

# PRIVATE AND SECONDARY EMPLOYMENT PROCEDURE

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Implementation procedure for Private and Secondary Employment

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**Contact:** EDConnect

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## Document history

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1.0.0	21/04/2017	First publication	Executive Director, People and Culture
	15/02/2017	Changed from Guideline to Procedure (new format)	Executive Director, People and Culture
	8/03/2018	Change in section 7.1 to reflect new approving structure	
	21/08/2018	Inserted into the new template. Update contact details to EDConnect. Accessibility checked.	
	21/11/2018	Moved Policy provisions into the Procedure.	
	4/3/2020	Updates to the Private and Secondary Employment Procedure to add references to the Corruption Prevention Policy, as required by the Corruption and Fraud Prevention Plan	
	2/01/2021	Updated contact details and repaired broken links.	
1.0.4	21/04/2021	Updated contact details, repaired broken links and addressed style, formatting and accessibility.	
1.1.0	20/10/2022	Repaired broken links, updated wording throughout and additions of sections 4.3, 6.2 and 6.3 (teachers working as private tutors). Section 7 was restructured – no change in intent.	Director, Human Resources Operations, Policies and Systems

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# 1 Introduction

The Department of Education recognises private or secondary employment may contribute to an employee acquiring additional skills and capability. Employees may engage in private or secondary employment provided they meet the requirements under this procedure and the Code of Conduct.

The Private and Secondary Employment policy outlines the department's position on private and secondary employment.

The Private and Secondary Employment Procedure contains mandatory provisions and guidance for employees to undertake employment other than their primary employment with the department.

All permanent, temporary and casual departmental staff are required to comply with the department's Code of Conduct when engaged in private or secondary employment. In accordance with the Code of Conduct, employees must ensure their primary responsibility to the department is not adversely affected and no conflicts of interest arise.

When considering applications for private or secondary employment, the safety, welfare, wellbeing and protection of children is the paramount consideration. If an application for private or secondary employment is inconsistent with the need to protect children, it will be declined.

Private or secondary employment must be lawful and must not damage the department's reputation.

All staff are responsible for fraud and corruption mitigation in their area of responsibility, refer to the Fraud and Corruption Control policy for information.

Employees should not work in competition with any section of the department. In certain cases, approval may be granted where an identified conflict of interest can be resolved or managed. Where the conflict of interest is not managed, approval will be withdrawn. See section 7 for information on the approval process.

## 2 Audience and application

All permanent 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 obtain approval for private and secondary employment.

The following employees are not required to obtain approval for other employment, if the other paid work is undertaken outside their Department of Education work hours and duties:

- casual employees in the department
- temporary employees, employed for less than 10 weeks, under the Education (School Administrative and Support Staff) Act 1987
- permanent 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 and temporary part-time employees covered by these Acts are deemed to have approval providing the other paid work is undertaken outside their Department of Education work hours and duties.

Employees identified in this section must assess their duties to the department are not adversely affected and no conflict of interest arises (section 10 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 Application.

The supervisor must assess and manage the conflict of interest and / or review the continuation of the private or secondary employment. Information on conflict of interests is located in the Code of Conduct.

Written approval is required for each case of private or secondary employment.

Private or secondary employment undertaken without approval is a breach of the Code of Conduct and may result in disciplinary action.

This policy does not apply to contractors.

## 3 Responsibilities and delegations

### 3.1 Responsibilities

Secretary:

- Section 7C(2) of the Education (School Administrative and Support Staff) Act 1987, states the Secretary, Department of Education, may prepare guidelines with respect to the type of work that constitutes paid work.

Principals, managers, supervisors and approving delegates:

- have a responsibility to be aware of the policy requirements, conditions of approval and ensure the requirements or conditions are satisfied
- must monitor the work performance of employees with approved private or secondary employment to ensure it does not adversely affect the proper and efficient performance of their primary department duties
- approving delegates must maintain a record of all applications including the outcome, any conflict of interest, potential problems and their management, as well as ensure the approval is current
- must place a copy of the private or secondary employment approval on the employee's personal file and provide a copy to the employee.

