

Conflict of Interest – Policy and Procedures Including Financial Interests and Gifts and Benefits

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Version:	Final				
Summary:	This policy and procedure on <i>Conflict of Interest</i> includes financial interests and gifts and benefits and sets out mandatory requirements and guidance for NSW health professional Council members, associated committee, panel and hearing members, and Health Professional Councils Authority (HPCA) staff.				
Applies to:	Members of health professional Councils. Members of committees, panels and hearings. All HPCA staff.				
Author:	Corporate Governance				
Related legislation, policies, awards, agreements	<ul style="list-style-type: none">• <i>Government Sector Employment Act 2013</i>• PD2015_026 Recruitment and Selection of Staff to the NSW Health Service – NSW Health• PSCC 2014-13 Behaving Ethically: A guide for NSW government sector employees - Public Service Commission• PD2015_049 Code of Conduct - NSW Health• PD2018_031 Managing Misconduct – NSW Health• PD2016_29 Corrupt Conduct - Reporting to the Independent Commission Against Corruption – NSW Health• <i>HPCA Reporting Corrupt Conduct (HP16/7148-01)</i>• PD2016_027 Public Interest Disclosures – NSW Health• Privacy Manual for Health Information - NSW Health• <i>HPCA Public Interest Disclosure Policy (HP12/3101)</i>				
Review date:	2022				
Approved by:	HPCA Executive				
Approval date:	11 April 2019				

POLICY

PURPOSE

The purpose of this policy is to assist effective identification, management and recording of conflicts of interest, including financial interests and receipt of gifts or benefits.

This supports:

- A culture that is consistent with the Codes of Conduct applicable to and signed by all members and staff
- An ethical and responsible environment for the regulation of health practitioners in NSW
- The integrity, fairness and transparency of decisions made and actions taken by members and staff.

MANDATORY REQUIREMENTS

All members and staff must perform their duties in a fair and unbiased way in the public interest and make decisions that are not affected by self-interest or personal gain. This includes identifying, avoiding and managing **actual, perceived or potential** conflicts of interest, declaring any financial interests and only accepting gifts or benefits if they are of a token nature.

Actions that put private interests, gain or advantage above public interest may be considered corrupt conduct under the provisions of the *Independent Commission Against Corruption Act 1988*. This could lead to removal of a member from their position and disciplinary action for staff.

Conflict of Interest Declarations

Members must declare any conflicts of interest that arise. These declarations must be recorded in minutes of the meeting as well as action taken to manage the conflict.

Staff must declare any conflicts of interest that arise as they perform their duties. These should be reported to the relevant manager or other authorised person to decide appropriate action, or to escalate if necessary.

Financial Interest Declarations and Undertakings

This section on financial interest declarations and undertakings only applies to Council members and Senior Executives and not other committee, panel and hearing members or other staff.

Council Members must submit a completed *Financial Interest Declaration and Undertaking* form on appointment and re-appointment and provide written advice of any changes as they occur.

Consistent with Public Service Commission (PSC) directives, Senior Executives should provide a written declaration of any financial interests that could potentially influence their decisions or advice. This involves completing a *Financial Interest Declaration and Undertaking* form on commencement of employment, annually thereafter and if circumstances change at any time. HPCA Corporate Governance manages financial interest declarations.

Financial Interests Register

This section on the financial interests register only applies to Council members and not other committee, panel and hearing members, Senior Executive or staff.

Council members must declare at meetings if any matters under consideration raise any financial conflicts of interest. Details must be recorded in the meeting minutes and in the *Financial Interests Register*. The National Law, Schedule 5C Clause 16(3) requires Councils to maintain the *Financial Interests Register* (Book) and make this available for inspection by any person. The Chief Audit Officer manages this register.

Gifts and Benefits Declarations

Any gifts or benefits above the nominal amount of \$75 received by members or staff must be declared and particulars recorded in a *Gifts and Benefits Register* which is managed by HPCA Corporate Governance.

RESPONSIBILITIES

The Director must ensure:

- Conflicts of interest, including financial interests and receipt of gifts or benefits, are managed appropriately
- Systems are in place to effectively identify, manage and record conflicts of interest, financial interests and receipt of gifts and benefits

- An officer with an appropriate level of seniority and experience is nominated to assess and manage conflict of interest, financial interest and gifts and benefits matters as needed
- This policy is brought to the attention of members and staff and relevant information is provided regularly.

Presidents and Chairs must ensure:

- Members are aware of and comply with this policy
- Correct procedures are followed for declaring and recording conflicts of interest at meetings
- Real, perceived or potential conflicts of interest are managed appropriately, including exclusion of conflicted members from discussion and / or decision making
- Correct procedures are followed for declaring and recording gifts or benefits received by members
- Council members are aware they need to declare if any matters under consideration at meetings present possible financial conflicts of interest which must be recorded in the *Financial Interests Register*
- Council members are aware they need to complete and return a *Financial Interest Declaration and Undertaking* form on appointment, on re-appointment and immediately there are any changes in financial interests.

Senior Executive, Managers and Executive Officers must ensure:

- Members and staff are aware of this policy and procedures
- Information on conflict of interest, including financial interests and gifts and benefits, is routinely provided to members and staff
- The systems for identifying, managing and recording conflicts of interest, financial interests and gifts and benefits are implemented
- *Financial Interest Declaration and Undertaking forms* are completed annually and provided to HPCA Corporate Governance (Council members and Senior Executive only).

The Chief Audit Officer must:

- Review and sign off the *Financial Interest Register* and *Gifts and Benefits Register* each year and report to the Audit and Risk Committee that all actions have been completed, any instances that require further action and any trends identified
- Provide advice and assistance on appropriate management of conflicts of interest, financial interests or gifts and benefits issues when required.

