should not accept gifts or benefits in the course of their work, if receiving gifts or benefits could be considered a real or perceived conflict of interest. If an IBP worker is involved with an individual or organisation, which is in a form of contractual relationship, or has the potential to enter into a contract with the Department, they should not accept any form of gift or benefit from that individual or organisation.

The Department recognises that circumstances arise, where no conflict of interest could reasonably be inferred from accepting a gift or benefit, or where refusing a gift or benefit may cause cultural offence, which may place the Department, the post or Australia in a poor light.

Before accepting a gift or benefit, the IBP worker must ensure the decision to accept the gift or benefit:

- is defensible and able to withstand public scrutiny.
- does not compromise the reputation of the Department or the Government.
- does not influence, or could not be perceived to influence, their decision or action on a particular matter.
- is not, or could not be perceived to be, in response or reward for a decision or action by the IBP worker.

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All gifts and benefits accepted in the course of work which are valued at AUD20 or more must be recorded in the Department's gift and benefits register in accordance with the instructions in the [AAIs](#). More information on receiving gifts or benefits, including Frequently Asked Questions (FAQs), can be found on the [Intranet](#) or by contacting [gift.register@homeaffairs.gov.au](mailto:gift.register@homeaffairs.gov.au).

### 3.4. Declaring and recording a conflict of interest

IBP workers must update the Department of any changes in their personal circumstances. The Declarable Circumstances reporting requirement is mandatory for all IBP workers. These declarations allow the Government to assess the ability of departmental workers to hold clearances and access classified information. It also allows the Department to be alert to risks, including any conflict of interest (real, potential or perceived) that may be present.

Furthermore, IBP workers must disclose any real, potential or perceived conflicts of interest to their supervisors as soon as they arise.

Where an IBP worker is unsure whether a conflict exists, they should discuss this with their supervisor or second line manager. If a decision is made that there is no conflict, the decision and the reasons for it must be recorded on the Conflict of Interest Declaration form and a copy emailed to [esc@homeaffairs.gov.au](mailto:esc@homeaffairs.gov.au). The email should also be copied to the individuals who have signed the form.

Where a conflict of interest has been identified and a management plan is required, the IBP worker must:

- discuss the circumstances of the conflict of interest with their supervisor and/or second line manager.
- come to agreement on an appropriate management plan (where required, I&PS can assist in determining an appropriate management plan).

Following agreement, details of the conflict of interest and the proposed management plan must be recorded in the relevant section of the Conflict of Interest Declaration form. The Form must be signed by the IBP worker, their supervisor and their second line manager. The completed Form must be emailed to [conflictofinterest@homeaffairs.gov.au](mailto:conflictofinterest@homeaffairs.gov.au).

- Where an existing conflict of interest remains at the next annual declaration period, and no changes to the individual's work area have occurred, the individual should discuss the existing management plan with their supervisor, to consider whether any changes are required. This conversation should be noted on a new Conflict of Interest Declaration form and sent to [conflictofinterest@homeaffairs.gov.au](mailto:conflictofinterest@homeaffairs.gov.au).
- Where changes or a new conflict of interest is identified, the IBP worker must discuss the conflict with their supervisor or second line manager. A new Conflict of Interest Declaration form must be completed and sent to [conflictofinterest@homeaffairs.gov.au](mailto:conflictofinterest@homeaffairs.gov.au).
- Where an IBP worker with a declared conflict of interest moves to a different position within the Department, the IBP worker must advise the new supervisor of the existing conflict of interest and provide the new supervisor with a copy of the agreed management plan.

Similarly, prior to accepting a new position, employees must discuss with their new supervisor whether the new position creates any real, potential or perceived conflicts of interest.

If an individual is not comfortable discussing their circumstances with their supervisor, second line manager or Senior Executive Service (SES) officer, they must speak with I&PS.

If presented with a declaration of a conflict of interest, managers should ensure that the conflict is declared according to this procedural instruction.

