

Australia

1. Fair	
Regulatory framework	<p>Legislative branch: The <i>Requirements of the House of Representatives: Registration of Members' Interests</i> adopted by the House of Representatives on 9 October 1984 and by the Senate on 17 March 1994 (last amended 2008), §1 and 2 contains financial disclosure requirements for Members of the Senate and the House of Representatives.</p> <p>Executive branch: The <i>Public Service Act 1999</i> covers Australian Public Service employees, who must disclose any material personal interest.</p>
Outreach to public officials about disclosure requirement	<p>Legislative branch: The Cabinet Handbook contains provisions on <i>ad hoc</i> declarations of interest (sections 50 to 52). The Handbook can be found online at: http://www.dpmc.gov.au/pmc/publication/cabinet-handbook-8th-edition.</p> <p>Executive branch: Employees of the Australian Public Service (APS) are bound by a separate enforceable statutory Code of Conduct established by section 13 of the <i>Public Service Act</i>. Among other things, the Code requires that all APS employees must:</p> <ul style="list-style-type: none"> • behave honestly and with integrity in connection with APS employment; • disclose details of any material personal interest of the employee in connection with their APS employment • take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their APS employment. <p>Perceived conflicts of interest pertaining to statutory office holders are addressed under the enabling legislation or administrative codes of conduct within the courts, tribunals and statutory bodies that the office holders are part of.</p> <p>Judicial branch: Candidates for appointment to the judiciary must make a private interest declaration prior to appointment. The appointments section of The Cabinet Handbook outlines this obligation for public office including the judiciary.</p>
Type of information disclosed	<p>Disclosure requirements, including those for the judiciary, are focused on potential conflicts of interests with less emphasis on assets.</p> <p>Legislative branch: Members of the Senate and the House of Representatives (and therefore members of the Government) are required to disclose the following:</p> <ul style="list-style-type: none"> • Properties: Real estate, including the location (suburb or area only) and the purpose for which it is owned. • Investments and Liabilities: Shareholdings in public and private companies (including holding companies) indicating the name of the company or companies; family and business trusts and nominee companies, indicating the name of the trust, the nature of its operation and the beneficiary of the trust; liabilities indicating the nature of the liability and the creditor concerned; the nature of any bonds, debentures and like investments; saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned; the nature of any other assets (excluding household and personal effects) each valued at over AUD \$7,500. • Incomes: Nature of any other substantial sources of income. • Positions: Registered directorships of companies; partnerships indicating the nature of the interests and the activities of the partnership; membership of any organisation where a

conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

- **Gifts and funded travels:** Gifts valued at more than AUD \$750 received from official sources, or at more than AUD \$300 where received from other than official sources provided that a gift received by a Member, the Member's spouse or dependent children from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist; any sponsored travel or hospitality received where the value of the sponsored travel or hospitality exceeds AUD \$300;
- **Other:** Any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

The registrable interests of which the Member is aware of the Member's spouse and any children wholly or mainly dependent on the Member for support must also be included in the statement.

The statement is to include:

- in the case of new Members, interests held at the date of the Member's election;
- in the case of re-elected Members of the immediately preceding Parliament, interests held at the date of dissolution of that Parliament; and
- changes in interests between these dates and the date of the statement.

Executive branch: The purpose of disclosure by APS employees under the Public Service Act is to ensure that heads of agencies are aware of any private interests or relationships of APS employees in leadership or other sensitive positions which could or could be seen to influence the decisions the employees are taking or the advice they are giving. It is the responsibility of employees to whom the declaration policy applies to consider and declare private interests or relationships that could or could be seen to impact upon the decisions they are taking or the advice they are giving.

The types of interests and relationships that may need to be disclosed include:

- real estate investments;
- shareholdings;
- trusts or nominee companies;
- company directorships or partnerships;
- other significant sources of income;
- significant liabilities;
- gifts; and
- paid, unpaid or voluntary outside employment that could or could be seen to impact upon the employee's responsibilities.

On the other hand, ownership of personal assets such as a personal or family home, works of art, jewellery, furniture, antiques etc. are unlikely to have any real or perceived impact on an employee's responsibilities and would not normally need to be declared, except in the case of people working in these fields.