Members and staff have a public duty to:

- Identify and assess conflicts of interest relating to their appointment or employment
- Avoid conflicts of interest where possible and appropriately manage conflicts of interest that cannot be avoided
- Declare to the President, or committee / panel / hearing chair or HPCA Executive, or Executive Officer, or Manager as appropriate, any actual, perceived or potential conflict of interest, or receipt of any gift or benefit
- Declare if any matters under consideration at meetings present a possible financial conflict of interest (Council members)
- Never accept gifts of cash or bribes
- Refuse gifts or benefits where members or staff are making decisions about individuals or suppliers
- Not seek or accept for themselves, a family member, or friend any payment, gift or benefit outside the terms of appointment or employment agreement
- Treat all persons equally and fairly and not show preference or bias towards any individual or organisation.
- Complete a *Financial Interest Declaration and Undertaking* form on appointment, re-appointment and immediately after any change in financial interests (Council members and Senior Executive only)

DEFINITIONS

Authorised Officers / Delegates are individuals the Director designates as authorised to receive, make decisions and advise on matters involving conflicts of interest, financial interests and receipt of gifts and benefits. This includes managing a *Financial Interests Register* and *Gifts and Benefits Register*. Authorised Officers cannot delegate their responsibility to another staff member.

Bribe is a gift or benefit offered to, or solicited by, members or staff to influence that person to act in a particular way.

Chief Audit Officer is an appointed officer responsible for internal audits and reporting. The Chief Audit Officer cannot delegate the responsibility to another officer.

Conflict of interest is a situation where the capacity of members or staff to make an impartial decision, or give impartial advice on a matter, is influenced or undermined by other interests.

Conflicts of interest may be:

- **Actual** conflict of interest – where there is a direct conflict between the private interests of a member or staff and the performance of their duties and responsibilities
- **Perceived** conflict of interest – where it might appear to others that members or staff have private interests that could improperly influence the performance of their duties and responsibilities, whether or not this is the case
- **Potential** conflict of interest – where members or staff have private interests that could interfere with the performance of their duties and responsibilities in the future.

Conflicts of interest may be:

- **Regulatory** – where a conflict of interest relates to the regulation of health practitioners, such as assessment of a complaint about a practitioner known to a member
- **Corporate** – where a conflict of interest relates to business operations, including procurement of goods and services (for example computer and software purchases and ICT maintenance contracts); human resource functions (such as recruitment or engagement of temporary staff); contracts management and consultants (for example engagement of researchers or legal advisors).

Conflict of Interest Record is official documentation of declared conflicts of interest and details including names of those with a conflict of interest, if necessary the nature of the conflict, and decisions and action taken to manage the conflict. These records include meeting minutes.

Corrupt Conduct is deliberate or intentional wrongdoing, not negligence or a mistake, which involves or affects a NSW public official or public sector organisation. Corrupt conduct can take many forms, and occurs when:

- A public official improperly uses, or tries to improperly use, the knowledge, power or resources of their position for personal gain or the advantage of others
- A public official dishonestly or improperly exercises official functions, breaches public trust or misuses information or material acquired while carrying out official functions
- A member of the public influences, or tries to influence, a public official to use their position in a way that is dishonest, biased or breaches public trust.

Director (HPCA) is responsible for ensuring the policy and procedures are implemented. The Director can delegate responsibilities to Authorised Officers or the Chief Audit Officer.

Financial Interests Register is the official record required under the National Law, Schedule 5C Clause 16(3) of financial conflicts of interest declared by Council members about matters arising in Council meeting agendas.

Gift or Benefit is any item, service, prize, hospitality or travel, offered or provided by a practitioner or complainant, customer, client, applicant, supplier, potential supplier or external organisation, which is of value to the recipient, a relative, friend or associate. Examples of intangible benefits include access to confidential information, a new job, professional or social advancement, free admission to a sponsored event where tickets would normally be purchased, preferential treatment such as 'queue jumping', or hospitality such as a sit down meal during a presentation or product launch.

Gifts and Benefits Register is an official written record that captures all gifts and benefits received by members in relation to their regulatory role, or staff in relation to performance of their duties, and details the decisions made and action taken.

Health Professional Councils are the 15 statutory bodies that regulate registered health practitioners in NSW.

Health Professional Councils Authority (HPCA) is an executive agency of the NSW Ministry of Health working in partnership with, and providing support to, the NSW health professional Councils.

HPCA Staff refers to any person working in an ongoing, temporary, casual, contracted, term appointment or honorary capacity within the Councils or the HPCA, including practitioners undertaking assessments, consultants and researchers performing work for the Councils or the HPCA.

Member includes any member of a Council, Council committee, or regulatory panel or hearing such as an Assessment Committee, Professional Standards Committee, Impaired Registrants Panel or Performance Review Panel.

Nominal value is the monetary limit of acceptable token gifts. The nominal value for members and staff is \$75.

Non-token gifts have a value greater than \$75 or are gifts that could be seen as an inducement to act in a particular way.

Private interests are personal involvements, affiliations or holdings of members or staff that are outside their terms of appointment or employment and may give rise to a conflict of interest.

Private interests may be:

- **Financial interests** involving actual or potential financial gain or loss, or other material benefits or losses
- **Non-financial interests** which do not have a financial or material component but may arise from personal or family relationships or involvement in other activities that could influence the judgement or decisions of members or staff.

PROCEDURES

1. Background
2. Identifying and declaring a conflict of interest
3. Assessing a declared conflict of interest
4. Recording and managing conflict of interest
5. Receipt of gifts and benefits
6. Forms and registers
7. Annual review
8. Policy breaches
9. Member and staff awareness
10. Reference documents
11. Appendices

1. BACKGROUND

This procedure informs members and staff of their obligations and provides direction for identifying, managing and recording conflicts of interest, including financial interests and receipt of gifts and benefits.

The procedures apply to:

- All members of Councils and associated committees, panels and hearings
- All HPCA staff.

2. IDENTIFYING AND DECLARING A CONFLICT OF INTEREST

Identifying a conflict of interest

In a work context, a conflict of interest can arise where members or staff could be influenced, or perceived to be influenced, by other personal or private interests or relationships when carrying out their public duty.

The tension between public duty and personal interest is closely scrutinised. The community expects public interest to come first.

All members and staff have personal interests, so the possibility of conflict of interest exists for everyone. However interests outside the responsibilities of member appointments or staff employment do not automatically mean there will be a conflict. The issue is whether the individual could be influenced, or appear to be influenced, by other interests while carrying out their public duty.

Also, not all conflicts of interest will necessarily be material. The key considerations are:

- Whether the ability of members or staff to act equitably, fairly and impartially has the potential to be compromised, or could be perceived to be compromised.
- How a conflict of interest is managed.

