

## Policy

Subject: **Conflicts of Interest**  
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The purpose of this policy is to provide guidance in identifying and managing actual, potential, or perceived conflicts of interest involving the College and its activities. This policy relates to Directors, committee members, examiners, supervisors, staff, and other College representatives.

Conflicts of interest can sometimes be avoided by being aware of the potential for conflict and by exercising good judgement. However, some conflicts of interest may be unavoidable and this policy accordingly provides guidance on how such conflicts of interest should be disclosed and managed in order to protect the integrity of the College and to manage risk.

### What is a conflict of interest?

A conflict of interest occurs when a person's personal interests conflict with their responsibility to act in the best interests of the College. There is a risk that the person will make a decision based on, or affected by, those personal interests, rather than in the best interests of the College.

Personal interests include direct interests as well as indirect interests. Examples of indirect interests include the interests of associates such as family, friends, or other organisations which a person may be involved with or have an interest in (eg as a shareholder).

A conflict of interest may be:

- *actual* – where a person is being influenced by a conflicting interest;
- *potential* – where a person could be influenced by a conflicting interest; or
- *perceived* – where a person could appear to be influenced by a conflicting interest.

A conflict of interest may be either financial or non-financial.

### Where might conflicts of interest arise?

Conflicts of interest may arise across any area of the College's operations and functions – eg they may arise in relation to training, examination, supervision, accreditation, research, or the development of College policy, or indeed they may relate to any aspect of managing and running a company such as the College.

Some examples of how conflicts of interest may arise include:

- a person could use his/her position to advocate for or support a decision that will result in a benefit for himself/herself or for an associate;
- a person could use information gained through his/her position to gain an advantage for himself/herself or for an associate; or
- a person's duties to a third party such as their employer could require them to act in a way that conflicts with their duty to act in the best interests of the College.

Further detailed, illustrative examples of potential conflicts of interest are set out in Annexure A.

Please note, this policy is not intended to and does not apply to people making decisions in their own personal capacity in matters entirely unrelated to the College.

### **What should you do if you think you may have a conflict of interest?**

If you become aware of an actual, potential or perceived conflict of interest in an activity or function relating to the College, you must promptly disclose the conflict and the nature of the conflict to your manager, supervisor or the chair of the relevant committee or body (as appropriate) for review and determination of whether there is a conflict of interest.

If you are unsure whether something is a conflict of interest, it is preferable to err on the side of caution and disclose it.

### **What happens following a disclosure of a potential conflict of interest?**

Following a disclosure, your manager, supervisor or the chair of the relevant committee or body will discuss the matter with you and request any further information required to understand and assess the potential conflict of interest.

Except where the disclosure is made by a Director, if the person or body making the assessment is unable or unwilling to make a determination regarding whether there is a conflict of interest and the actions required to manage such conflict, the disclosure will be referred to the Chief Executive Officer (CEO) or Deputy CEO of the College (provided they are not interested in the matters referred to in the disclosure) for assessment and decision, or possible referral to the Board of the College (Board).

If it is established that a conflict of interest does exist, the decision will then be made as to what (if any) appropriate steps are required to manage the conflict. This will vary depending upon the particular circumstances, and the position(s) held by the people involved. For example, where the conflict relates to a decision to be made by a committee on which the person sits, it may be necessary for the person to be absent while the matter is being considered and to be excluded from the committee's decision-making process. Sometimes, no further action will be necessary, however this can only be determined after the disclosure.

The details of the disclosure and any steps taken in response should be recorded in the Register of Interests (see attached in Annexure B) by the person or body making the assessment, and a copy should be provided to the Deputy CEO. A different procedure applies in relation to the Directors of the College (see 'Particular considerations for Directors', below).

The taking of appropriate steps should not be considered a confirmation of any impropriety by the relevant individual(s) or be a source of embarrassment. Instead, taking such steps (or indeed, even making a disclosure) at the right time can protect individuals from later suggestions of misconduct.

### **Particular considerations for Directors**

Directors have a general duty under the law to avoid conflicts of interest. Furthermore, because the College is a public company, the Directors are obliged, if they have a material personal interest in a manner being considered by the Board, to declare that interest, and leave the room so that the remaining directors may then decide whether the 'conflicted' director may be involved in the relevant discussion and decision – see section 195 of the *Corporations Act 2001* (Cth).

Difficulties in a practical sense arise in a representative organisation such as the College. For example, if an issue being considered by the Board involves the private practice of pathology, does that mean that every Director who has a relationship with a private pathology company should leave the room? Also, if the issue relates to public pathology, do all the public pathologists also have an interest in the issue? It could get to the point where the Board is unable to do anything.

This issue is faced by every board of a public company. So, what does section 195 require? The director must have a “*material personal interest*”. What is material? Case law says it is not just any interest. It has to be something of real substance related to the matter before the board.

There is also an additional layer that applies to Directors because the College is registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The College itself is required under that Act to take reasonable steps to ensure that the Directors are subject to, and comply with, their duty to disclose perceived or actual material conflicts of interest. Because this requirement specifically refers to perceived conflicts of interest, Directors should be aware that this may require disclosure of a wider range of matters than under the *Corporations Act*, which refers to “*material personal interests*”.

If a Director believes that an interest may exist, he or she should advise the Chair of the Board (Chair) as soon as the potential for a conflict is identified. The Director should absent themselves from further discussion of the issue and any subsequent voting unless the Board either resolves that the Director does not have a material personal interest in the issue, or resolves that the Director does have a material personal interest in the issue but may still be present at the meeting (though the Director will still not be able to vote on the issue, in accordance with rule 104.2 of the College Constitution).

