



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Conflict of Interest Procedures v1 – RM007

April 2015

Contents

Conflict of Interest Procedures	1
1. Introduction	2
2. Conflict of Interest	2
3. Public Duty	4
4. Roles And Responsibilities	4
4.1 Agency Management Committee (through the Audit and Risk Committee)	4
4.2 Responsibilities of managers.....	4
4.3 Responsibilities of employees	5
4.4 Fraud and Corruption Control Officer	5
5. Manage Conflict of Interest.....	5
6. Document control	10

1. Introduction

“The community has a right to expect that (AHPRA employees) will perform their duties in a fair and unbiased way, and that the decisions they make are not affected by self-interest, private affiliations, or the likelihood of personal gain or loss.

Community confidence in the integrity of (AHPRA) and its processes is also fundamental to the rule of law, one key principle of which is that every citizen is equal before the law and should receive fair and impartial treatment.

For these compelling reasons, it is crucial that (AHPRA and the National Boards) protect the public interest by ensuring that private interests that conflict with it are identified and managed effectively.”¹

ICAC (NSW) and the Crime and Misconduct Commission of Qld have identified undisclosed or unmanaged conflicts of interest as the catalyst for many cases of serious corruption.

Conflict of interest in relation to National Boards is dealt with in the National Law (Schedule 4, clause 8) and the Manual for National Boards and their committees (Part 2 and Appendix 2).

AHPRA's Conflict of Interest Procedures apply to all AHPRA employees and are based on “Managing Conflicts of Interest in the Public Sector - Guidelines, Independent Commission Against Corruption (NSW) and Crime and Misconduct Commission (Qld), 2004 and “Conflict of Interest Policy Framework in the Victorian Public Sector”, State Services Authority Victoria 2009. They are designed to support the Fraud and Corruption Control Policy by:

- identifying the different types of conflicts of interest that may arise within AHPRA;
- developing appropriate management strategies and responses to conflicts of interest;
- educating staff, managers and senior executives about conflict of interest;
- communicating AHPRA’s commitment to managing conflicts of interest to stakeholders including contractors, clients and the public; and
- enforcing conflict of interest procedures

2. Conflict of Interest

The term ‘conflict of interests’ refers to situations where a conflict arises between the **public duty** and **private interests** of an official, which could improperly influence the performance of official duties and responsibilities.¹

Private interests are those interests that can bring benefits or disadvantages to public officials as individuals, or to others whom public officials may wish to benefit or disadvantage. Private interests are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss. They also include many social and professional activities and interests.¹

The types of conflicts that can occur include actual, perceived/apparent or potential conflict.

An **actual conflict** of interest involves a direct conflict between an official’s current duties and responsibilities and existing private interests.

A **perceived or apparent conflict** of interest can exist where it could be perceived, or appears that an official’s private interests could improperly influence the performance of his/her duties – whether or not this is in fact the case.

A **potential conflict** of interest arises where an official has private interests that could conflict with his/her official duties in the future.

Avoiding actual, potential and perceived conflicts of interest is fundamental to ensuring the highest levels of integrity and public trust.

¹ Managing Conflicts of Interest in the Public Sector - Guidelines, Independent Commission Against Corruption (NSW) and Crime and Misconduct Commission (Qld), 2004

A conflict of interest can arise from avoiding personal losses, as well as gaining personal advantage, whether financial or otherwise.

Areas of work or organisational functions that create a high risk for potential conflicts of interest include (but are not limited to):

- interacting regularly with the private sector
- contracting and procurement
- inspecting, regulating or monitoring of standards, businesses, equipment or premises
- issuing qualifications or licences (i.e. practitioner registration)
- providing a service where demand exceeds supply
- allocating grants of public funds
- issuing or reviewing the issue of fines or other sanctions
- providing subsidies, financial assistance, concessions or other relief to those in need
- making determinations or handing down judgement about individuals or disputes
- carrying out regulatory tests and procedures
- making appointments to positions.

A **private interest** in the context of conflict of interest means anything that can have an impact on an individual or group and includes not only an employee's own personal, professional or business interests, but also the personal, professional or business interests of individuals or groups with whom he or she is closely associated. This can include relatives or friends.

Private interests can be divided into two types: **pecuniary** and **non-pecuniary**.

Pecuniary Interests involve an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have pecuniary interests if they (or relatives, or close associates) own property, hold shares, have positions in a company bidding for government work, or receive benefits such as concessions, discounts, gifts or hospitality from a particular source.

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.

