IRAP conflict of interest guidance

The following are not exhaustive examples of conflict of interest, they are provided to demonstrate some typical conflicts that should be reported to ASD. Where there is any doubt, IRAP Assessors should declare all disclosure events to the IRAP Team (via the Partner Portal submission) and the organisation or agency that has engaged the IRAP Assessor.

Any conflict of interest information must be outlined in the Conflict of interest section of the IRAP Assessment Report, even the fact that there are no conflicts present.

Conflict of interest	Conflict of interest status	Mitigation(s)
IRAP assessor is employed by Company A that has merged/acquired Company B.	Apparent	Restrict: No staff that developed the system are involved in the assessment. Any documentation or functionality developed by acquired company is out of scope. Company B designed or developed the system.
IRAP assessor or employer has previously provided advice on the system.	Apparent	Restrict: IRAP assessor has not provided advice on this system or, dependent systems within the last 12 months. Any documentation created by the IRAP assessor or functionality that the IRAP assessor advised on has been scoped out of the assessment. OR Oversight: Client may employ a non-conflicted IRAP assessor to provide assurance of assessment independence.
IRAP assessor has interests in technology used in the system or alternative technology that is not used in the system.	Real	Relinquish: The parent company sells all interests in the technology.

Conflict of interest	Conflict of interest status	Mitigation(s)
IRAP assessor is directly employed by the system owner	Real	Unable to mitigate
IRAP assessor has relationships with employees of the system's owner	Apparent	Remove: Identified employees are not involved in the IRAP assessment through either the provision of information or any functionality or documentation developed by the identified employee was not included in the assessment or was assessed by an alternate IRAP assessor. OR Relationships identified by the assessor were agreed with the client and ASD as being insignificant or immaterial to the assessment of the system.
IRAP assessor is aware that the assessed entity may seek to procure cyber security uplift work that their own consulting business may bid for during the IRAP assessment process.	Potential	Oversight: IRAP assessor keeps up-to-date with any potential commercial interactions with the assessed entity, ensuring to notify both ASD IRAP and the assessed entity if any circumstances around the IRAP assessment change. If a commercial arrangement is entered, and the uplift work is related to the assessed system (including governance of the entity), the uplift work will need to be de-scoped, or completed after the IRAP assessment is complete. The assessed entity may also employ a non-conflicted IRAP assessor to provide assurance of independence oversight.
Following an IRAP assessment, the assessed entity seeks to procure the IRAP assessor that completed the assessment to assist with their cyber uplift.	None	As this is after the conclusion of an IRAP assessor, for non-IRAP assessment activities, the IRAP assessor is not bound by IRAP conflict of interest policy. **Note, performing cyber uplift work for a system/entity will preclude an IRAP assessor from performing an IRAP assessment on that system in the future.**

Conflict of interest declaration handling procedure

Once a conflict of interest declaration is received by ASD the following procedure will be followed:

ASD conflict of interest declaration handling:

1. Obtain all relevant facts to ensure that the decision maker completely understands the situation:

   a) If the conflict of interest has been reported by a third party, seek information in writing from the person alleged to have a conflict.

2. Review the situation to determine the nature and scope of any alleged conflict of interest giving consideration to:

   a) the person's position, duties and the level of their decision making responsibilities;

   b) the person's decision making authority;

   c) the levels of review to which the person's decisions are subject;

   d) the proximity and significance of the matter causing the conflict;

   e) the potential public perception of the alleged conflict of interest and its management; and

   f) the operational or administrative impact of the conflict.

3. Determine if a real, potential or apparent conflict of interest exists:

   a) If there is no conflict of interest, notify parties of the decision and ensure that the justification for the decision is recorded and stored for future reference.

   b) If there is a conflict of interest, proceed to next step.

4. The decision maker will consult with the affected person(s) to determine an appropriate strategy to address the conflict of interest. There are a number of options available for managing conflicts of interest. These range from simply disclosing relevant details to relinquishing the private interest. The appropriate option or combination of options used in any situation will depend on the circumstances. Commonly accepted strategies include:

   a) Restrict—restrictions are placed on the individual's involvement in the matter. An example would be restricting a delegate from exercising a financial delegation that relates to a business they have financial interests in.

   b) Oversight—a non-conflicted third party can be appointed to oversee part or all of the process that deals with the matter. An example would be having an unbiased individual from a different firm processing specific elements that could relate to a conflict of interest.

c) Remove—the individual so that they do not participate in the matter at all. This may be achieved by a temporary or permanent transfer of the conflicted individual to another position.

d) Relinquish—the individual voluntarily relinquishes the private interest giving rise to the conflict of interest. An example might be the revoking their position as a director in a company where a conflict of interest exists.

5. Inform the person with the conflict of interest and any other relevant persons of the management strategy to be adopted to address the conflict of interest.
6. Ensure appropriate records of the matter, including details of the circumstances, the nature of the conflict and the steps taken or strategies adopted to manage it, are recorded on the conflict of interest declaration and stored for future reference.
7. Monitor and review the matter to ensure that the strategy is working effectively and the circumstances have not changed.

Notes:

In conducting this evaluation procedure, decision makers should be mindful of the need to ensure that adversely affected persons are afforded procedural fairness. This includes engagement in consultation and providing an opportunity for affected persons to comment on or make their position known with respect to an intended management strategy.

The decision maker should also take into account the effect that the selected strategy could have on the affected individual. For example, decisions may impact the individual, and/or the client.

Conflicts of interest often involve situations that give rise to confidentiality and privacy obligations. It is important to maintain confidentiality on sensitive and private conflict of interest issues consistent with statutory requirements, in compliance with contractual arrangements and in keeping with the 'need to know' principle. When reporting sensitive conflict of interest issues, the reporting should be confidential and based on evidence, and the issues must not be discussed in an open area or with any person who is not required to know of the issue.

If a suspected conflict of interest has been reported from a third party, the decision maker will advise the affected individual as soon as practicable that a report has been made. The affected individual should be given an opportunity to respond and is expected to provide all reasonable assistance to the decision maker.

The Commonwealth will not accept liability for any losses suffered as a result of voluntary relinquishment. It is a matter of personal choice whether an IRAP assessor decides to relinquish personal assets that might give rise to a conflict of interest.

IRAP assessors are responsible for the day-to-day management of any real, potential or apparent conflicts of interest.

Disclaimer

The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or emergency situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances.

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ASD AUSTRALIAN SIGNALS DIRECTORATE

ACSC Australian Cyber Security Centre