Employees:

- permanent and temporary full-time, must notify their supervisor of any private and secondary employment and complete a Private and Secondary Employment Application
- identified in section 2 must disclose any real or perceived conflict of interest to their supervisor and if required complete the Private and Secondary Employment Application.

EDConnect:

- provides general information on private and secondary employment.

### 3.2 Delegations

Under the Government Sector Employment Act 2013, public service senior executives can determine applications for private and secondary employment.

Clause 7 of the Government Sector Employment Regulation 2014 allows the delegates listed below (except principals) to determine applications from non-executive employees to engage in other paid work or other extra official activities.

For staff employed under the Teaching Service Act 1980, the delegates listed in Table 1 may exercise all powers under Section 92B of the Act with regard to giving permission to undertake private and secondary employment.

For staff employed under the Education (School Administrative and Support Staff) Act 1987, the delegates listed in Table 1 may exercise their power under Section 7C(1) of this Act giving permission to undertake private and secondary employment.

**Table 1 Type of delegations**

<b>Delegate type</b>	<b>Teaching Service Act 1980</b>	<b>Education (School Administrative and Support Staff) Act 1987</b>
PSSE Band 4 (Secretary)	Y	Y
PSSE Band 3 (for example, Deputy Secretary, Chief Executive Officer)	Y	Y
PSSE Band 2 (for example, Chief Financial Officer, Executive Director)	Y	Y
PSSE Band 1 (for example, Director, Chief Legal Officer)	Y	Y
Principals (for example, P1-P5, Associate Principal, Executive Principal, Teaching Principal)	Y Principals may not sub-delegate their power in relation to private and secondary employment applications for teachers.	Y Delegates can delegate their power in relation to private and secondary employment applications for school administrative and support staff.
Clerk Grade 11/12	Y	N/A

Information on administrative delegations is available on EDConnect's [Delegations webpage](#).

## 4 Private employment

Private employment refers to any employment outside of the department.

### 4.1 Private employment requiring approval

Paid work outside the department requires prior written approval, subject to the exceptions at section 4.2.

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
- providing consultancy services
- accepting or holding office, other than in the department, with any state or territory government, 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 4.2)
- engaging in paid tutoring outside normal duties or a department sanctioned tutoring program, through a tutoring company or organised by the employee
- 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.

Employees who wish to undertake private employment while on leave, including full- or part-time leave without pay, maternity leave, extended leave and the deferred salary leave year under the Deferred Salary Scheme, are required to obtain prior written approval from their manager.

Employees on leave without pay are not permitted to teach in an independent or private school.

Leave without pay will not be granted to take up a teaching position with a NSW private or independent school.

Failure to comply with the Private and Secondary Employment policy and this procedure while on leave without pay, may result in leave request being cancelled.

Employees travelling overseas or interstate who wish to work overseas or interstate, must apply for written approval to engage in private employment. If the department offers similar courses or services in the countries or states the employee is visiting, and the employee is seeking approval to teach in those locations, the delegate may grant approval if the approval requirements are met.



## 4.2 Activities that do not require private employment approval

Work outside the department that does not require approval includes:

- unpaid work undertaken by employees outside the department, such as volunteer work
- 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 the 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
- presenting professional associations of which the 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

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

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

- entering 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.

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 General conditions

Employees may not work in competition with any section of the department. In certain cases, approval may be granted when in the interest of, or benefit to, the department. Conflicts of interest must be addressed by the employee in their application. This provision applies during periods of full- or part-time leave without pay, parental leave, extended leave and the deferred salary leave year under the Deferred Salary Scheme.

Employees approved for private or secondary employment must not use their position in the department to promote their private business interests. This includes referrals to businesses employees are associated with, such as a teacher referring students to their tutoring business or a corporate staff member promoting their private business through a department contract. Guidance on conflict of interests is located in the Code of Conduct.

Staff who work in schools approved for private or secondary employment must ensure any professional or ethical decisions are guided by the department's Values in NSW Public Schools.

Staff working in the public sector should align any decisions with the department's core values – accountability, service, integrity, equity, trust and excellence.