#### 3.4.1. Senior Executive Service

All APS employees must take reasonable steps to avoid any conflict of interest in accordance with section 13(7) of the Code of Conduct. See Section 3.3 for assistance with identifying a conflict of interest.

SES officers are required to declare in writing any financial or other interests of their own and of their immediate family that could lead to a real, potential or perceived conflict of interest. This must occur annually. This can be undertaken using the Declaration of Interests Form available via SES SharePoint and submitted to the SES Declarations mailbox: [SES.Declarations@homeaffairs.gov.au](mailto:SES.Declarations@homeaffairs.gov.au).

#### 3.4.2. Procurement Activities

Where procurement processes, contractors, and consultants are concerned:

- Declarations of a conflict of interest are required at the beginning of, and during, the procurement process as a probity control. The declarations must be provided in accordance with relevant procurement and probity plans.
- Requirements in relation to reporting and managing a conflict of interest will be set out in the contract.
- A conflict management plan for contractors and consultants should be developed by the relevant contract manager, procurement officer and/or probity advisor as appropriate.

Further advice about conflict of interest issues as they relate to procurement and contracts, can be found on the Intranet [here](#), or enquiries can be directed to the PSCB via the [Procurement Enquiries and Services \(PES\) tool](#) in Connected Services.

#### 3.4.3. Family Members

IBP workers must disclose any gifts received or other interests relating to their immediate family (including spouses/partners and children) that they are aware of that could, or could be seen to, influence the decisions or actions they take or the advice they provide in connection with their official duties.

#### 3.4.4. Privacy and Recordkeeping

Information provided in relation to a Conflict of Interest Declaration Form must be maintained in accordance with the *Privacy Act 1988* and the *Archives Act 1983*. All records created as a result of this Procedural Instruction must be managed in accordance with the Records Management Policy Statement. Records created as a result of this document must be saved in TRIM RM8 or an approved business system.

Information provided in relation to a Conflict of Interest Form will be used for the purpose of determining whether a conflict of interest arises. IBP workers are permitted to access and correct personal information that is held by the Department in connection with a Conflict of Interest Form pursuant to the Privacy Policy of the Department, as applicable.

### 3.5. Strategies for managing a conflict of interest

The following strategies may assist in managing a conflict of interest:

- **Separate** – Where an IBP worker can be effectively separated from parts of an activity or process, this may be sufficient to manage the conflict.
- **Oversight** – Where it is not feasible or desirable to resolve the conflict by separating the IBP worker from an activity or process, it may be appropriate for an independent person to oversee all or part of a matter. This approach may be useful where the expertise required is not easily replaceable (e.g. in remote locations).



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- **Remove** – Where the conflict of interest presents a high risk to the IBP worker or the Department, it may be appropriate for the individual to be removed from any involvement in the particular matter or transferred to another role. Where removal to another role is the only means of resolving the conflict of interest, the IBP worker must be consulted and advice from Legal Group sought.
- **Relinquish** – Where other options are not workable or suitable, an IBP worker may choose to relinquish the other interest. An IBP worker should not be asked to consider relinquishing a significant private interest where the effects of the conflict of interest are not considered to be significant.
- **Refer** – Where a conflict of interest management plan cannot be agreed between the supervisor and the IBP worker, the matter should be escalated within the line management. Depending on circumstances, the matter may be referred to I&PS for review.

### 3.6. Further guidance and support

Seek guidance on addressing a conflict of interest from your supervisor, or by reaching out to I&PS via email: [integrityawareness@homeaffairs.gov.au](mailto:integrityawareness@homeaffairs.gov.au).

The Department's Ethical Decision Making (EDM) course through OurPeople might assist with ethical decision making, utilising critical thinking skills and problem solving to apply the REFLECT process.

Further guidance is also available from the Australian Public Service Commission (APSC) via their website [www.apsc.gov.au/conflicts-interest](http://www.apsc.gov.au/conflicts-interest) or via the APSC Ethics Advisory Service by phone: 02 6202 3737 or by email: [ethics@apsc.gov.au](mailto:ethics@apsc.gov.au).