It is College policy to call on those present to declare any potential conflicts of interest at the beginning of each meeting of the Board. Such conflicts of interest are then recorded in the minutes of the meeting.

Directors may also provide standing notice of interests to the other Directors, setting out the nature and extent of their interest in a matter. These standing notices of interests will be noted by the Chair at the beginning of each meeting of the Board, in addition to any other potential conflicts of interest that may be advised by a Director, and considered by the Board in relation to particular Agenda items.

## **Related College documents and forms**

Please also refer to the following documents:

Guideline 6/2004 - Medical Appointment Panels requiring College input

Guideline 2/2013 - Gifts for Employees and Directors

Guidelines 3/2015 - Quality Framework for RCPA Examinations – Written, Practical and Oral

Register of Interests (see Annexure B)

## Annexure A

### Illustrative examples of assessing whether a conflict exists and appropriate steps<sup>1</sup>

- 1 *Fellow A, employed in the private sector, and Fellow B, employed in the public sector, are representing the College on a Government committee, the decisions of which will have implications for MBS funding of pathology services.*

*Does either Fellow A or Fellow B have a conflict of interest?*

- It could be argued that both Fellows could have a conflict of interest, but neither does automatically. If Fellow B manages a large public laboratory with significant Medicare revenue, his or her potential for a conflict may be higher than Fellow A's (who might have no role in management). Both Fellows should disclose their potential conflicts of interest for assessment.

The Fellows should also refer to the Government committee's own conflict of interest policy (if any).

- 2 *Fellow C owns a private laboratory and also sits on this same committee. Does Fellow C have a conflict of interest?*

- The potential for a conflict is increased significantly in the case of Fellow C and Fellow C should disclose this as a potential conflict of interest.

Of course, disclosure of the personal interest and the possible conflict would be required at the outset of any discussion on the issue if similar circumstances arose at a meeting of the Directors of the College.

- 3 *Fellow A is also on a College committee that makes recommendations to the Board and a position statement is being developed that relates primarily to the private sector. Fellow A recently acquired some shares in her employer company as part of an employee share scheme.*

*Does Fellow A have a conflict of interest in these circumstances?*

- It is relatively unlikely that Fellow A would have a conflict of interest requiring Fellow A to be excluded from the Committee's deliberations (though Fellow A should at least consider disclosure). Firstly, the committee is only making recommendations to the Board, it is not making the decision. Secondly, it needs to be recognised that a College position statement has limited potential to influence the decisions and actions of Governments and commercial entities, each of which must operate in a much broader context of regulations and stakeholder influences.

- 4 *Fellow D is employed by a laboratory that is the subject of a site visit following a complaint from a Trainee, and he is a member of the committee where the site visit report is to be discussed.*

*Does Fellow D have a conflict of interest and what should Fellow D do?*

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<sup>1</sup> This list is not all inclusive and is intended to provide general guidance only.

- There is clearly potential for a conflict of interest, particularly if Fellow D has any role in management or trainee supervision. Fellow D should disclose his interest to the chair of the committee for assessment.

All of the facts and circumstances should be considered by the chair of the committee, but it would seem likely that Fellow D should be absent from any subsequent discussions and any decision making or recommendations.

- 5 *Fellow E is an experienced College examiner scheduled to examine candidates in upcoming second part oral exams. Fellow E is particularly looking forward to examining a candidate who previously worked in her laboratory under her supervision.*

*Does Fellow E have a conflict of interest and what should the Chief Examiner do?*

- Fellow E should declare a conflict of interest to the Chief Examiner in advance of the exams. It is likely that the examiner has a conflict of interest and should not participate in the exam for this candidate.

- 6 *Director A sits on a Board committee tasked with overseeing a significant building project for the College. Director A receives a personal invitation to attend an interstate sporting event, including travel and accommodation, from one of the construction companies bidding for work on the project.*

*How should Director A respond to the invitation?*

- Director A should not accept the invitation, as it may create, or be perceived to create, a conflict of interest.

Director A should also refer to Guideline 2/2013 - Gifts for Employees and Directors.

- 7 *Director B is the recipient of a research grant from an organisation that is seeking to enter into a joint venture with the College. If the joint venture proceeds, it is probable that the organisation's focus will shift away from Director B's particular area of research. The Board intends to consider and vote on the organisation's proposal at the upcoming Board meeting.*

*Can Director B still be involved in the decision regarding whether to proceed with the joint venture?*

- This will depend. Director B should provide notice of her interest, either prior to or at the Board meeting itself. Director B should then absent herself from the Board meeting while the other Directors consider Director B's interest in the matter.

If Director B is considered to have a material personal interest in the matter, the other Directors may still resolve that Director B may be permitted to be present at the meeting while the proposal is being considered, and may be heard during the discussions regarding the proposal. However, under the Constitution of the College, Director B will not be able to vote on the proposal itself.

- 8 *Staff Member A is ordinarily involved in the printing of examination materials at the College. Trainee A is to sit the Basic Pathological Sciences Examination, and is Staff Member A's stepdaughter.*

*What should Staff Member A do in these circumstances?*

- Staff Member A should notify his manager of his relationship with Trainee A. Steps can then be taken to ensure that Staff Member A is not involved with the production or printing of the relevant examination materials for that particular examination, and does not otherwise have any access to those materials.

**Annexure B**

**Register of Interests - College employees and other College representatives (except Directors)**

Name of individual	Description of potential conflict of interest	Date of disclosure	Actions and decision taken by the College in response to the disclosure	Steps (if any) taken by the individual to deal with the conflict	Any other comments