Employees who accept employment in the business of a department employee must declare the relationship in the application form.

### 6.2 In competition for commercial opportunities

An employee who identifies a private employment opportunity, for example, a consultancy, new teaching area or course, that may be in competition with the department (terms and definitions, section 10), or a commercial opportunity the department could undertake, should seek advice from their manager and/or delegate, prior to applying to undertake the activity as private employment, to determine whether the department may be in a position to provide the activity on a commercial basis.

If a commercial opportunity is identified, the manager and/or delegate may contact EDConnect on 1300 32 32 32.

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 usual duties. The duties will not be treated as private or secondary employment. The manager and/or delegate will consult with the immediate supervisor of the employee in reaching their decision.

Where the department decides not to undertake the activity, the employee may apply for private or secondary employment. The application should include a record of the consultation undertaken with the relevant marketing unit in the department.

### **6.3 Private tutoring**

Private tutoring is tutoring engaged on a paid basis and/or undertaken outside of a department-sanctioned program. Staff engaged in private tutoring as a sole trader or through an agency, regardless of the time spent per week, will be regarded as engaging in private or secondary employment.

Staff in this situation must complete the private and secondary employment application form and follow the approval process. Staff must ensure they are not at risk of misconduct or corruption, and comply with the Code of Conduct.

Examples of situations where conflicts of interest may occur include teachers:

- offering their paid tutoring services to their own students outside of school hours
- referring their own students to a colleague's paid tutoring service
- working in selective high schools offering paid services (as an individual or as part of an agency) to prepare students for the selective high school placement test
- telling a student or parent/guardian that they would benefit from a tutor and then recommending a particular tutor or company that they have an association with
- using their approved secondary employment as HSC markers to promote their private business.

Staff approved for private or secondary employment as a private tutor must comply with the department Code of Conduct and review NESAs statement on Honesty in HSC Assessment – the Standard.

To assist in mitigating misconduct and corruption risk, schools should:

- maintain a record of staff working privately as tutors
- ensure teachers clearly understand these guidelines and the risk of malpractice if they are not followed.

Staff approved to work as private tutors should examine the potential for a conflict of interest in their work arrangements and discuss any conflicts with their department supervisor.

## 7 Process

The approval process flowchart is shown in the [Appendix](#).

### 7.1 Procedures for approving an application

Written approval is required for private employment or secondary employment.

Employees should submit their application for approval each year through their immediate supervisor to the appropriate delegate, using the [private and secondary employment application form](#).

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

Applications should be submitted at least 7 days before commencing any proposed private or secondary employment. Managers and delegates are required to address the application in a reasonable timeframe.

In exceptional circumstances, verbal or email approval obtained from the approving manager and/or delegate prior to engaging in private or secondary employment must be confirmed in writing using the application form within 7 days of the private or secondary employment commencing.

Advice on the application process may be sought from EDConnect on 1300 32 32 32.

### 7.2 Approval requirements

Applications for private or secondary employment, must satisfy the manager and/or delegate the:

- work will not create a conflict of interest
- work does not conflict with child protection obligations
- activity is not in competition with the department ([section 10](#), Terms and definitions) or where it may be in competition with the department, [section 6](#), Competition with the department, is followed
- work will not damage the department's reputation
- 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 study or training, where 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 department work time or use the department's premises, 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 community, except in the case where the department is the contractor and such use is specified in the contract
- employee will 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).

If a supervisor suspects there may be a conflict of interest or has concerns about the application they should escalate the issue to the delegate. If the issue cannot be resolved, EDConnect can be contacted on 1300 32 32 32 for advice. Information on conflict of interests is detailed in the [Code of Conduct](#).

All staff have a responsibility to mitigate fraud and corruption, see the [Fraud and Corruption Control policy](#) for information.

Applications for private employment that may be in competition with the department may only be approved where there is a 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.

Delegates and supervisors must maintain a record of private and secondary employment approvals. This will allow delegates and supervisors to identify staff at risk of malpractice or unethical behaviour.

### **7.3 Conditions**

There is no limit on the number of hours per week that can be approved.