If personal values are likely to impact on the proper performance of public duty, then these can also lead to a conflict of interest. Enmity as well as friendship can give rise to a conflict of interest.

Some examples of private interests that could create pecuniary and non-pecuniary conflicts of interest include:

- financial and economic interests (such as debts or assets)
- family or private businesses
- affiliations with for-profit and not-for-profit organisations
- affiliations with political, trade union or professional organisations and other personal interests
- involvement in secondary employment that potentially conflicts with an official's public duties
- undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household)
- enmity towards or competition with another person or group

3. Public Duty

Public Duty is the duty expected of all public officials, that is, to put the public interest above their own personal or private interests when they carry out official duties.²

The public interest can be defined as the interest of the community as a whole. It is not the sum of individual interests or the interest of a particular group, but the collective interest of the entire community.

Determining the public interest in a particular situation can be complex, even problematic, but on a practical, day-to-day level, employees can best fulfil their duties to put the public interest first by:

- carrying out their prescribed official duties fully and effectively in accordance with relevant legislation and policy;
- carrying out their official duties in accordance with the public sector values and codes of conduct; and
- identifying any actual, potential or perceived conflicts of interest that they have and ensuring these are managed effectively.

4. Roles And Responsibilities

Managing conflict of interest risks is the shared responsibility of the Agency Management Committee, National Executive, managers and employees.

4.1 Agency Management Committee (through the Audit and Risk Committee)

The overriding objective of any conflict of interest management strategy is to ensure that the public interest is not compromised should. The Agency Management Committee is responsible for:

- prescribing a system for identifying and managing conflicts of interest in the form of detailed policies and procedures;
- building an organisational culture that supports implementation of all relevant policies through appropriate education, training and enforcement activities;
- reviewing relevant policies and procedures on a regular basis to ensure they are effective;
- receiving and investigating complaints regarding possible breaches of conflict of interest policies; and
- monitoring compliance with conflict of interest policies, including responses to alleged breaches.

It will perform this role through the Chief Executive Officer and evaluate its effectiveness through the Audit & Risk Committee.

4.2 Responsibilities of managers

Managers are responsible for complying with conflict of interest policies with respect to their own conflicts and potential conflicts of interest facilitating the compliance of those they supervise by:

- being aware of the risks of conflicts inherent in the work of the staff they manage;
- making staff aware of relevant policies and procedures;
- advising staff about appropriate ways to manage conflicts;
- recording the receipt of disclosures of conflicts of interest reported to them by staff;
- assisting with preparation of management strategies for staff who disclose conflicts of interest; and
- monitoring the work of staff and the risks to which they are exposed.

² Fraud and Corruption Control Strategy NSW Govt - 2006

4.3 Responsibilities of employees

Employees subject to these general procedures must:

- take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise, their impartiality when carrying out their official duties;
- abstain from involvement in official decisions and actions that could reasonably be seen to be compromised by their private interests and affiliations;
- avoid private action in which they could be seen to have an improper advantage from inside information they might have access to because of their official duties;
- not use their official position or AHPRA resources for private gain;
- ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties; and
- not take improper advantage of their official position or privileged information gained in that position when seeking employment outside AHPRA.

4.4 Fraud and Corruption Control Officer

The Fraud and Corruption Control Officer will be responsible for:

- Developing and maintaining Conflict of Interest Procedures for all AHPRA employees;
- Maintaining a Conflict of Interest Register;
- Providing regular reports in relation to conflict of interest issues;
- Developing and maintaining a Fraud and Corruption Control framework to deal with conflicts of interest;
- Development and delivery of Conflict of Interest training and awareness programs for all employees, stakeholders, third party providers and the public.

5. Manage Conflict of Interest

The proper management of conflicts of interest does not require the wholesale avoidance or relinquishment of private interests that might give rise to a conflict of interest issue. It requires the appropriate management of the interaction between private interests and public duties and requires the application of the “reasonable person” test.

Acting in a reasonable way means exercising sound judgement and taking a sensible approach. That is, would another reasonable person make the same decision in light of the same facts and circumstances?

There are a number of options available for managing conflict of interest. These range from simply disclosing relevant details, to relinquishing the private interest or stepping down from the public office.

Commonly accepted procedures are:

Registration	details of the existence of a possible or potential conflict of interest are formally advised and noted
Restriction	restrictions are placed on the employee’s involvement in the matter
Recruitment	a disinterested third party is appointed to oversee part or all of the process that deals with the matter
Removal	the employee does not participate at all in the matter
Relinquishment	the private interest concerned is relinquished
Resignation	the employee steps down from the position he or she holds on a temporary or permanent basis.