## 4. Statement of Expectation

The APS Code of Conduct states that an APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction under subsection 13(5) of the *Public Service Act 1999* (the Public Service Act).

Failure by an APS employee to comply with any direction contained in this PI document may be determined to be a breach of the APS Code of Conduct, which could result in sanctions under subsection 15(1) of the Public Service Act.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the *Australian Border Force Act 2015*, (the ABF Act) requires all IBP workers who are not employed under the Public Service Act to comply with any lawful and reasonable direction given by someone in the Department with authority to issue that direction.

Failure by an IBP worker who is not an APS employee to comply with a direction contained in this PI document may be treated as a breach of the Professional Standards Direction, which may result in the termination of their engagement under section 57 of the ABF Act. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

All IBP workers who make decisions or exercise powers or functions under legislation have a duty to do so in accordance with the requirements of the legislation and legal principles.

## 5. Accountabilities and Responsibilities

Role	Description
All Staff	<p>Have a responsibility to read and understand this policy.</p> <p>Have a responsibility to report all conflicts of interest in line with this policy.</p> <p>Have a responsibility to report the receipt of any gifts or benefits in line with this policy and the <u>Accountable Authority Instructions</u>.</p> <p>Have a responsibility to report any suspected breaches with this policy to the I&amp;PS Branch.</p>
Supervisors or Managers	<p>Have a responsibility to read and understand their obligations in relation to this policy.</p> <p>Have a responsibility to assist staff to document and declare conflicts of interest raised to them or noted by them.</p>
Integrity and Professional Standards Branch	<p>Administers and maintains the procedural instruction and related documentation and serves as a central contact point for all policy statement matters. Supports business areas with all aspects of the Integrity Framework, including providing advice on effective policy and procedural development and management.</p> <p>Referral point for Integrity related matters that need to be investigated.</p> <p>Records and maintains all conflict of interest forms. Supports the Department with keeping records of all conflict of interest declarations.</p>

## 6. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1.0	27/09/2018	I&PS Branch	Draft
1.1	3/10/2018	I&PS Branch	Minor revisions
1.2	28/11/2018	I&PS Branch	Minor revisions
2	29/05/2019	I&PS Branch	Incorporated gifts and benefits information
2.1	5/07/2019	I&PS Branch	Minor revisions
3	25/08/2020	I&PS Branch	Update to latest template, minor revisions
4	23/12/2020	I&PS Branch	Added additional guidance, minor revisions
4.1	19/04/2021	I&PS	Minor revision – Gifts and Benefits Web form

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Version number	Date of issue	Author(s)	Brief description of change
5	19/10/2022	I&PS	Minor revision – contact details

## Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Australian Border Force	ABF	The ABF is an operational law enforcement workforce trained and equipped to undertake functions across the border continuum.
Benefit	N/A	An advantage or gain received by an IBP worker.
Code of Conduct	N/A	Guidelines for all APS employees that govern appropriate behaviour and conduct and must be complied with at all times.
Conflict of Interest	N/A	A conflict of interest can arise in a variety of different circumstances including, but not limited to circumstances where an individual has private interests, which improperly influence, or may be perceived to influence, the performance of their official duty to serve the public interest.
Department of Home Affairs	The Department	The Department of Home Affairs, including the Australian Border Force.
Departmental workplace	N/A	<p>Has the meaning given in section 8 of the <i>Work Health and Safety Act 2011</i>:</p> <p>A workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.</p> <p>In this section, place includes:</p> <ul style="list-style-type: none"><li>• a vehicle, vessel, aircraft or other mobile structure</li><li>• any waters and any installation on land, on the bed of any waters or floating on any waters.</li></ul>
Family member	N/A	Includes a spouse, partner, children, siblings, parents and extended family, including those involving same-sex relationships.
Gift	N/A	An item or thing that is willingly given to an IBP worker without any monetary payment.
Immigration and Border Protection Worker	IBP worker	Defined in the <i>Secretary's Determination of Immigration and Border Protection Workers</i> and under subsection 4(1) of the ABF Act, includes but is not limited to:

