

Private and Secondary Employment Procedure

Approved by: Executive Director, Human Resources

Approval date: 21 April 2017

Brief description:

Implementation document for the Private and Secondary Employment policy.

The Private and Secondary Employment Procedure contains mandatory provisions that must be read and applied in conjunction with the Code of Conduct, and the Fraud and Corruption Control Policy.

It contains guidance for employees wanting to undertake employment other than their primary employment with the department.

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1. Introduction

- 1.1 The Department of Education recognises that private or secondary employment can contribute to an employee acquiring additional skills and knowledge. Therefore, employees may engage in private or secondary employment provided that they meet relevant requirements under this procedure and the [Code of Conduct](#).
- 1.2 The [Private and Secondary Employment Policy](#) sets out the department's position on private and secondary employment. This Private and Secondary Employment Procedure contains mandatory provisions and guidance for employees wanting to undertake employment other than their primary employment with the department.
- 1.3 All permanent, temporary and casual departmental staff are required to comply with the department's [Code of Conduct](#), including when engaged in private or secondary employment. In accordance with the Code of Conduct, employees must ensure that their responsibility to the department is not adversely affected and that no conflicts of interest arise.
- 1.4 In considering applications for private or secondary employment, the protection of children is to be the paramount consideration. If an application for private or secondary employment is inconsistent with the need to protect children, it will not be approved.
- 1.5 Private or secondary employment must be lawful and not damage the reputation of the department. All staff have a responsibility for the mitigation of fraud and corruption within their area of responsibility, see the [Fraud and Corruption Control Policy](#) for more information.
- 1.6 In general, employees may not work in competition with any section of the department. In certain cases, approval may be granted where the conflict of interest can be resolved or adequately managed. Where it becomes apparent that the conflict of interest is not being adequately managed, the approval will be withdrawn. See section 6 of this document for further information on the approval process for work in competition with the department.

2. Audience and application

- 2.1** All permanent full-time employees and temporary full-time employees employed under the *Teaching Service Act 1980*, *Education (School Administrative and Support Staff) Act 1987* and the *Government Sector Employment Act 2013* are required to gain approval for private and secondary employment.
- 2.2** The following employees are not required to gain approval for other employment, providing the other paid work is undertaken during the period that the person is not required to discharge duties for the department:
- all casual employees in the department
 - temporary employees (employed for less than 10 weeks) employed under the *Education (School Administrative and Support Staff) Act 1987*
 - all permanent part-time and temporary part-time employees in the department.

Note: For the purposes of section 92B of the *Teaching Service Act 1980* and section 7C of the *Education (School Administrative and Support Staff) Act 1987*, permanent part-time employees and temporary part-time employees covered by these Acts are deemed to have approval providing that the other paid work is undertaken during the period that the person is not required to discharge duties for the department.

The employees identified in section 2.2 of this document must assess that their duties to the department are not adversely affected and that no conflict of interest arises (see section 11 Terms and definitions). In cases where a real or perceived conflict of interest exists, the employee must advise their immediate supervisor, and complete a Private and Secondary Employment Form (Appendix 2). The supervisor must then assess the manageability of the conflict of interest and/or review the continuation of the private or secondary employment. More information about conflict of interests can be found in the [Code of Conduct](#).

- 2.3** This policy does not apply to contractors.
- 2.4** Written approval is required for each case of private employment or secondary employment.
- 2.5** Private or secondary employment undertaken without approval is a breach of the Code of Conduct and may result in disciplinary action.