Members and staff are responsible for identifying and declaring their own conflicts of interest, including actual, perceived or potential conflicts. The following questions can help in making an assessment:

- Am I a member of a professional organisation, association, or club, or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose from consideration of a complaint / matter by the Council or HPCA?
- Could there be benefits for me or my family, a friend, or associate in the future that could cast doubt on my objectivity?

- Am I in a position to influence decision making about a matter related to a potential private interest?
- If I do participate in assessment or decision-making, would I be happy for my colleagues and the public to be aware of any association or connection?
- Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- Have I made any promises or commitments about the matter outside my normal duties?
- Have I received benefits or hospitality from someone who stands to gain or lose from the decision / action?
- Am I confident of my ability to act impartially and in the public interest?
- Do I, a relative, friend or associate stand to gain / lose financially, or in any other way, from a Council, or HPCA decision, or action on this matter?
- Do I need to seek advice or discuss the matter with an objective party?
- Do I need to declare a matter to the President, a committee or panel chair, HPCA Executive, Executive Officer or other manager?

Declaring a conflict of interest

Members and staff must declare all conflicts of interest whether actual, perceived, potential, financial or non-financial.

Members and staff must be particularly vigilant in identifying and declaring financial interests and possible associated conflicts.

Members are more likely to have conflicts of interest concerning the regulation of health practitioners, but may also have corporate conflicts, for instance in the selection of researchers for a project.

Staff are more likely to have corporate conflicts of interest, but may also have regulatory conflicts, for instance if staff are handling the administration for a complaint about a practitioner they know.

Members and staff should report a conflict of interest as soon as possible. Members should report the conflict to the relevant Executive Officer who will alert the President or chair. Staff should report the conflict to their manager and, if relevant, a committee / panel chair. More serious conflicts of interest should be elevated to the HPCA Executive.

Becoming aware of another person's possible conflict of interest

If members or staff become aware of another person's conflict of interest they should raise the matter directly with the person concerned. Members and staff should consider raising the matter with a relevant President, their immediate supervisor or an authorised officer if:

- i) they are uncomfortable raising the possible conflict with the person concerned, or
- ii) it becomes apparent that a conflict has not been declared after raising the matter with the person concerned.

During a meeting it may be necessary for members or staff to draw attention to a possible conflict for others if they do not recognise their own conflict straight away.

If the matter involves possible corrupt conduct, members and staff must make a report through internal reporting processes. Reporting to external bodies may also be required.

[See ICAC website and NSW Health [PD2016_29 Corrupt Conduct - Reporting to the Independent Commission Against Corruption.](#)]

Members and staff should be aware that public interest disclosures are protected under the *Public Interest Disclosures Act 1994 (NSW)* if they need to report a conflict of interest matter involving possible corrupt conduct, maladministration and / or serious and substantial waste of public resources.

[See HPCA *Public Interest Disclosure Policy*.]

Complaints about conflict of interest by the general public

The general public may make a complaint if they have reason to believe that members, management or staff have a conflict of interest. Where this occurs, procedures in the HPCA policy *Managing complaints about a Council, Committee, Panel or Member*¹ (HP15/6395) should be followed.

[Also see NSW Health [PD 2006_073 Complaint Management Policy](#) and [GL2006_023 Complaint Management Guidelines](#).]

3. ASSESSING A DECLARED CONFLICT OF INTEREST

Council Presidents (or Deputy President where a President may be conflicted), committee and panel chairs, managers and other officers delegated to assess conflicts of interest need to consider the significance of declared conflicts by using the following assessment criteria:

- Does the matter fall within the definition of a financial or non-financial interest?
- Has appropriate legal and other advice been obtained?
- Is all the relevant information available to ensure a proper assessment?
- What is the nature of the relationship / association that could give rise to the conflict?
- Is the matter / issue controversial?
- Could the individual's involvement in this matter cast doubt on his / her integrity?
- Could the individual's involvement cast doubt on the process and final decision being made by the Council, or HPCA?
- How would it look to a member of the public?
- What is the best option to ensure impartiality, fairness and protection of the public interest?

The assessment process should include discussion with the individual declaring a conflict of interest.

The Chief Audit Officer should be consulted when:

- Advice is needed, especially if there is the possibility of corrupt conduct
- A matter cannot be readily resolved and needs to be escalated.

Conflicts of interest need to be managed expeditiously. Where the Director delegates assessment of a conflict of interest to an authorised officer, the process of assessment, consultation, recommendation and determination needs to be completed within seven calendar days of receipt of the declaration. Where it is not possible to make a determination within this timeframe, the individual concerned is to be kept informed of progress on the matter.

If the individual disagrees with a determination, the Director or authorised officer needs to attempt to resolve the matter through discussion with the individual involved. If, following this discussion, the matter remains unresolved, grievance procedures are to be followed.

¹ Available on the HPCA or health professional Councils' websites or in 'Resources' in Boardbooks.

4. RECORDING AND MANAGING CONFLICT OF INTEREST

Every time a conflict of interest is declared it must be recorded, as well as decisions about how the conflict is to be managed effectively.

Options for managing a conflict of interest

Choosing the right option to deal with a conflict depends on the circumstances of the matter.

Options for managing a conflict of interest can include:

- **Removing** the individual with the conflict from the matter entirely.
This may be appropriate where the conflict is serious and ongoing and ad hoc restrictions may not be feasible.
- **Restricting** involvement in the matter that gives rise to the conflict.
This may mean the conflicted individual does not participate in the assessment process, withdraws from discussion of affected proposals / assessments or has restricted access to sensitive information. This action is useful when the conflicted individual can be separated from parts of the activity or process, or when the conflict is not likely to arise frequently.
- **Relinquishing** or divesting the private interest.
This may be appropriate where the individual is more committed to their public duty than their private interest. Options may include liquidating or withdrawing from the private interest.
- **Recruiting** a disinterested third party to oversee part or all of the process that deals with the matter. This can be useful when it is not practical or desirable to remove the conflicted individual from the decision-making process, for instance in small communities, or when there is specific expertise that needs to be retained (eg for tendering or recruitment selection panels).
- **Reviewing or restarting** the decision making process.
In rare situations this may not be possible, for example, if a conflict of interest is identified at or near the conclusion of a process. In these circumstances clear information needs to be provided outlining the conflict, when it arose and how it was managed and the conflicted person's role in the decision making process.
- **Resigning** from the public sector agency and / or Council.
This is the most extreme resolution for a serious conflict of interest, but may need to be considered if the conflict cannot be resolved in any other way.

