

# Guideline

## Declaring and Managing Conflict of Interest



Authorising Committee / Department:	Board
Responsible Committee / Department:	Corporate Governance and Risk Committee / OPCEO
Document Code:	<b>GDL OPCEO Conflict of Interest</b>

### Purpose

This Guideline is designed to ensure that all relevant disclosures of interest are addressed in an open and transparent manner throughout the period of a person's term on a College Committee or the Board.

### Scope of this Guideline

This Guideline applies to RANZCP Board members and College committee members.

### Background

Declaring a conflict of interest is considered to be good governance and minimises risk within organisations. Everyone has personal interests and for members of the Board and committees, it is inevitable that sometimes these interests may conflict with their professional decisions or actions. Identifying conflicts of interest is an important step in managing them appropriately. A conflict of interest, real, potential or perceived will arise from time to time in the discharge of a committee member's official functions or duties, including voting, decision making, writing policy/guidelines, handling complaints, applying policy, procedures etc.

### Principles

This Guideline is underpinned by four principles, to be adopted by all committee members:

- **Identification** – interests, real or perceived, should be identified as soon as practicable
- **Disclosure** – interests will be fully declared, actively reviewed and updated / amended
- **Decision** – all decision making processes will be open, transparent and impartial
- **Diligence** – conflicts of interest will be managed in a timely, diligent and transparent manner

### Definitions

#### *What is a Conflict of Interest?*

A conflict of interest may arise in any situation where an individual stands to, actually or potentially, benefit or alternatively be disadvantaged by a particular decision either personally or professionally, to the extent it can reasonably be expected decisions of the person affected may be influenced. Such benefit, or detriment, may be financial or non-financial, direct or indirect.

The College's Code of Conduct in relation to College Members states, under item 1.5 –

*“Directors or committee members have an obligation to declare any actual or potential material conflict of interest as soon as he or she becomes aware of it, and to withdraw from the discussion and decisions of any matter on which he or she has a material conflict, unless the Directors or committee members who do not have a conflict have resolved that the Directors or committee member should stay”.<sup>3</sup>*

## When to disclose / identify an interest

It is the responsibility of each committee member to identify and disclose actual or perceived conflicts of interest. A committee member must disclose an interest as soon as practicable after becoming aware of the interest, or there has been a change in the nature and extent of the interest.

## How to disclose an interest

Conflicts of interest shall be addressed as a standing agenda item at the commencement of a committee meeting. Where such a conflict exists, the interests of the College will be balanced against the interests of the individual.

It is the responsibility of a committee member to declare the conflict of interest. In declaring a conflict of interest the committee member should state:

- The nature and extent of the interest, and if applicable, the date upon which the interest arose
- How the interest relates, or may relate, to the affairs of the College.

It is the responsibility of the Chair to determine how the declared interest should be managed, in conjunction with the individual. The Chair should determine one of the following actions:

- To note the conflict with no further action required
- To ask the person who declared the interest to take part in the discussions of the matter (for example where the person is a recognised subject expert) but to leave the room/meeting for the voting/decision making.
- To ask the person who declared the interest to remain silent whilst the matter is discussed and a vote (if required) is taken. The person declaring the interest should abstain from voting.
- To ask the person who declared the interest to remove themselves from the discussions that relate to the declared conflict of interest.

The declared conflict of interest, the name of the person declaring the interest and how it was dealt with by the committee must be recorded in the meeting's minutes.

Due to the size and nature of some jurisdictions, it is important that committee members declare any conflicts of interest regarding partners, siblings or children on College committees and external committees.

## Conflict of Interest Register

Each committee will be responsible for maintaining a conflict of interest register for that committee. The register will be managed by the staff member who provides support to that committee. The register should be referred to at each committee meeting to allow committee members to update the register with any new conflicts of interest or changes to existing declared conflicts of interest.

## Declaration of Interest Form

Due to the nature of the work undertaken by a committee or the Board, e.g. development / review or approval of Clinical Practice Guidelines, a declaration of interest form can be used to record all relevant interests, to be taken into account and managed during the course of the committee's work. The form may be obtained from the staff member who provides support to that committee. Members will be asked to update this information if/as changes occur, or at least annually.