3. Responsibilities and delegations

Table 1: Responsibilities and delegations

Individuals or areas	Responsibilities
Secretary	<ul style="list-style-type: none"> In accordance with section 92B(2) of the <i>Teaching Service Act 1980</i>, and section 7C(2) of the <i>Education (School Administrative and Support Staff) Act 1987</i>, the Secretary, Department of Education may prepare guidelines with respect to the type of work that constitutes paid work.
Employees	<ul style="list-style-type: none"> Permanent full-time employees and temporary full-time employees have a responsibility to notify their supervisor of any private and secondary employment and to complete the Private and Secondary Employment Approval Form. Employees identified in section 2.2 of this document must disclose any real or perceived conflict of interest to their supervisor and if required complete the Private and Secondary Employment Approval Form.
Supervisors, Managers and Approving Delegates	<ul style="list-style-type: none"> Supervisors have a responsibility to be aware of the policy requirements and any specific conditions of approval and ensure that these requirements or conditions are satisfied. Managers and supervisors must monitor the work performance of employees who have approved private or secondary employment to ensure that it does not adversely affect the proper and efficient performance of their primary department duties. The approving delegates must maintain a record of all applications (including their outcome, the nature of any conflict of interest or potential problems, the means of managing them) and ensure the currency of approvals. A copy of the approval to engage in private or secondary employment must be placed on the employee's personal file. The delegate must also provide the applicant with a copy of their completed application form for future reference.
EDConnect	<ul style="list-style-type: none"> Provides general information on private and secondary employment.

Delegations

- 3.1** Clause 7 of the Government Sector Employment Regulation 2014 allows the delegates listed in Table 2 (except for principals) to determine applications from non-executive employees to engage in other paid work or other extra official activities. Under the Government Sector Employment Act 2013, public service senior executives can determine applications for private and secondary employment.
- 3.2** For staff employed under the Teaching Service Act 1980 the delegates listed in Table 2 may exercise all powers under Section 92B of the Act with regard to giving permission to undertake private and secondary employment.

Table 2: Approving applications for private and secondary appointment

Delegates who may approve an application for private and secondary employment
<ul style="list-style-type: none">• PSSE Band 4 (Secretary)• PSSE Band 3 (example: Deputy Secretary, Chief Executive Officer etc.)• PSSE Band 2 (example: Chief Financial Officer, Executive Director etc.)• PSSE Band 1 (example: Director, Chief Legal Officer etc.)• Principals* (example: P1-P5, Associate Principal, Executive Principal, Teaching Principal etc.)• Clerk Grade 11/12 <p>*Note: Principals may not sub-delegate their powers in relation to private and secondary employment applications for teachers.</p>

- 3.3** For staff employed under the *Education (School Administrative and Support Staff) Act 1987*, the delegates listed in the table below may exercise all powers under Section 7C(1) of this Act with regarding to giving permission to undertake private and secondary employment.

Delegates who may approve an application for private and secondary employment
<ul style="list-style-type: none">• PSSE Band 4 (Secretary)• PSSE Band 3 (example: Deputy Secretary, Chief Executive Officer etc.)• PSSE Band 2 (example: Chief Financial Officer, Executive Director etc.)• PSSE Band 1 (example: Director, Chief Legal Officer etc.)• Principals* (example: P1-P5, Associate Principal, Executive Principal, Teaching Principal etc.) <p>*Delegates can sub-delegate their powers in relation to private and secondary employment applications for school administrative and support staff.</p>

- 3.4** For more information on delegations see the department's staff only [administrative delegations page](#).

4. Private employment

4.1 Private employment refers to any employment outside of the department.

Private employment requiring approval:

4.2 Any paid work outside the department requires prior written approval, subject to the exceptions at section 4.6 of this document. Paid work outside the department includes:

- employment by any outside entity
- self-employment
- the private practice of any profession, occupation or trade
- engaging in or undertaking any commercial business, whether as principal, agent, partner or employee
- provision of consultancy services
- accepting or holding office, other than in the department, with any government of a state, the Australian or any local government
- the appointment of public service staff as Returning Officers under section 21AE of the *Parliamentary Electorates and Elections Act 1912*
- participating as a member of an examining authority or undertaking private contract marking where fees are paid to such examiners (except for HSC Marking, see section 4.6)
- writing or editing books, articles and other published documents where the work is related to the employee's duties or contains specialist knowledge or information obtained in the course of such duties
- lecturing, teaching and tutoring in universities, recognised professional associations and other recognised educational bodies
- commercial activity associated with owning or participating in the ownership of a primary producing property where the commercial activity is related to the employee's duties
- any position with a corporation, company or firm
- furthering the aims, objectives or interests of any of the above for actual or prospective gain.