Sound management and recording of conflicts of interest reduces risks for members and staff, as well as the Councils and the HPCA, particularly if an accusation of a conflict of interest is raised to question or discredit decisions.

Support and advice

The Executive Officers, Chief Audit Officer, HPCA Executive team and others designated as authorised officers may provide advice on managing conflicts of interest.

Regulatory conflicts of interest – recording and managing a declared conflict

Members will often become aware of a conflict in performing their regulatory role when they receive meeting papers which include the names of practitioners who are subject of a complaint.

The member should advise the Executive Officer in writing (email is acceptable) of the conflict of interest before the meeting and the President should be alerted (or Deputy President if the President has the conflict of interest) or committee or panel chair where applicable. The conflict should also be declared at the meeting for a decision about how this is to be managed, if this has not already been determined before the meeting. Any conflicts that become apparent during a meeting also need to be declared. Conflicted members excluded from discussion and / or decision making must leave the meeting room.

Decisions about managing a conflict of interest should not be deferred unless the Council decides the conflict is significant and requires further examination. The member should not participate in any decision making about the matter until management of the conflict is resolved.

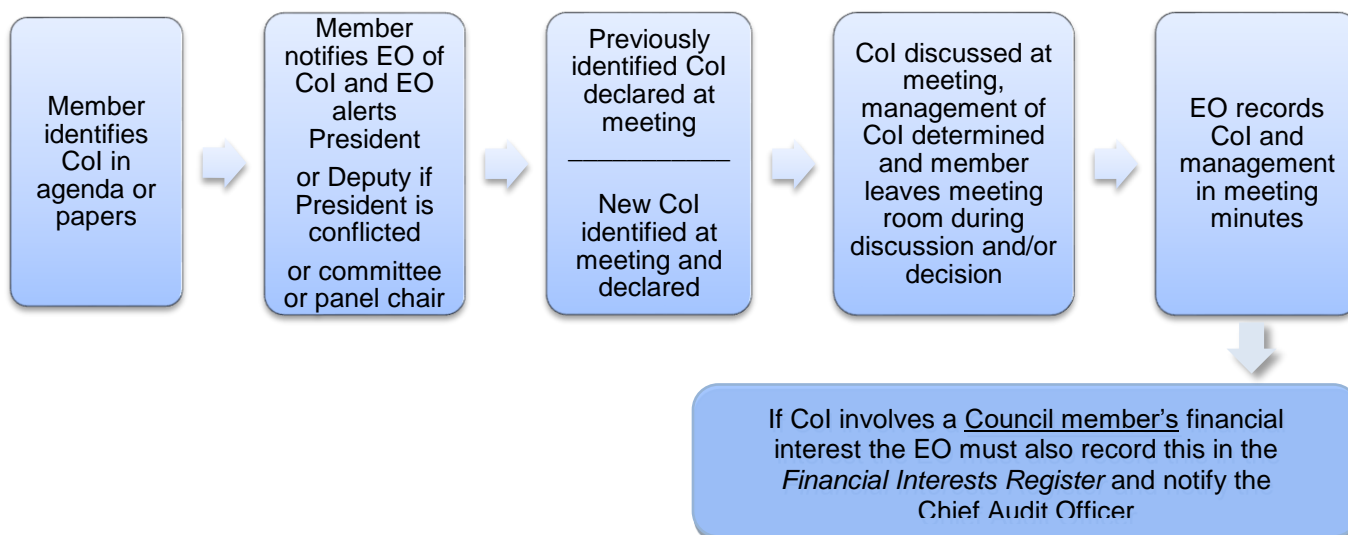
The conflict of interest and how it is to be managed must be recorded in meeting minutes. Minutes must be readily accessible for review. Information to be recorded in the minutes includes:

- Name of the member
- Identified practitioner or complainant by name and complaint number
- Whether the conflict is actual, perceived, potential, financial or not
- Outcome eg member is to leave the room while the matter is being considered and decided
- If a matter is deferred, the reasons, further action to be taken, and the member / officer responsible for ensuring the conflict of interest is managed properly.

Where a financial matter arises for a Council member during a meeting, the Council member must declare this and the Executive Officer must record the declaration in the meeting minutes and in the *Financial Interests Register*, and notify the Chief Audit Officer.

The *Conflict of Interest* declaration form may also be used to assist the accurate recording of conflicts of interest.

Process for recording and managing regulatory conflicts of interest – each time a matter is raised



Corporate conflicts of interest – recording and managing a declared conflict

A corporate conflict of interest may arise for members or staff where they are involved in making recommendations or decisions about operational matters such as:

- Engaging contractors or consultants
- Tendering processes
- Recruiting staff
- Assessing expressions of interest for Council appointments.

Members or staff must declare a possible conflict of interest to the committee or selection panel chair and details must be documented.

For material conflicts of interest, the conflicted individual should also complete the *Conflict of Interest Declaration Form* to assist accurate record keeping and send this via email to:

- The Chief Audit Officer and
- An Assistant Director, or the Director.

- Should be excluded from the selection process if the individual has not already withdrawn
- May participate in discussion to provide relevant information but is excluded from decision making about the known applicant
- May participate in discussion and decision making as no direct or material conflict of interest exists, or the conflict is such that it is not likely to impact on impartial decision making

Conflicted members or staff should cease to be involved in a matter until a decision on how to manage the conflict has been made.

Pathway 1

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graph LR; A[Member or staff identifies Col in committee or selection panel papers] --> B[Member or staff notifies Chair of committee or selection panel about Col]; B --> C[Member or staff may withdraw from committee or selection panel  
-----  
Chair of committee or panel may replace member or staff]; C -- or --> D[Col discussed at committee or selection panel meeting and management of Col determined]; D --> E[Chair records details of Col in process documentation and notifies Chief Audit Officer if Col is material and requires significant management];
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Member or staff identifies Col in committee or selection panel papers

Member or staff notifies Chair of committee or selection panel about Col

Member or staff may withdraw from committee or selection panel

Chair of committee or panel may replace member or staff

or

Col discussed at committee or selection panel meeting and management of Col determined

Chair records details of Col in process documentation and notifies Chief Audit Officer if Col is material and requires significant management

Process for managing other corporate conflicts of interest



Privacy – collection of personal information

Reporting and managing conflicts of interest may involve disclosing and / or collecting personal information. Any personal information must be handled in a way that ensures privacy is managed appropriately and in accordance with the *NSW Health Privacy Management Plan* and *Health Privacy Manual*.

