

# Secondary Employment Policy

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<b>Department:</b>	Governance		
<b>Author:</b>	HR Officer		
<b>Responsible Director:</b>	General Manager		
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## 1. Purpose

- 1.1 Section 353(2) of the Local Government Act provides that employees are not to engage, for remuneration, in private employment or contract work outside the service of the Council that relates to the business of the Council or that might conflict with the employee's Council duties unless he or she has notified the General Manager in writing of the employment or work.
- 1.2 This section of the Act is based on the principle that people in public positions must avoid situations in which private interests impact upon the discharge of their public duties. It is also based on the reality that situations can arise that appear to indicate conflict of interest, whether or not a conflict actually exists.
- 1.3 The aim of this policy is to provide the framework for identifying conflicts of interest that may arise from employees engaging in employment outside Council. The procedure outlined in this policy will provide the mechanisms for notifying, approving, prohibiting and reviewing these matters.

## 2. Commencement

This policy will commence from the date endorsed by Council. It replaces all other policies and practices relating to secondary employment (written or not).

## 3. Application

- 3.1 This policy applies to all employees across CDSC and with the contents not forming part of an employee's contract of employment.
- 3.2 This policy should be read in conjunction with the relevant provisions in the Award and legislation, as amended from time to time.
- 3.3 The Leadership Team will be responsible for ensuring that approved secondary employment arrangements are not impacting upon the needs of Council, and that health and safety of the employees is maintained.

## 4. Definitions

**Leader / Leadership** - Includes all manager/supervisor positions within CDSC irrespective of their actual title (e.g. Director, Manager, Team Leader, Co-ordinator, Supervisor, Ganger, etc).

**Outside Work / Work Outside of Council** – shall refer to secondary employment for the purposes of this policy.

**Paid Outside Work / Paid Work Outside of Council** – shall refer to private employment, or contract work, for remuneration, outside Council, within the meaning set out in Section 353 (2) of the *Local Government Act, 1993*.

**Secondary Employment** – shall mean any employment (whether casual, part-time, full-time or shift work) with an organisation or business other than Central Darling Shire Council, and includes self employment, independent contracting, consulting, or employment by a family organisation/business.

## **5. Employee Responsibility**

- 5.1 Employees are not to engage in paid work outside Council which relates to the business of Council, or which might conflict with their Council duties unless they have notified the General Manager and he/she has given approval. [s.353 of Local Government Act]
- 5.2 Prospective employees who is already participating in paid outside work which may represent a conflict of interest, at the time of accepting employment with Central Darling Shire Council should declare the employment when accepting the offer and complete the Secondary Employment Application Form for lodgment with acceptance of the offer of employment.
- 5.3 It is the employee's responsibility to advise the General Manager, using the form attached to this policy, of any paid work outside Council which relates to the business of Council, or which may conflict with Council duties.
- 5.4 Where the secondary employment is ongoing, it is the responsibility of the employee to seek approval from the General Manager to continue this work. This re-approval process must be completed each year.
- 5.5 It is the employee's responsibility to seek re-approval for their outside/secondary employment as outlined in this Policy. Failure to comply with this requirement may result in the suspension or removal of approval for secondary employment and/or commencement of a disciplinary process.
- 5.6 Approvals to engage in secondary employment will be valid for 12 months from the date of approval.

## **6. Management Responsibility**

- 6.1 The General Manager is responsible for approving, prohibiting and/or terminating paid outside work where it presents a conflict with the requesting employee's Council duties in line with this policy.
- 6.2 The General Manager will not unreasonably prohibit a request to undertake outside work.
- 6.3 The General Manager may review, and subsequently withdraw, an approval if:
  - an employee is transferred to another position or location within Council and the paid work being undertaken conflicts with the employee's Council duties in the new position or location; or
  - circumstances change which, in the General Manager's opinion, create a conflict of interest or a potential conflict of interest; or
  - issues arise from the performance of outside work which affect the employee's health, safety or attendance for duty.
- 6.4 The General Manager may delegate his/her authority to deal with all or any part of this policy to an appropriate alternate officer. Details of such delegations will be captured in Council's delegations register.
- 6.5 Directors/Managers are responsible for providing advice to employees in relation to the provisions of this Policy, as well as all other procedures pertaining to an individual's conditions of employment. The Director/Manager may also provide recommendations to the General Manager concerning declarations of secondary employment.
- 6.6 Town Gangers, Co-ordinators, Team Leaders and Supervisors are required to report all cases of secondary employment to the General Manager whether disclosed by the employee or not.