Judicial branch: The private interests declaration requires disclosure of the following:

- whether the candidate or any of his former business partners have been declared bankrupt, entered into debt agreements, or entered into personal insolvency agreements;
- whether any business or commercial enterprise for which the candidate has had responsibility has gone into receivership;
- whether the candidate or their partner(s) has been the subject of a court order in connection with debt;
- whether the candidate has been summonsed or charged concerning non-payment of tax, outstanding tax debts, or negotiated with the Australian Tax Officer over outstanding tax debts; and

	<ul style="list-style-type: none"> any other information relevant to the suitability of the candidate for the proposed appointment. <p>The candidate must also give an assurance that their private, business and financial interests would not conflict with public duties or otherwise cause embarrassment during the term of appointment.</p>
Other relevant information	<p>Judicial branch: Under the common law a judicial officer must disclose a private interest in a case if ‘in all the circumstances, a fair minded lay observer with knowledge of the material objective facts “might entertain a reasonable apprehension that [the judge] might not bring an impartial and unprejudiced mind to the resolution of the question” in issue.’(Webb v the Queen (1994) 181 CLRT 41 at 67).</p> <p>Additional information about how members of the Judiciary handle conflicts of interest can be found in Chapter 3 of the Australian Institute of Judicial Administration’s <i>Guide to Judicial Conduct</i>, available at http://www.aija.org.au/online/GuidetoJudicialConduct.pdf</p>
2. Transparent	
Public accessibility of disclosed information	<p>Legislative branch: Required under the <i>Registration of Members’ interests Resolution</i>, section 3(d): ‘the Register of Members’ Interests shall be available for inspection by any person...’.</p> <p>Members’ Interest Statements for the 44th Parliament are available on the House of Representatives Standing Committee of Privileges and Members’ Interests website http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pmi/registermeminterests.htm and the Senate Standing Committee of Senators’ Interests http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/Register_4_August .</p> <p>Executive branch: Declarations of conflict of interest made under the Public Service Act remain confidential.</p> <p>Judicial branch: Private interest declarations made by candidates for judicial appointment remain confidential.</p>
Public access to information concerning disclosure system functioning	<p>There is no reporting of compliance statistics or enforcement data. However, in the case of the legislative branch the full list of filers appears on the website where disclosures are also made available.</p> <p>APS employees, including members of the SES, make their declarations to their agency head. Agency heads, in turn, are required to provide their disclosure statements to the agency Minister.</p>
Other relevant information	
3. Targeted at senior leaders and those in at-risk positions	
Legislative	Public officials required to disclose include members of both the Lower and Upper Houses (Members of Parliament and Senators).
Executive	<p>APS agency heads and members of the SES are required to disclose at least annually.</p> <p>Every APS employee is obliged to disclose any material interest when it arises.</p>
Judiciary	Candidates for appointment to the judiciary must make a private interest declaration prior to appointment.

Other	N/A
Risk-based approach to the disclosure requirement	Only senior officials (MPs and members of Government) are required to disclose. Employees within the executive and in specific high risk positions may also be required by an agency head to make annual statements.
Other relevant information	Special arrangements apply to people employed under the Public Service Act, material creating a mandatory annual disclosure scheme for both agency heads and for members of the Senior Executive Service (SES) in relation to their interests, and the interests of their families.

4. Supported with adequate resources

Main agency/ agencies involved in disclosure	<p>Legislative: The Registrar of Members' Interests (House of Representatives) and the Senate Standing Committee of Senators' Interests (Senate).</p> <p>Executive: The responsibility for supporting, monitoring and enforcing the APS disclosure arrangements rests with each agency head for their agency.</p> <p>Judiciary: The Attorney-General's Department is responsible for declarations made during the judicial appointments process. Each court manages its own processes for disclosure of private interests in individual cases.</p>
Other entities	N/A
Other relevant information	