4.3 Employees wishing to undertake private employment while they are on leave (including full-time or part-time leave without pay, maternity leave, long service leave, extended leave and the deferred salary leave year under the Deferred Salary Scheme) are required to gain prior written approval from their manager for private employment.

4.4 Employees on leave without pay are not permitted to teach in an independent or private school. Leave without pay will not be granted in order to take up a teaching position with a NSW private or independent school.

4.5 Employees travelling overseas or interstate who may wish to work overseas or interstate, need to apply for written approval to engaging in private employment. If the department currently offers similar courses or services in the countries or states that the employee is visiting, and the employee is seeking approval to teach in those areas, the delegate may grant approval only if the requirements at section 7.6 of this document are met.

Activities that do not require approval for private employment include:

4.6 Work outside the department that does not require approval as at section 4.2 above includes:

- work undertaken by employees outside the department on an unpaid basis
- becoming a member or shareholder of any corporation, company or society registered under state or Commonwealth laws where the employee does not take part in any conduct of the corporation, company or society other than in the exercise of a right to vote as a member or shareholder
- accepting any office founded under the law relating to friendly societies for the benefit only of public service staff or persons employed under the *Teaching Service Act 1980*
- presentations to professional associations of which an employee is a member
- where an employee is representing the department or a recognised employee association and/or health society such as the Teachers Federation Health
- work related to HSC marking and the HSC Advice and Inquiry Line
- department-sponsored/operated programs and activities – for example, work related to the department-operated HSC Tutorial Support Schemes, Summer Schools, E-Summer Schools, Study Plus and Homework Centres.

5. Secondary employment

5.1 Secondary employment means any work or position within the department that is in addition to an employee's principal full-time employment in the department.

5.2 The types of secondary employment within the department that require prior written approval include:

- entering into a contract with the department for work such as curriculum or educational resource development
- contract marking (except HSC marking, NAPLAN marking or marking of other department assessment activities)
- paid education research.

5.3 Unpaid or voluntary work is generally not regarded as secondary employment, however, real or perceived conflicts of interest may still arise, in which case the employee must refer to the Code of Conduct.

6. Competition with the department

- 6.1** In general, employees may not work in competition with any section of the department. However, in certain cases approval may be granted if it is in the interest of, or benefit to the department. Issues of conflict of interest must be fully addressed by the applicant in their application. This provision applies during periods of full-time or part-time leave without pay, long service leave, parental leave, extended leave and the deferred salary leave year under the Deferred Salary Scheme. Information about conflict of interests can be found in the [Code of Conduct Procedures](#).
- 6.2** An employee may identify opportunities for private employment (for example, consultancy, new teaching area or course) that may potentially be in competition with the department (see terms and definitions in section 11 of this document), or that may be a commercial opportunity for the department to undertake. Consequently, before applying to undertake the activity as private employment, the employee should request advice from their manager and/or delegate as to whether the department may be in a position to provide the activity on a commercial basis. If a potential commercial opportunity is identified, the delegate may contact EDConnect on 1300 32 32 32.
- 6.3** Where the department decides to undertake the proposed commercial opportunity, the employee who identified it, if appropriately qualified, may be engaged to deliver the service as part of their normal duties. In this instance, these duties will not be treated as private or secondary employment. The delegate will consult with the immediate supervisor of the employee concerned in reaching their decision.
- 6.4** Where the department decides not to undertake the activity, the employee may apply for private or secondary employment. The documentation, which is completed by the applicant and is approved by the delegate, is to include a record of the consultation undertaken with the relevant marketing unit in the department.
- 6.5** Employees must not accept employment in the business of another department employee without declaring the relationship in the application form.

7. Process

An overview of the approval process is shown in a flow chart in [Appendix 1](#)

Procedures for the approval of an application

- 7.1** Employees need to submit their application for written approval through their immediate supervisor to the appropriate delegate, using the form at Appendix 2. The immediate

supervisor for school counselling staff is their professional practice supervisor in the school counselling service.