AHPRA will maintain a conflict of interest register. The register will incorporate:

- mandatory declarations for all AHPRA personnel who hold financial or HR delegations or delegations under the National Law;
- Management plans for identified incidents of conflict of interest.

Any APRHA employee who holds a delegation is required to submit an annual Conflict of Interest Declaration form. A copy of the declaration is contained in appendix A attached.

For all other circumstances which may involve conflict of interest, the conflict should be immediately reported to the manager of the individual who is the subject of the conflict.

The manager and the individual will examine the circumstances and determine an appropriate strategy for managing the conflict.

The strategy must be documented and agreed by the manager and the individual. The documented strategy will be recorded in a Conflict of Interest Report and submitted to the Fraud and Corruption Control Officer who will be responsible for maintaining the Conflict of Interest Register.

Any conflict of interest strategy must be approved by the Critical Incident Management Team.

While conflicts of interest can be resolved or managed in a variety of ways as mentioned above and outlined in the schedule below (see table 1), the choice of strategy will depend on an assessment of the:

- nature of the conflict;
- complexity of the situation;
- subtlety and severity of the case.

Each case will require detailed examination and careful application of various conflict resolution strategies. Often a combination of measures may be adopted and consideration should be given to the schedule of strategic elements outlined in the schedule below (see table 1)

Management Strategy	When most suitable	When least suitable
<p>Register:</p> <p>Where details of the existence of a possible or potential conflict of interest are formally registered.</p>	<ul style="list-style-type: none"> • for very low-risk conflicts of interest and potential conflicts of interest • where the act of recording the conflict of interest is sufficient 	<ul style="list-style-type: none"> • the conflict of interest is more significant or of higher risk • the potential or perceived effects of a conflict of interest on the proper performance of the employee's duties require more proactive management
<p>Restrict:</p> <p>Where restrictions are placed on the employee's involvement in the matter.</p>	<ul style="list-style-type: none"> • the employee can be effectively separated from parts of the activity or process • the conflict of interest is not likely to arise frequently 	<ul style="list-style-type: none"> • the conflict is likely to arise more frequently • the employee is constantly unable to perform a number of regular duties because of conflict of interest issues

Management Strategy	When most suitable	When least suitable
<p>Recruit:</p> <p>Where a disinterested third party is used to oversee part or all of the process that deals with the matter.</p>	<ul style="list-style-type: none"> it is not feasible or desirable for the employee to be removed themselves from the decision-making process in small or isolated communities where the particular expertise of the employee is necessary and genuinely not easily replaced 	<ul style="list-style-type: none"> the conflict is serious and ongoing rendering <i>ad hoc</i> recruitment of others unworkable recruitment of a third party is not appropriate for the proper handling of the matter a suitable third party is unable to be sourced
<p>Remove:</p> <p>Where an employee chooses to be removed from the matter.</p>	<ul style="list-style-type: none"> for ongoing serious conflicts of interest where <i>ad hoc</i> restriction or recruitment of others is not appropriate 	<ul style="list-style-type: none"> the conflict of interest and its perceived or potential effects are of low risk or low significance the employee is prepared to relinquish the relevant private interest rather than radically change his or her work responsibilities or environment
<p>Relinquish:</p> <p>Where the employee relinquishes the private interest that is creating the conflict.</p>	<ul style="list-style-type: none"> the employee's commitment to public duty outweighs his or her attachment to the private interest 	<ul style="list-style-type: none"> the employee is unable or unwilling, for various reasons, to relinquish the relevant private interest
<p>Resign:</p> <p>Where the employee resigns from his or her position with the agency.</p>	<ul style="list-style-type: none"> no other options are workable - the employee cannot or will not relinquish his or her conflicting private interest and changes to the work responsibilities or environment are not feasible the employee prefers this course as a matter of personal principle. 	<ul style="list-style-type: none"> the conflict of interest and its potential or perceived effects are of low risk or low significance other options exist that are workable for the employee and the Agency.

Table 1 – Schedule of Conflict of Interest Management Strategies

Whichever strategy is chosen, transparent decision making and detailed record keeping are essential. The following points should be clearly recorded in the conflict of interest register:

- registration of relevant private interests, if required
- disclosure of the conflict of interest
- directions given about handling the conflict of interest
- decisions and arrangements made for resolving the conflict of interest
- steps taken in implementing the chosen management strategy.

These records will enable AHPRA to demonstrate in an accountable manner that a specific conflict of interest has been appropriately identified and managed.