Monitoring

More significant and / or ongoing conflicts of interest may need to be monitored after an initial declaration, assessment and decision about managing the conflict. A relevant manager or Executive Officer would normally be responsible for regular reviews and re-assessment in consultation with the conflicted individual. This includes monitoring:

- The original situation that led to the conflict of interest and declaration
- Initial determinations and conflict management decisions
- The strategy put in place to manage a conflict of interest
- Action to implement the conflict management strategy
- Changes in circumstance that may impact on the management strategy
- Perceptions of others about whether the conflict of interest is improperly influencing matters
- Re-assessments and management decisions about ongoing management of the conflict of interest
- Changes to the management strategy and its implementation.

If circumstances change significantly, the Director and the Chief Audit Officer should be consulted and the process may need to be re-commenced. This involves formal identification of the current situation and current conflicts of interest and then decisions about whether a revised management strategy should be adopted. All reassessments, conflict management decisions and actions must be documented and saved in TRIM.

5. RECEIPT OF GIFTS AND BENEFITS

Accepting a gift or benefit, other than a token gesture, may be seen as an inducement to act in a certain way and may cause a conflict of interest, particularly if offers are from suppliers, bodies or individuals who do business with a Council or the HPCA. A gift or a benefit is anything of value that is offered to members in relation to their regulatory role or staff in relation to performance of their duties.

Gifts

An inexpensive gift of appreciation up to a nominal value of \$75 is a token gift and generally acceptable. A gift of greater value than the nominal amount of \$75, or a gift that could be seen as an inducement is not a token gift and should not be accepted by members or staff.

Staff and members receiving a gift over \$75 are to complete a *Gift and Benefits Disclosure Form* and provide this to the Manager, Corporate Governance.

Benefits

Benefits are services or non-tangibles which are of value to the recipient such as:

- Free (or below market value) accommodation, entertainment, hospitality or travel
- Free admission to a sponsored event where tickets would normally be purchased
- Preferential treatment such as queue jumping
- A sit down meal during a presentation or product launch.

Benefits that could be seen as an inducement should not be accepted by members or staff.

Staff and members receiving a benefit over a token value of \$75 are to complete a *Gifts and Benefits Disclosure Form* and provide this to the Manager, Corporate Governance.

Recommended action when gifts or benefits are offered

Generally, members and staff (or relatives and associates of members and staff) should not accept a gift or benefit. However there may be occasions when refusal would offend and it is appropriate to accept the offer, for example a token gift of appreciation for presenting at a conference.

Gifts and Benefits Register

When completed *Gifts and Benefits Disclosure Forms* are provided to the Manager, Corporate Governance, the Director will be consulted about whether the gift or benefit can be accepted and whether it should be recorded in the *Gift and Benefits Register*. Token gifts are not necessarily recorded in the *Gifts and Benefits Register*.

The Director ensures that the *Gifts and Benefits Register* is maintained and includes all gifts and benefits received and decisions made about the gift (eg returned or retained). The Register is protected and only the Manager, Corporate Governance can enter information into the register which is based on the completed disclosure forms. All completed *Gifts and Benefits Disclosure Forms* are to be retained in TRIM.

The Register records:

- Date gift or benefit was offered
- Offered to (name and position)
- Offered by (name, position, organisation, contact details)
- Reason for offer
- Description of gift or benefit
- Estimated value
- Decision regarding gift (retained by member / staff, retained for corporate use, or returned)
- Sign off (decision and date)

Records about gifts and benefits must comply with the *NSW State Records Authority General Retention and Disposal Authority for Administrative Records*.

The Gifts and Benefits Register is subject to applications under the GIPA Act.

As the Register can contain information relevant to the public, as well as personal and private information, decision makers need to carefully weigh up these competing interests in responding to GIPA applications.

6. FORMS AND REGISTERS

Forms

Forms for completion by members and staff include the following.

i) Conflict of Interest Declaration form (TRIM reference: HP19/133651)

The *Conflict of Interest Declaration* form is available to use for regulatory and corporate conflicts of interest whether actual, perceived or potential.

Adequate information must be recorded about conflicts of interest that arise for members or staff during the performance of Council or HPCA duties. Where conflicts of interest information is not adequately recorded in meeting minutes or process documentation (eg selection process documents), members and staff should use this form.

Councils may also choose to use the forms to assist accurate record keeping and for ease of retrieval of conflict of interest information during reviews.

A copy of the completed and signed form should be saved in the conflict of interest file in TRIM (11/77).

ii) Gifts and benefits disclosure form (TRIM reference: HP19/133666)

Members and staff must complete the *Gifts and Benefits Disclosure* form when a gift above the token value of \$75 is received.

Completed forms are to be returned to, and retained by the Manager, Corporate Governance who also enters details into the *Gift and Benefits Register*.

iii) Statement of Conflict of Interest Resolution or Management Form (TRIM reference: HP19/133663)

The *Statement of Conflict of Interest Resolution and Management* form is for significant material corporate conflicts of interest. It is completed by a person authorised to resolve or manage a declared conflict of interest. Documentation is to be saved centrally in TRIM.

iv) Financial Interest Declaration and Undertaking (TRIM reference: HP19/133650)

This form only applies to Council members and Senior Executives and not other committee, panel and hearing members or to other staff.

Council members must complete the *Financial Interest Declaration and Undertaking* form:

- On appointment and reappointment
- Anytime there is a change in financial interests.

Senior Executives are also to complete this form on appointment, each year thereafter and anytime their financial interests change.

Completed forms are to be returned to, and retained by HPCA Corporate Governance.

Registers

Registers maintained by the HPCA include the following.

i) Gifts and Benefits Register

The Manager Corporate Governance records details of gifts and benefits declared by members and staff in the *Gifts and Benefits Register*.

ii) Financial Interests Register

This register only applies to Council members and not other committee, panel and hearing members or staff.