## What is an example of a conflict of interest?

A competing interest (actual or perceived) can include, but is not limited to:

- a) Financial interests e.g. your organisation receives research funding for a mental illness and the College is reviewing a Guideline that relates specifically to that illness.
- b) Having provided expert testimony.
- c) As a committee member you participated in a committee's decision, with that decision now being considered/discussed by another committee, which you are also a member of.
- d) Where the committee you are a member of is considering a matter that has a direct relationship with yourself e.g. you are the Trainee's supervisor or the Director of Training; you have a personal relationship with an election candidate being considered for a committee role, you are the Director of a Health Service and the policy the committee is reviewing may have service related impacts
- e) Having been recently involved in the development of related guidelines, standards, writing of publications, writing of educational material e.g. you were a member of a government committee reviewing a guideline that the College is now reviewing and you are a member of the College committee reviewing that guideline
- f) Institutional interests i.e. interests arising from an affiliation or association of an individual with an institution e.g. you hold a position in a university and the committee is reviewing a proposal from that university
- g) Where you have received funding/support either directly or indirectly from a pharmaceutical company and you are a member of a College guideline development group that is formulating clinical recommendation/s on medications associated with that company.

## Board Members (Board Director)

The information outlined below is applicable to RANZCP Board members only.

Upon being appointed as a Board director, it is good practice for a director to disclose any material personal interests and for the College to record these. The following details should be recorded:

- The nature and extent of the interest
- If applicable, the date upon which the interest arose
- How the interest relates, or may relate, to the affairs of the College.

## **Corporations Act 2001**

Sections 191—195 of the Corporations Act deal with conflicts of interest.

## **RANZCP Constitution**

The RANZCP Constitution prescribes the following obligations that a Board member (Director) has in relation to a material personal interest matter that is being considered by the Board.

### **13.1 Prohibition on being Present or Voting**<sup>4</sup>

*13.1.1 This Article applies to a Director who has a Material Personal Interest in a matter that is being considered by the Board.*

*13.1.2 Except to the extent the Act permits, a Director who has a Material Personal Interest, or whose employer or corporate practice has a Material Personal Interest in a matter or transaction that is being considered at a meeting of the Board which might reasonably*

*give rise to a conflict of interest or a perception of a conflict of interest with that of the College must not:*

- a) be counted in a quorum;
- b) vote on the matter; or
- c) be present while the matter is being considered at the meeting,

*but is not thereby in breach of duty to the College merely because he or she does not act in relation to the matter.*

A Board member may instruct the company secretary to withhold board papers from him or her where it relates to a material personal interest.

Board members i.e. Directors, will be asked to disclose at the commencement of each Board meeting if they have a conflict of interest in relation to any of the items on the meeting agenda. If they do, the meeting must then determine the extent to which the Director may or may not participate in the discussion and vote on that matter. Any declared conflicts of interest and Board decisions relating to these must be recorded in the minutes.

*What is a Material personal interest?*

“To be a material personal interest the interest must be of a type that can give rise to a real or perceived conflict of interest. Personal interests do not give rise to a conflict of interest unless there is a real or sensible possibility of a conflict and not a remote or theoretical possibility of conflict. In addition to be ‘material’, the nature and substance of the interest must have the capacity to impact on the ability of the person to honestly discharge their duties”.<sup>1</sup>

“The materiality of an interest will depend on the circumstances of each case and it will be a matter of judgment for the member, to be determined having regard both to what is material to the company and what is material to the member.”<sup>2</sup>

“Where a conflict of interest exists, ‘material’ can be interpreted to mean the matter has ‘a capacity to influence the vote of a particular member on the decision to be made’. The material personal interest need not be the subject of a conflict of interest at the time it is disclosed. Furthermore, the interest need not necessarily be of a financial or pecuniary nature”.<sup>2</sup>

#### **Associated Documents:**

- Corporations Act 2001
- RANZCP Constitution
- RANZCP Deed of Undertaking in Relation to Confidentiality and Conflict of Interest
- RANZCP Code of Conduct and Employee Code of Conduct
- Conflict of Interest Register – Board and Committee

#### **Definition:**

Committee - a committee is any College committee including but not limited to the Board, a Committee, a Subcommittee, a Faculty, a Section or a Working Group/Party.

## REVISION RECORD

Contact: **Manager, Governance and Office of President and CEO**

Date	Version	Approver	Description
28/11/15	1.0	B2015/7 R21	New document

**2018**

**NEXT REVIEW**

<sup>1</sup> Australian Government, Department of Finance, *Resource Management Guide No. 203 General Duties of Officials*, June 2014

<sup>2</sup> Governance Institute of Australia, *Good Governance Guide: Issues to consider when developing a policy on disclosure of and voting on matters involving a director's material personal interests* 2014

<sup>3</sup> Royal Australian and New Zealand College of Psychiatrists, *Code of Conduct*, Version 1.2, April 2013

<sup>4</sup> Royal Australian and New Zealand College of Psychiatrists, *RANZCP Constitution*, August 2012