- 7.2** Applications need to be submitted at least seven days prior to the commencement of any proposed private or secondary employment. Managers and delegates are required to address the application in a reasonable timeframe.
- 7.3** In exceptional circumstances verbal or email approval should be obtained from the approving delegate prior to engaging in the private or secondary employment. Such approval must be confirmed in writing using the form at Appendix 2 within seven days of the private or secondary employment.
- 7.4** Written approval is required for each case of private employment or secondary employment.
- 7.5** Advice on the application process may be sought from EDConnect on 1300 32 32 32.

Approval requirements

- 7.6** Where applications are made for private or secondary employment, the delegate needs to be satisfied that the:
- work will not create a conflict of interest
 - work does not conflict with the need to give paramount consideration to the protection of children
 - activity is not in competition with the department (see terms and definitions in section 11 of this document) or where it may be in competition with the department, that the procedure set out in section 6 of this document is followed
 - work will not damage the reputation of the department
 - employee's services to the department take precedence during contracted working hours
 - work will not adversely affect the proper and efficient performance of usual duties
 - work will not adversely affect the completion of a course of study or training, for which the employee is receiving financial assistance or a grant of paid leave from the department
 - work associated with private employment will not be conducted in the department's work time. This work will not use the department's premises or resources (for example, telephone, stationery, computing equipment, systems, databases, email, mobile phone or other equipment or facilities) or services other than those available to the general community except in the case where the department is the contractor and such use is specified in the contract

- employee will fully comply with the department's copyright guidelines
- work does not arise from the employee using their official position for personal advantage (for example, where the employee would have exclusive access to the work due to their official duties or position).

7.7 If the supervisor suspects there may be a conflict of interest or has concerns about the application of this procedure, they should escalate the issue to the delegate in the first instance. If the issue cannot be resolved, EDConnect can be contacted on 1300 32 32 32 for further advice. More information about conflict of interests can be found in the [Code of Conduct Procedures](#).

7.8 All staff have a responsibility for the mitigation of fraud and corruption within their area of responsibility, see the [Fraud and Corruption Control Policy](#) for more information.

7.9 Applications for private employment that may be in competition with the department (see terms and definitions in section 11 of this document) may only be approved where there is a demonstrable benefit to the department. For example, where approval to engage in private employment ensures the retention of a teacher with unique or scarce skills, it may be in the department's interest to approve private employment.

Conditions

7.10 There is no specific limit on the number of hours per week that can be approved. Where greater than ten hours per week is sought by a full-time employee, the application will need to justify the number of hours.

7.11 Supervisors and approving delegates should decide on the approved number of hours in private employment in consultation with the employee concerned.

7.12 Approval may be withdrawn by the delegate in writing at any time (see section 7.16 of this document).

7.13 The department is not able to re-arrange an employee's duties to accommodate private or secondary employment.

Renewal of approvals

7.14 Employees who seek to renew an approval for private or secondary employment, are to seek written approval through a new application form:

- four weeks prior to the one-year anniversary of the approval
- four weeks prior to the expiry date of the approval
- when they change their work location or position

- when the nature of the private or secondary employment activity changes.

7.15 Teaching employees who seek to renew an existing approval for private or secondary employment in teaching are required to seek the new written approval at the beginning of the calendar year.

Relinquishment of approvals

7.16 Any change to the conditions of approval, either through a change in the private or secondary employment or in the employee's work with the department, requires discussion between the employee and delegate, and review of the approval. In a situation where the approval is withdrawn, a copy of the original approval form must be updated and noted with the reasons for withdrawing approval. The delegate retains a copy of the updated application form for their records and provides a copy for the employee. The completed original is sent to the relevant EDConnect area (see contacts in **Appendix 2**) for placement on the employee's personal file for secure record keeping.

Fees and remuneration

7.17 Where private or secondary employment is approved in accordance with these procedures, the employee is entitled to retain fees and remuneration received. Where activities are undertaken as part of the employee's normal duties and responsibilities, even outside normal working hours, they are not treated as private or secondary employment and any fee or remuneration received is paid to the department.

Use of department intellectual property

7.18 Apart from the exceptions below, employees are not permitted to use department intellectual property outside of the department for the purposes of private or secondary employment (see section 11 of this document for the definition of intellectual property). Refer to the department's [copyright intranet page](#).