Executive Officers record in the *Financial Interests Register* details of financial interests declared by Council members about matters arising in Council meeting agendas and notify the Chief Audit Officer.

7. ANNUAL REVIEW

The Chief Audit Officer reviews and signs off the *Financial Interests Register* and the *Gifts and Benefits Register* annually to ensure all actions have been completed and to identify any trends and / or instances that require further action eg a Council that consistently does not act to manage members' conflicts of interest, or a firm giving gifts to a number of staff. The Chief Audit Officer then submits an annual report to the Audit and Risk Committee.

8. POLICY BREACHES

Breaching this policy and procedures has consequences. These may be serious, depending on the significance of the breach. Conflict of interest policy breaches may also be a breach of the Code of Conduct signed by members, or the NSW Health Code of Conduct signed by staff, or amount to corrupt conduct.

There is a range of possible conflict of interest policy breaches including failure to declare a conflict of interest; refusal to resolve or properly manage a declared conflict; and action that puts private interests ahead of public interests.

Serious breaches of the conflict of interest policy by members or staff may necessitate reporting to external bodies such as ICAC (in accordance with reporting obligations under section 11 of the *Independent Commission Against Corruption Act 1988*) or to Police (in accordance with NSW Health [PD2018_031 Managing Misconduct](#)).

For members, possible penalties for a policy breach include removal from their position.

For staff, possible penalties for policy breaches include disciplinary action ranging from counselling to dismissal.

Members or staff who become aware of policy breaches must report these to the President, or HPCA Executive, or Executive Officer or other chair, or manager who needs to assess the situation and report to the Director.

9. MEMBER AND STAFF AWARENESS

Various Council and HPCA materials reinforce this conflict of interest policy and procedures including:

- Manuals and handbooks
- Orientation / induction program information and resources for new members and staff
- NSW Health fact sheets on conflict of interest and gifts and benefits available on the Ministry of Health intranet site:
http://internal.health.nsw.gov.au/cgrm/rmra/risk_management/conflicts_interest.html
http://internal.health.nsw.gov.au/cgrm/rmra/risk_management/managing_corruption_training_kit.html
- Risk assessment / risk management processes requiring identification of conflict of interest
- Agendas for meetings with Conflict of Interest included as a standing agenda item.

Other awareness raising activities for members and staff include:

- Conducting awareness programs / staff development on corruption prevention, fraud control and conflict of interest generally, or in higher risk areas such as major procurement projects
- Providing information about conflict of interest in newsletters, including illustrative scenarios.

10. REFERENCE DOCUMENTS

Independent Commission Against Corruption

- *Identifying and managing conflicts of interest in the public sector* (July 2012)
- *Managing the Risk of Corruption: a training kit for the NSW public health sector* (August 2007).
- *Managing Conflicts of Interest in the Public Sector – Guidelines and Toolkit* (November 2004)

NSW Ombudsman

- Fact sheet – *Recognition and Managing Conflicts of Interest*
- Public Sector Agencies fact sheet No. 3 – *Conflicts of Interest*
- Publication – *Good Conduct and Administrative Practice* (2nd edition) 2006

NSW Audit Office

- Potential Conflicts of Interest – *Our Audit and Assurance Policies Audit Office Audit and Assurance*

NSW Health

- [Policy Directive PD2015_049 – NSW Health Code of Conduct](#)

11. APPENDICES

Appendix 1 Conflict of interest scenarios with recommended actions

Appendix 2 Forms

APPENDIX 1: CONFLICT OF INTEREST SCENARIOS WITH RECOMMENDED ACTION

This appendix provides examples of possible conflict of interest situations and recommended action to avoid or deal with the conflict.

Conflicts of interest that could also be a breach of the *Code of Conduct* or corrupt conduct are illustrated under *Improper Actions* headings.

Scenarios include:

- A. Directorships and shareholdings – members and senior executives
- B. Involvement with other professional bodies
- C. Membership of associations, clubs, professional organisations, political parties
- D. Secondary employment
- E. Fee for service
- F. Regulating health practitioners
- G. Recruitment
- H. Staff administration
- I. Purchasing goods and services or letting of contracts

Note: These examples are not an exhaustive list of conflicts of interest.

A. Directorships and shareholdings – members and senior executives

Situation	Recommended action
Holding directorships and shareholdings in private companies, associations etc.	<p>Declare the interest by completing a <i>Financial Interest Declaration and Undertaking</i> form:</p> <ul style="list-style-type: none">• for <u>Council members</u> – on appointment and re-appointment to Council and any time there is a change• for <u>Senior Executive</u> – on appointment, each year thereafter and any time there is a change. <p><i>(not applicable to committee and panel members and other staff)</i></p> <p>The Chief Audit Officer decides whether a conflict of interest exists and could restrict involvement in Council business or HPCA processes, or request resignation from external involvements.</p>

B. Involvement with other professional bodies

Situation	Recommended action
<p>Participation in professional boards, committees, societies etc.</p> <p>Some members are nominees of professional bodies and bring particular expertise, however in conducting Council business responsibilities are to the Council and not the nominating bodies.</p> <p>Concurrent membership of a national health practitioner Board is supported, but any conflicts of interest that arise must be declared and managed.</p> <p>Membership of professional associations or unions would not normally be a conflict of interest.</p>	<p>Declare roles in other professional bodies or unions on appointment to Council or on appointment to other roles if already a Council member, and declare any consequent conflicts of interest if they arise.</p> <p>Depending on the nature of the conflict:</p> <ul style="list-style-type: none">do not participate in discussion, or decision making (leave the room), orconsult with the President (or chair) and members to determine whether any involvement in the matter is appropriate or not.

C. Membership of Associations, Clubs, Professional Organisations, Political Parties

Situation	Recommended action
<p>Involvement in Council or HPCA decision-making that could impact on operations of an association, club, professional or other organisation that a member or staff belongs to.</p>	<p>Declare the conflict of interest and comply with decisions about the extent of involvement in a matter or other appropriate action.</p> <p>If staff influence a decision to the detriment of the Council or HPCA they could be subject to at least disciplinary action and possibly dismissal, depending on the extent of the breach of conduct.</p>

Improper actions

- Using Council membership or the HPCA to favour a private organisation, or member of a private organisation
- Making decisions which impact adversely on the Council or the HPCA because of involvement in an association, club or professional organisation
- Making known Council or HPCA confidential information without approval that advantages a private or external organisation and / or is to the detriment of the Council or the HPCA.