The process of managing conflicts of interest is outlined below (see figure 1) and include:

- Identifying conflicts of interest,
- Developing and implementing a strategy for each conflict of interest; and
- Monitoring the implementation of that strategy.

Conflict of Interest Management Decision Model

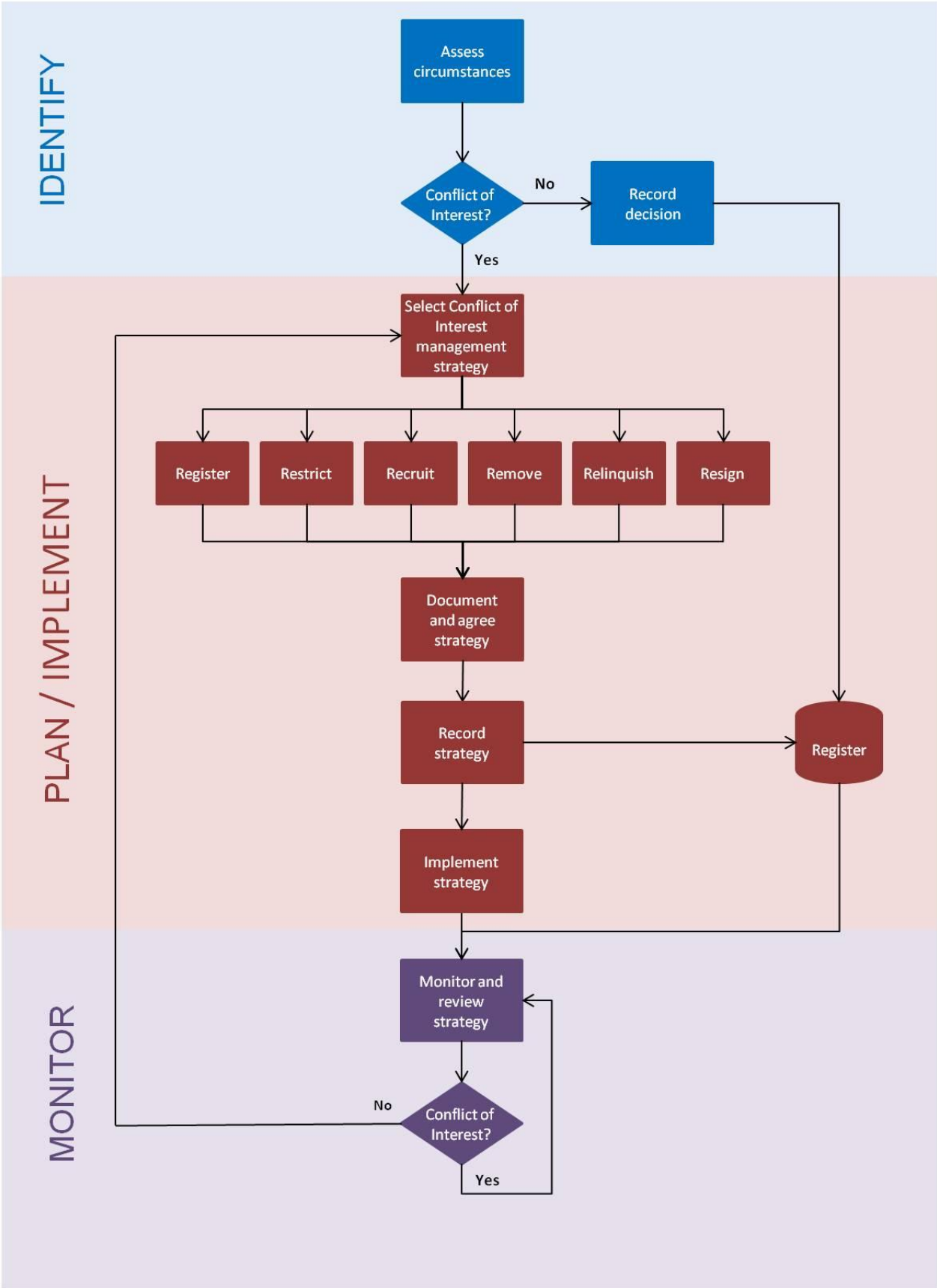


Figure 1 – Conflict of Interest Management Decision Model

6. Document control

Approver	National Executive
Policy Number	RM007 v.1
Date Approved	May 2015
Date Commenced	May 2015
Date for Review	April 2017
Responsible Officer	Fraud and Corruption Control Officer (Manager Corporate Risk and Compliance)
Sections modified	October 2014, New document April 2015, updated to reflect new policy template