5. Useful

Frequency of filing requirement	<p>Legislative branch: Members of the Senate and the House of Representatives are required to report on their interests within 28 days of making the oath or affirmation as a member or a senator. Members are required to notify any alterations to those interests to the Registrar within 28 days of the alteration occurring. Alterations are tabled at the end of the Autumn, Winter and Spring sessions of Parliament.</p> <p>Executive branch: Agency heads and members of the SES are required to complete the disclosure form on commencement in their role and then annually thereafter.</p> <p>APS employees are required to disclose any real or apparent conflict of interest when it arises.</p>
Validation & verification	<p>Legislative branch: The Committee of Privileges and Members' Interests is appointed to consider specific complaints about registering or declaring interests (House of Representatives Standing Order 216(a)(iv)).</p> <p>Executive branch: APS employees are required to declare personal and private interests under the Public Service Act</p> <p>Agency heads have a responsibility to ensure that any conflict of interest or other threat to the integrity of the agency that is identified in the declarations is avoided or effectively managed.</p>

	<p>In some circumstances it may not be logistically possible for the agency head to assess, review and retain every declaration. In these cases, the agency head may decide to put in place systems that delegate primary responsibility for reviewing and holding declarations to senior SES level staff. Such systems and processes will need to:</p> <ul style="list-style-type: none"> • ensure the confidentiality of the declarations; and • bring any serious real or apparent conflicts of interest to the attention of the agency head. <p>Judicial branch: Disclosures made during the judicial appointments process are verified where the candidate is recommended for appointment.</p>
Uses of disclosed information	Disclosure forms filled out by members of the legislative branch are available on-line for all institutions to access.
Other relevant information	
6. Enforceable	
Types of applicable sanctions	<p>Legislative branch: Where a Member knowingly fails to provide a statement of registrable interests, knowingly fails to notify any alteration of those interests within 28 days, or knowingly provides false or misleading information, shall be guilty of a serious contempt of the House or Senate, and shall be dealt with by the House/ Senate accordingly.</p> <p>Executive branch: For APS agency heads and members of the SES, failure to comply with the disclosure scheme might amount to a breach of the Code of Conduct in its own right and be subject to a range of sanctions under the Public Service Act. Sanctions available for an APS employee (including members of the SES) who fails to disclose and manage a conflict of interest range from a reprimand to termination of employment.</p> <p>Judicial branch: Judicial appointments are not made until a private interest declaration is made. If information is deliberately omitted from the declaration or is knowingly false, depending on all the circumstances, such an act could be considered as proved misbehaviour' for the purpose of the Australian Constitution. Parliament might consider removal of a federal judicial officer under section 72(ii) of the Constitution. Additionally, under s 34 of the <i>Crime Act 1914</i> (Cth) a judge or magistrate acting oppressively or when interested in a case may be liable for imprisonment of up to two years. Specifically subsection 4 provides that:</p> <p>(4) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is a judge or magistrate; and (b) the judge or magistrate perversely exercises jurisdiction in a matter; and (c) the judge or magistrate has a personal interest in the matter; and (d) the jurisdiction is a federal jurisdiction.
Mechanism and entities responsible for	Legislative branch: The Standing Committee of Privileges and Members' Interests is appointed to take action including

<p>enforcing measures</p>	<ul style="list-style-type: none"> • to inquire into and report on the arrangements made for the compilation, maintenance and accessibility of a Register of Members’ Interests, and • consider specific complaints about registering or declaring interests. <p>The Committee may call for witnesses and documents, but it may only exercise that power when considering a matter concerning the registration or declaration of a Members’ Interests if the action is approved by at least 6 members of the committee other than the Chair (the total membership is 11 members). The committee must report to the House on its operations in connection with the registration and declaration of Members’ interests during the year as soon as possible after 31 December each year.</p> <p>Executive branch: APS agencies should have systems and procedures in place to enforce the Code of Conduct. The Public Service Commissioner is empowered to evaluate the adequacy of systems and procedures to ensure compliance with the Code.</p> <p>Judicial branch: Only Parliament can consider removal of a federal judicial officer under section 72(ii) of the Constitution. The Parliament may, under the <i>Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012</i>, establish a Commission to assist the Parliament in determining whether such removal is warranted.</p>
<p>Other relevant information</p>	

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