Note: Release of confidential information without appropriate approval is a disciplinary offence and, depending on the extent and nature of the information, could be a case for dismissal.

D. Secondary employment

Situation	Recommended action
Members seeking remuneration for Council business while employed by the NSW Government.	Members who are NSW Government employees cannot receive payment from the Council, unless they meet the requirements as defined by the Premier and are granted an exemption. (NSW Government employees – <i>Premier's Exemption HP14/14665-31</i>)
Employment of HPCA staff in a second job which could affect their performance at the HPCA and / or give the impression that the private employer was being favoured.	<p><u>Full time staff</u> must obtain Director approval for any secondary employment.</p> <p>Approval will be denied if any conflicts of interest associated with the secondary employment cannot be managed.</p> <p><u>Part time staff</u> must notify the Director and provide details of any secondary employment. If a conflict of interest is identified and all efforts to resolve the matter are unsuccessful, the part time staff member should be given the option to cease secondary employment if they wish to continue to be employed at the HPCA.</p> <p>If a secondary employer provides services used by Councils or the HPCA, further action may be needed to address any conflict of interest, including not using the provider.</p>

Improper actions

- Using Council and HPCA resources (including staff) to support private work outside member appointments or staff employment
- Using a Council appointment or the HPCA to unfairly obtain opportunities for external employment
- Inappropriately accessing private or confidential information to establish a private practice or other personal gain.

E. Fee for service

Situation	Recommended action
Other organisations / companies offering to pay staff travel and accommodation costs eg to present research findings.	Offers from suppliers providing goods or services to Councils or the HPCA should be refused. Offers from professional bodies require approval from the Director to: <ul style="list-style-type: none"> • accept travel and accommodation costs and • release information which could be confidential.
Offers to pay staff fees and / or honorariums for sitting on committees, or other activities, including jury duty.	Staff must declare any fees received for services they provide during paid work or leave hours and give these fees to the HPCA for inclusion in 'Other revenue'. If staff provide services outside the time covered by usual salaries and wages, fee for service is acceptable with appropriate manager approval.

F. Regulating health practitioners

Situation	Recommended action
Making regulatory decisions about a registered health practitioner: i) when the member and practitioner (subject of the complaint) or complainant: <ul style="list-style-type: none"> • have a professional relationship (eg employer / employee; partners in a practice; work in competing practices; reviewer / reviewee situations such as accreditation), or • have a personal relationship (eg relative of practitioner or complainant; receiving treatment from practitioner; legal member representing practitioner or complainant in another arena). ii) when the member and practitioner <ul style="list-style-type: none"> • worked in the same facility / faculty, or • attended university together or trained together. 	Declare the conflict on receipt of papers and at meeting(s), and i) do not participate in discussion, or decision making (leave the room), or any ongoing processes ² , depending on the nature of the relationship. ii) consult with the President (or chair) and members to determine whether any involvement in the matter is appropriate.

² It may be decided that the member can participate, however the situation should be monitored with the opportunity to review the original decision if there is a change in the circumstance of the relationship. See section on **Monitoring**.

G. Recruitment

Situation	Recommended action
<p>Sitting on selection panels where applicant(s) for the position are known to the member or staff personally (eg family, friend or close associate).</p> <p>Selections must be conducted equitably, fairly and based on merit in accordance with the principles of EEO and affirmative action.</p>	<p>Declare the conflict of interest and preferably withdraw from the recruitment process.</p> <p>In some situations it may be necessary to retain the conflicted person on the panel (eg where their specific expertise is required). In these cases another independent person may be involved in the recruitment process, or the conflicted person's input may be segregated.</p>
<p>Not sitting on a selection panel but being in a position to influence the selection of an applicant / member where the applicant is a personal acquaintance.</p>	<p>Do not offer advice or get involved in the recruitment process.</p>

Improper actions

- Manipulating / coercing selection panels to select or not select a particular applicant
- Withholding information that would affect the selection or non-selection of the most appropriate applicant
- Providing information such as selection questions to one applicant and not others.

H. Staff administration

Situation	Recommended action
<p>Managing another staff member where there is a close personal and / or family relationship.</p> <p>All staff members must be treated equally and fairly.</p>	<p>Notify a senior officer of any relationships that present a conflict of interest or could be perceived as problematic.</p> <p>If staff give preferential treatment to another person or show bias against another person, disciplinary action should be taken.</p>

Improper actions

- Promoting friends or relatives where other staff are more deserving
- Recommending incremental progression, or non-progression, of particular officers due to personal interests, or attitudes, that are not aligned to the work situation
- Approving leave requests that are preferential to some staff and detrimental to others
- Assessment and / or inappropriate recommendation of particular individuals over others because of personal associations in areas such as:
 - Training courses
 - Attending conferences
 - Job or advancement opportunities
- Not applying the same rules equally to all staff because of personal association eg failure to address issues of late attendance, non-performance etc.

I. Purchasing goods and services or letting of contracts

Situation	Recommended action
Having a financial or other interest (eg through a family member / friend) in a company that is a potential supplier to the organisation. Having a relationship with a potential supplier (eg socially or through a family member).	Declare the conflict of interest and <ul style="list-style-type: none">• withdraw from any part of the tendering / purchasing process, or• refrain from voting (if acceptable to other personnel involved). If a secondary employer provides services used by Councils or the HPCA, further action may be needed to address any conflict of interest, including not using the provider.
Gifts or benefits offered by suppliers, or other individuals, involved in providing goods and / or services which could present a conflict of interest or obligation. Gifts and benefits can take many forms eg prizes, raffles, travel, meals, opportunities to attend educational meetings etc.	Do not accept gifts from businesses or suppliers used by the organisation.

Improper actions

- Preferential selection of individual suppliers
- Evaluating new products with bias towards a supplier
- Inviting quotes / tenders and then informing a particular supplier of other prices quoted so they can better the other quotes
- Providing information that gives a supplier an advantage over other suppliers
- Going to a supplier who is a relative without ensuring competitive prices are obtained
- Developing specifications that are directed at a particular supplier's product because of a personal association
- Receiving short supply of goods and paying full costs to a business in which the member or staff has a financial interest, or expects a 'kick-back'
- Accepting an invitation from a supplier to a social engagement which could lead to a sense of obligation to that supplier.