Where a full-time employee seeks more than 10 hours per week, the application will need to justify the hours sought.

Supervisors and approving delegates should decide on the approved hours for private employment in consultation with the employee.

Approval may be withdrawn by the delegate in writing at any time, refer to section 7.5.

The department is unable to re-arrange an employee's duties to accommodate private or secondary employment.

### **7.4 Renewal of approvals**

Employees seeking to renew an approval for private or secondary employment, are required to submit a new application form:

- 4 weeks prior to the one-year anniversary of the approval
- 4 weeks prior to the expiry date of the approval
- in the event of any change to their work location or position
- in the event of any change to the private or secondary employment activity.

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.

### **7.5 Relinquishment of approvals**

Any change to the approval conditions requires discussion between the employee and manager and/or delegate, and review of the approval.

Where approval is withdrawn, the original approval must be updated and the reasons for withdrawing approval noted.

The manager and/or delegate retains a copy of the updated application form for their records and provides a copy to the employee. The completed original is sent to the relevant EDConnect area (see contacts in the application) and placed on the employee's personal file.

### **7.6 Fees and remuneration**

Where private or secondary employment approval is obtained, the employee is entitled to retain fees and remuneration received.

Activities undertaken as part of the employee's usual role and responsibilities, including outside normal working hours, are not treated as private or secondary employment, and any fee or remuneration received is paid to the department.

## 7.7 Use of department intellectual property

Employees are not permitted to use department intellectual property outside of the department for the purposes of private or secondary employment ) apart from the exceptions below, Refer to the [copyright intranet page](#) for information.

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

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 be noted in the application under additional information.

## 7.8 Complaints and escalation of issues

Where an employee is not satisfied with the result of an application, the request is escalated to the delegate's supervisor for review. If an agreement is not reached, the employee may follow the process outlined in the department's [Complaints Handling](#) policy.

Contact EDConnect on 1300 32 32 32 if you require clarification.

## 8 More information

Further enquiries may be referred to EDConnect on 1300 32 32 32 or by [logging an online query](#).

## 9 Document history

Table 2 Document information

Procedure title	Private and Secondary Employment Procedure
Current version	4.1
Procedure number	PD-2003-0007-01-V01.0.4
Approved by	Executive Director, People and Culture
Approval date	21 April 2017
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Audience	Temporary and permanent full-time employees of the department Publicly available
Location in taxonomy	Procedure Performance and Conduct
Subject keywords	private & secondary employment, private & secondary, secondary employment, private employment

**Table 3 Document accountability**

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

## 9.1 Document linkages

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

**Table 4 Document linkages – key legislation**

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

Reference procedures and procedures that flow from this procedure:

**Table 5 Document linkages - department policies**

Type	PD number	Title
Policy	PD-2004-0020	Code of Conduct
Policy	PD-2003-0007	Private and Secondary Employment
Policy	PD-2004-0009	Fraud and Corruption Control
Policy	PD-2002-0051	Complaints Handling

## 10 Terms and definitions

**Competition with the department** means 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 the provision of:

- 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** is the department's interest in its market share as a provider of school education-related activities, and consultancy and training.

**Conflict of interest** is 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 interest of the department. Refer to the Code of Conduct section on conflict of interest.

**Department** is the NSW Department of Education.

**Intellectual property**, for the department exists in the form of copyright material, including 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** is any employment **outside** the department.

**Secondary employment** is any work or position **within** the department additional to an employee's principal employment in the department.



## Appendix 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)

### Step 2

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

### Step 3

The immediate supervisor completes section 2 of the application, recommending or not recommending approval, (refer to section 7.2)

### Step 4

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

### Step 5

The delegate completes section 3 of the application, and approves or does not approve the application, (refer to section 7.6)

### Step 6

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

### Step 7

The delegate retains a copy of the completed application 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](mailto: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](mailto: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](mailto:EDConnect.Bathurst.Forms@det.nsw.edu.au)
- State office and regional office staff, including SES: email to [EDConnect.CorporatePayroll.Forms@det.nsw.edu.au](mailto:EDConnect.CorporatePayroll.Forms@det.nsw.edu.au)