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Term	Acronym (if applicable)	Definition
		<ul style="list-style-type: none"> <li>all APS employees in the Department</li> <li>persons employed by an Agency under the Public Service Act 1999 whose services are made available to the Department (often referred to as 'secondees')</li> <li>persons engaged as consultants or contractors to perform services for the Department in-house in the Department</li> <li>persons engaged as consultants or contractors to performing services for the Department that require non-public access to departmental Assets.</li> </ul>
Integrity and Professional Standards Branch	I&PS	Administers the Professional Standards and Integrity Frameworks, which set out the standards of integrity and ethical behaviour required by all employees of the Department.
Non-public access	NA	Ongoing or unrestricted access to departmental assets which are not available to members of the public.
Policy and Procedure Control Framework	PPCF	The Policy and Procedure Control Framework mandates a consistent and integrated approach to the development and management of the Department's policies and procedures. The PPCF is aligned to, and complements, the Department's Risk Management Framework, Quality Management Framework and Information Environment Strategy.
Procedural Instruction	PI	Describes how to implement a Policy Statement by outlining actions in relation to a particular activity.
Senior Executive Service	SES	Senior managers, including branch and division heads, the Secretary and his deputies, and ABF Commissioner.

## Attachment B – Assurance and Control Matrix

### 1.1. Powers and Obligations

**Please Note:** Staff exercising any powers, delegations or authorisations outlined in this SOP (listed here) must check the latest delegation advice on the Intranet or the relevant instrument in LEGEND to ensure they currently hold the applicable power, delegation or authorisation.

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Australian Border Force Act 2015</i>	s55(1)	The Secretary may give directions to IBP workers in connection with the administration and control of the Department	No	
<i>Public Governance, Performance and Accountability Act 2013</i>	s9 and s13	Officials	No	
<i>Public Service Act 1999</i>	s13(5)	An APS employee must comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give direction	No	
<i>Public Service Act 1999</i>	13(7)	An APS employee must: (a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and (b) disclose details of any material personal interest of the employee in connection with the employee's APS employment	No	
<i>Public Service Act 1999</i>	13(10)	An APS employee must not improperly use inside information or the employee's duties, status, power or authority: (a) to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or (b) to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.	No	

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### 1.2. Controls and Assurance

Related Policy	NIL
Procedures / Supporting Materials	Declarable Circumstances Procedural Instruction (SM-1552) <u>Outside Employment and Voluntary Activities Instruction and Guideline</u> <u>Accountable Authority Instructions (FM-4808)</u>
Training/Certification or Accreditation	<i>Essentials mandatory eLearning Package</i> <i>Ethical Decision Making (ES-IPS-CO-EDM)</i>
Other required job role requirements	N/A
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Personnel Security and Suitability Section <u><a href="mailto:Personnel.suitability@homeaffairs.gov.au">Personnel.suitability@homeaffairs.gov.au</a></u>  Integrity and Professional Standards <u><a href="mailto:Integrityawareness@homeaffairs.gov.au">Integrityawareness@homeaffairs.gov.au</a></u>  Workplace Behaviours <u><a href="mailto:performanceandbehaviour@homeaffairs.gov.au">performanceandbehaviour@homeaffairs.gov.au</a></u>  <u>Finance division</u> <u><a href="mailto:gift.register@homeaffairs.gov.au">gift.register@homeaffairs.gov.au</a></u>
Escalation arrangements	Director, Personnel Security and Suitability Integrity and Professional Standards Branch
Recordkeeping (eg system based facilities to record decisions)	TRIM
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	Integrity Framework
Job Vocational Framework Role	All Job Roles

## **Attachment C – Consultation**

### **1.1. Internal Consultation**

- Integrity and Professional Standards Branch
- Legal Group
- Workforce Capability
- Financial Framework Section
- Procurement Policy and Advice Section

### **1.2. External Consultation**

- Community and Public Sector Union through the National Staff Consultative Forum.