Note: *If gifts or other benefits are accepted from a particular supplier or individual and / or preferential treatment is given to a particular supplier or individual, this is corrupt conduct and may be cause for removal of a member from Council or staff dismissal.*

APPENDIX 2: FORMS

- i) Conflict of Interest Declaration Form
- ii) Gifts and Benefits Disclosure Form
- iii) Statement of Conflict of Interest Resolution or Management form
- iv) Financial Interest Declaration and Undertaking

CONFLICT OF INTEREST DECLARATION FORM

Adequate information must be recorded about conflicts of interest that arise for members or staff during the performance of Council or HPCA duties. Meeting minutes and process documentation (eg selection process documents) should capture this information*. Where conflict of interest information is not adequately recorded in meeting minutes or process documentation, members and staff should use this form. This form applies to actual, perceived and potential conflicts of interest that may be regulatory or corporate.

A copy of the completed and signed form should be saved in the conflict of interest file in TRIM (11/77).

Name:

Council/committee name or position title:

Matter under consideration: Please provide a brief outline of the conflict of interest. Include names of organisations or individuals involved. Details may be discussed privately with the Chief Audit Officer if advice is required about completing the form or how the conflict should be managed.

Expected role/duties affected by this matter: Describe the function or decision that may be affected by the declared interest.

Identify the private or personal interests which have the potential to impact on performance of official duties impartially and in the public interest:

The conflict of interest has been identified as: (Note: Tick all applicable boxes.)

ACTUAL	<input type="checkbox"/>	FINANCIAL INTEREST	<input type="checkbox"/>
PERCEIVED	<input type="checkbox"/>	NON-FINANCIAL INTEREST	<input type="checkbox"/>
POTENTIAL	<input type="checkbox"/>		

I declare that the above details are correct to the best of my knowledge and I make this conflict of interest declaration in good faith.

I declare that I have received and appropriately noted this conflict of interest declaration.

Signature
(member or staff)

Name: _____

Date: _____

Signature
(manager / supervisor / Chief Audit Officer)

Name: _____

Date: _____

* Declarations by Council members at Council meetings about matters on the agenda that may present a financial conflict of interest must also be recorded in the *Financial Interests Register* kept by the Chief Audit Officer.

GIFTS AND BENEFITS DISCLOSURE FORM

This form is to be completed by members and staff who receive a gift or benefit, other than a token gift or benefit of nominal value up to \$75.

A copy of the completed and signed form should be saved in the gift and benefits file in TRIM (11/105).

Completed forms must be provided to the Manager, Corporate Governance for entry into the *Gifts and Benefits Register*.

For further information refer to the HPCA *Gifts and Benefits Policy* and PD2010_010 on the HPCA website www.hPCA.nsw.gov.au, or speak to your manager/supervisor or Corporate Governance.

Offered to:

Name:

Position:

Date of offer:

Offered by:

Name:

Position:

Organisation:

Contact details:

Reason for offer:

Description of gift/benefit:

Estimated value (\$):

Recipient's signature

Date:

Decision regarding gift/benefit: (To be made by manager / supervisor or the Manager, Corporate Governance)

Signature (manager / supervisor)

Name:

Position:

Date:

Received and included in the Gift Register:

Signature (Manager, Corporate Governance)

Name:

Date:

STATEMENT OF CONFLICT OF INTEREST RESOLUTION OR MANAGEMENT

This form may be completed by the Director or President or Chief Audit Officer or an authorised officer with the individual who has declared a conflict of interest about a corporate conflict and / or other significant conflict.

A copy of the completed and signed form must be recorded in the relevant Council or HPCA register and stored on the conflict of interest file (11/77).

Proposed action to be taken to resolve or manage conflict of interest:

The above action has been agreed on to resolve the conflict of interest declared by [insert staff member's name] on [insert date].

Signature (staff member)

Name: _____

Date: _____

Signature (Authorised Officer)

Name: _____

Date: _____

STATEMENT OF ADJUSTMENT TO CONFLICT OF INTEREST RESOLUTION OR MANAGEMENT (if applicable)

Adjustment to action taken to resolve or manage conflict of interest:

The above adjustment action has been agreed on to resolve the conflict of interest declared by [insert staff member's name] on [insert date].

Signature (staff member)

Name: _____

Date: _____

Signature (manager/supervisor)

Name: _____

Date: _____

STATEMENT OF FINALISATION OF CONFLICT OF INTEREST

The conflict of interest declared by [insert staff member's name] on [insert date] has now been resolved and no further action is required.

Signature (staff member)

Name: _____

Date: _____

Signature (manager/supervisor)

Name: _____

Date: _____

FINANCIAL INTEREST DECLARATION AND UNDERTAKING

Name:

**Council/committee/regulatory body
or position title of Senior Executive:**

I give the following undertaking:

1. There is no matter I am aware of concerning my interests*, or any activity in which I am or have been engaged, that may call into question the probity of the Council/committee/regulatory body, or give rise to any conflict with my responsibilities as a member or Senior Executive of that body.
2. I am aware that I must exercise my responsibilities as a member or Senior Executive of the Council/committee/regulatory body in accordance with the applicable Code of Conduct, including confidentiality requirements.
For members – the Conduct Guidelines for Members of NSW Government Boards and Committees and the Health Professional Councils' Code of Conduct or the Audit and Risk Committee Chairs and Members Code of Conduct
For Senior Executives – the NSW Health Code of Conduct.
3. I have the following interests* in corporations, partnerships, businesses or other organisations that may be relevant to the activities of the Council/committee/regulatory body.

Sources of income:

.....
.....
.....

Memberships of Boards and Committees:

.....
.....
.....

Interests and positions in corporations:

.....
.....
.....

Interests and positions in trade unions, professional or business associations:

.....
.....
.....

4. I will formally advise the Council/committee/regulatory body of any significant change in circumstances that affects the accuracy of this declaration and undertaking.

Signature

Date

Members and Senior Executive are to complete this form and return it to the Manager, Corporate Governance on appointment, annually thereafter and any time circumstances change.

*The interests of a Member or Senior Executive include those of a close relative or an associate.