## 7. Considerations

- 7.1 The factors outlined below will be taken into account in considering approving, prohibiting or terminating paid outside work.
- 7.2 The General Manager may prohibit employees from engaging in paid outside work if, in his/her opinion, the hours of work, work arrangements or nature of duties jeopardise the health, safety and efficiency of the employee, co-workers or members of the public.
- 7.3 The General Manager may also prohibit employees from engaging in paid outside work if that work directly or indirectly conflicts or potentially conflicts with the business of Council or with the employee's function, duties or responsibilities at Council.
- 7.4 Outside work is not to be carried out on Council premises, using Council assets or facilities of any kind, using Council information or resources, unless such use is lawfully authorised and proper payment is made where appropriate. Outside work is not to be carried out within the hours of work for the employee's Council position.
- 7.5 Employees who are considering entering into outside work should think about the following:
  - Is the outside organisation, person or entity in, or entering into a contractual relationship with Council?
  - Is Council in a regulatory relationship with the outside organisation, person or entity?
  - Will the hours of work conflict in any way with his/her Council duties, or his/her health and safety?
  - Will there be sufficient rest time away from both forms of work to enable the employee to present for work fit and alert and be able to work efficiently and to the standard required?
  - Will the outside work involve him/her in litigation against another Council or directly in written or oral submission before another Council?
  - Will performance of the outside work impact negatively on Council's image and credibility?
  - Will performance of the outside work require release of confidential information which is known to the employee, but not available to the general public?
  - Is there any other conflict of interest, or potential conflict of interest, between the employee's Council duties and those involved in the outside work?
- 7.6 Answering "yes" to any of the above questions is likely to result in the General Manager prohibiting performance of the outside work.

## **8. Procedure**

### **8.1 Notification**

- 8.1.1 Notification of secondary employment is to be made on the form as attached in Annexure A. For existing employees, approval by the General Manager must be granted prior to engaging in the outside work. Prospective employees will be advised of their obligation to notify the General Manager of existing or potential outside work in letters of offer and will be advised of full details of the policy in staff inductions.
- 8.1.2 Where outside work has previously been approved, any change to the conditions of the outside work which could result in a conflict of interest arising, must be advised by completion of a new Application Form as soon as the changed conditions become known.
- 8.1.3 Each notification will be endorsed by the General Manager as being either approved or prohibited and a copy forwarded to the employee.

### **8.2 Potential Conflict of Interest**

- 8.2.1 Engaging in secondary employment can sometimes be perceived as contrary to the best interests of Council and described as a conflict of interest. Conflicts of interest are a major issue for Local Government employees. A conflict of interest occurs when:
  - a) Secondary employment is performed at the same time an employee is being engaged to deliver Council related services.
  - b) The demands of the secondary position compromise an individual's ability to undertake and deliver their duties or to meet their Workplace Health and Safety (WHS) obligations within Council.
  - c) Secondary employment may lead to the individual using Council facilities, equipment or resources such as IT software, plant equipment and/or vehicles.
  - d) Secondary employment may lead to the individual making use of, or receives benefit from, commercial or other information which is accessible by the staff person or elected official during the course of their day-to-day employment.
  - e) Secondary employment is with an agency, organisation or enterprise which supplies Council with equipment, services, or staff.
  - f) Secondary employment is with an agency, organisation or enterprise which is a customer of Council

### **8.3 Health and Safety of Workers**

- 8.3.1 Employees must not engage in any outside employment where the hours worked, or the nature of their duties is such that their personal health or efficiency could be impaired. All employees must adhere to the provisions included in Council's Work Health & Safety Management System Framework.

### **8.4 Sick Leave**

- 8.4.1 Sick leave will not be approved as a consequence of outside or secondary employment.