7.19 Department employees engaged in secondary employment as teachers or lecturers within the department may use department documents and resources in order to meet curriculum requirements. In these instances, permission to use department publications is not necessary.

7.20 Permission to use department's copyright material should be sought from the directorate or unit that created the copyright material. The request to use copyright material can also be noted in the application form at **Appendix 2**, under the 'additional information' section.

Complaints and escalation of issues

7.21 Where an employee is not satisfied with the result of the application, the request is escalated to the delegate's supervisor for review. If an agreement is still not reached, the employee

may follow through the process outlined in the department's Complaints Handling Policy and on the department's [Complaints Handling](#) intranet page.

7.22 Please contact EDConnect on 1300 32 32 32 if you require further clarification on the policy.

8. Monitoring and review

8.1 The Executive Director, People and Culture is responsible for monitoring the implementation of this policy and reviewing its effectiveness every three years, or sooner if necessary.

9. More information

9.1 Any further enquiries may be referred to EDConnect on 1300 32 32 32.

10. Document history

10.1 Document information

Procedure title	Private and Secondary Employment Procedure
Current version	4.0
Procedure number	PD-2003-0007-01-V01.0.4
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Audience	Temporary and permanent full-time employees of the department Publicly available
Location in taxonomy	Procedure Performance and Conduct
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10.2 Document accountability

Role	Name
Procedure Owner	Executive Director, People and Culture
Procedure Advisor	Director, HR Operations, Policies and Systems
Procedure Facilitator	Manager, HR Policy & Compliance
Procedure Contact	EDConnect 1300 32 32 32

10.3 Document version history

Version	Date	Author	Change description
2.0	15/02/2017	HR Policy	Changed from Guideline to Procedure (new format)
2.1	07/03/2018	HR Policy	Change in section 7.1 to reflect new approving structure
3.0	21/08/2018	HR Policy	Inserted into the new template. Update contact details to EDConnect. Accessibility checked.
3.2	21/11/18	HR Policy	Moved Policy provisions into the Procedure.
4.0	02/01/2021	HR Operations, policies and systems	Updated contact details and repaired broken links.
4.1	19/04/2021	HR Operations, policies and systems	Updated contact details, repaired broken links and addressed style, formatting and accessibility.

10.4 Document linkages

Legislation and regulation

Key relevant legislation and regulation that determines influences or defines this procedure:

Year of enactment	Title of legislation
1980	Teaching Service Act
1987	Education (School Administrative and Support Staff) Act
2006	Education Legislation Amendment Staff Act
2013	Government Sector Employment Act
2014	Government Sector Employment Regulation

Policies and procedures

Reference procedures and procedures that flow from this procedure:

Type	PD number	Title
Policy	PD-2004-0020	Code of Conduct
Policy	PD-2003-0007	Private and Secondary Employment Policy

11. Terms and definitions

Definitions of terms that are contained in this procedure:

Term	Definition
Competition with the department	provision of educational services in Australia or overseas, in a course or field in which the department is currently providing, or has well progressed plans to provide. This might be through the provision of: <ul style="list-style-type: none">• vocational education and training• school education• educational consultancy• the development of teaching or learning resources relevant to the vocational education and training or school education sector• IT training and software development.
Commercial interest	the department's interest in relation to its market share as a provider of school education-related activities, and consultancy and training.
Conflict of interest	a situation where an employee has a private or personal interest that may influence the exercise of his or her official duties. An employee's private employment might cause them to act in a manner that is not in the interests of the department. Refer to the Code of Conduct sections on conflict of interest.
Department	the NSW Department of Education.
Intellectual property	the department's intellectual property exists in the form of copyright material, this includes its trademark logo and applications, and reputation. Collectively, this property can include all curriculum materials, course information, promotional items, computer software and databases, training and staff manuals, commercial publications, non-commercial publications including reports, research, questionnaires, building plans, forms and stationery, and confidential information.
Private employment	any employment outside the department.
Secondary employment	any work or position within the department that is in addition to an employee's principle employment in the department.

12. Appendix 1: Overview of the approval process

Step 1

Complete section 1 of application form at least 7 days prior to commencement of proposed private/secondary employment (refer to section 7.1 of this procedure)

Step 2

Submit the application form to immediate supervisor. Where the immediate supervisor is also the delegate, proceed directly to **Step 5**

Step 3

The immediate supervisor completes section 2 of the application form, either recommending or not recommending approval, (referring to section 7.2 of this procedure)

Step 4

The immediate supervisor submits the application form to the appropriate delegate for approval (applicable delegates listed in section 3 of the procedure)

Step 5

The delegate completes section 3 of the application form, and either approves or does not approve the application, (referring to section 7.6 of this procedure)

Step 6

The delegate advises the applicant of the outcome of their application and provides the applicant with a copy of their completed application form

Step 7

The delegate retains a copy of the completed application form for their records and forwards the completed original application form for placement on the employee's personal file for secure record-keeping as follows:

- Teachers in Hunter and Central Coast, New England, North Coast, Northern Sydney and Western Sydney regions: email to EDConnect.Newcastle.Forms@det.nsw.edu.au
- Teachers in Illawarra and South East, Riverina, South Western Sydney, Sydney and Western NSW regions: email to EDConnect.Wollongong.Forms@det.nsw.edu.au
- School administrative and support staff, general and farm assistants and other non-teaching staff in schools in all regions: email to EDConnect.Bathurst.Forms@det.nsw.edu.au
- State office and regional office staff, including SES: email to EDConnect.CorporatePayroll.Forms@det.nsw.edu.au

13. Appendix 2: Private and secondary employment policy application form

1. TO BE COMPLETED BY APPLICANT (use separate forms for separate activities)

Name _____ Employee ID _____

Position at time of application _____

School/unit/directorate at time of application _____

Possible work location/s during next 12 months _____

If on leave, type and duration of leave _____

DETAILS OF PROPOSED/ONGOING ACTIVITY

Name of employer or business activity _____

Location of activity _____

Proposed period of activity _____

Proposed hours/days to be worked per week _____

Description of duties/terms of activity (attach details if insufficient space below)

Please read Section 7.6 of the Private and Secondary Employment Procedure and list all possible conflicts of interest, as well as how you will resolve or address these.

I acknowledge that I have read the Private and Secondary Employment Procedure and the department's Code of Conduct and that this request is not in breach of these documents.

I acknowledge that should there be any changes to my other employment or a potential conflict of interest arises, I will promptly notify my immediate supervisor.

Signed _____ Position _____ Date _____

3. TO BE COMPLETED BY DELEGATE

3.1 I confirm I have consulted with EDConnect, if required, in accordance with section 7.7 of the Private and Secondary Employment Procedure.

Tick one: Yes No Not applicable

3.2 The application is approved (following a review of the factors listed at section 7.6 of the procedure)

Tick one: Yes No

Period for which approval applies / / to / / (maximum of 12 months)

Comments:

Signed _____ Name _____
Position _____ Date _____

Privacy notice

The information provided on private and secondary employment is being obtained for the purpose of managing private and secondary employment and the consequences it creates. It will be used by the Department of Education to approve private or secondary employment where appropriate and to safeguard resources. Provision of this information is required if private or secondary employment is being undertaken. It will be stored securely. If you do not provide all or any of this information then approval cannot be granted. You may correct any personal information provided at any time by contacting the approving delegate.

Teachers in schools in Hunter and Central Coast, New England, North Coast, Northern Sydney and Western Sydney regions email to: EDConnect.Newcastle.Forms@det.nsw.edu.au

Teachers in schools in Illawarra and South East, Riverina, South Western Sydney, Sydney and Western NSW regions email to: EDConnect.Wollongong.Forms@det.nsw.edu.au

For all school administrative and support staff, all general assistants and farm assistants and all other non-teaching staff in schools in all regions email to: EDConnect.Bathurst.Forms@det.nsw.edu.au

For all state office and regional office staff, including senior executive service email to: EDConnect.CorporatePayroll.Forms@det.nsw.edu.au