### **8.5 Approvals**

- 8.5.1 Employees will be advised that their notification has been approved by return of a copy of the appropriately endorsed notification.

## 8.6 Prohibitions

8.6.1 Section 353 of the Local Government Act states:

*“(3) [**Conflict of Duties**] The general manager may prohibit a member of staff from engaging, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member’s council duties.”*

8.6.2 If it is believed that the work outlined in the notification will conflict with the employee’s Council duties, he/she will be advised that the General Manager has prohibited him/her from engaging in the outside work. The advice will be made by the return of a copy of the appropriately endorsed notification containing the reasons for the prohibition.

8.6.3 Section 353 of the Local Government Act states:

*“(4) [**Prohibition of staff to engage in private work**] A member of staff must not engage, for remuneration, in private employment or contract work outside the service of council if prohibited from doing so under subsection (3).”*

8.6.4 Therefore, employees who have been advised that the General Manager prohibits them from engaging in outside work, must cease this work within fourteen days, or at a later date as approved in writing by the General Manager. The General Manager will base his/her decision to approve delayed termination of prohibited outside work on the circumstances of the particular case.

8.6.5 Delayed termination of outside work will not be approved if a clear conflict of interest situation is currently evident. To apply for delayed termination, the employee should apply in writing to the General Manager within fourteen days of receiving the Prohibition, stating the circumstances, and any matter he/she wishes the General Manager to take into account when considering the matter.

## 9. Appeal

Any appeal against a decision by the General Manager or his/her delegate to prohibit outside work, should be dealt with by of Council’s internal **Workplace Grievance and/or Incident Procedure**.

## 10. Records

A Register of Notifications of Secondary Employment will be maintained by the HR Officer. The completed form, along with all documents associated with the requesting, approving, prohibiting or terminating secondary employment will be placed on the employee’s personnel file.

## 11. Legislation

*Local Government (State) Award  
Industrial Relations Act 1996 (Cth)  
Work Health and Safety Act 2011  
NSW Industrial Relations Act 1996  
Public Interest Disclosure Act 2013*

## **12. Related Documents**

- Model Code of Conduct
- Respectful Workplace Behaviours Policy
- Workplace Grievance and/or Incident Procedure
- Internal Reporting Policy
- Records Management Policy
- Workplace Surveillance Procedure
- Work Health Safety Policy

## **13. Monitoring and Review**

This policy will be monitored and reviewed by the HR Officer to ensure compliance through regular reporting to the Management Executive Group. Once endorsed by Council, it remains in force until it is reviewed by HR Officer or when legislation changes. It is to be reviewed approximately every two (2) years to ensure that it meets business requirements, or sooner if the General Manager determines appropriate.



**Annexure A**

**APPLICATION FOR APPROVAL OF SECONDARY EMPLOYMENT**

Applicant's Name: \_\_\_\_\_

Position with Council: \_\_\_\_\_

**Details of Proposed Secondary Employment**

Name of Employer: \_\_\_\_\_

Main business of Employer: \_\_\_\_\_

Relationship to Council if any: \_\_\_\_\_

Duties: \_\_\_\_\_

Hours of Work: \_\_\_\_\_

Statement by Applicant

**I acknowledge that, should approval be granted for my Secondary Employment, any such approval is subject to the following conditions, and may be revoked by the General Manager at any time should these conditions not be met:**

The secondary employment:

- Will not affect the actual or perceived integrity of Council, or involve an actual or perceived conflict of interest.
- Shall not be related in any way to any regulatory or inspectorial role I undertake for Council
- Shall not affect the efficient performance of my normal duties nor jeopardise the health and safety of myself, my co-workers or members of the public.
- Shall not entail the use of any Council resources or information either in the conduct of that secondary employment or to help gain private employment.
- Shall not entail the use of Council vehicles, materials and equipment to do part time work in off-duty hours.
- Shall not entail the release or misuse confidential information which is accessible to Council staff but not to the general public.

Signed \_\_\_\_\_ Date \_\_\_\_\_

**To be completed by the General Manager**

Approval Granted / Denied \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

Completed form to be placed on personnel file.