



Department of Planning, Industry and Environment

Conflict of Interest Policy

A resource for the NSW wildlife rehabilitation
sector



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1. About this policy

1.1 Why do we need a conflict of interest policy?

Managing conflicts of interest is an important part of governing an organisation well.

Having good systems in place for identifying, disclosing and managing conflicts of interest:

- promotes transparency and accountability in how decisions are made
- improves the quality of discussion and decision making on the committee
- reduces the risk of corruption, misconduct and bias in an organisation's operations
- increases community trust and protects the organisation's reputation
- helps committee members and senior leaders to meet their legal duties to the organisation.

Conflicts of interest are common. The existence of a conflict of interest is not usually, in itself, a problem. Inevitably there will be times when a person's duty to the organisation will 'come into conflict with' their personal interests or other duties they have. This is especially so in small communities or specialised sectors where everyone knows each other, and people might have numerous different roles.

What is important is how the conflict of interest situation is disclosed and managed.

1.2 Who does this policy apply to?

This policy applies to:

- all committee members (including officeholders such as the president, treasurer and secretary as well as members of any sub committees established by the committee)
- people occupying the following senior leadership positions [insert names of positions e.g. Chief Executive Officer, General Manager]
- if the organisation is a NSW incorporated association, the public officer.

(Note: a public officer may also be a committee member, but this is not always the case. If a public officer is a committee member, then the processes in this policy applying to committee members will apply to the public officer.)

1.3 Coverage and terminology

This policy has been drafted for organisations in the NSW wildlife rehabilitation sector and is suitable for groups structured as a NSW incorporated association and company limited by guarantee, as well as for groups that are registered as a charity.

In this policy:

- **Committee** (also known as the **board**) means the governing body of the organisation – the governing body makes key decisions about the strategic direction of the organisation and oversees the ongoing administration of the organisation.
- **Committee member** (also known as a **board member** or **director**) means a person who serves on the committee of the organisation, usually for a set period of time (term) to help govern or make strategic decisions to ensure the organisation is pursuing its purpose.

- **Conflict of Interest Register** means the register maintained by the committee which contains all current and past disclosures of personal interests made under this policy. A template Conflict of Interest Register is included in Appendix 2.

2. What is a conflict of interest?

A conflict of interest occurs when personal interests conflict with a person's duty to act in the best interests of an organisation.

Personal interests can include someone's own interests as well as the interests of their family, friends or other associates. A person's family might include their spouse, partner, child, parent, sibling or other relative. A person's associate might include their intimate partner, household member, relative, business associate, rival or competitor.

Someone's personal interests can also include their interests in another organisation, for example as an employee, volunteer, member, shareholder, business partner, director or committee member.

There are 3 main types of conflicts of interest:

- **actual:** a person currently has a conflict between their personal interests and their duties to the organisation
- **potential:** a person has a personal interest that could give rise to a conflict of interest in the future
- **perceived:** it could appear that a conflict exists, or could arise, that might improperly influence a person.

Sometimes conflicts of interest are also described as:

- **direct:** the conflict involves a person's own interests
- **indirect:** the conflict involves the interests of the person's family, friends or associate
- **financial:** a person (or that person's family, friend or associate) may experience a financial benefit or loss as a result of a decision made by the organisation
- **non-financial:** a person's opinions, values, beliefs or preferences may be in conflict with a proposed decision of the organisation. Alternatively, a proposed decision of the organisation may result in a person's family, friends or associate experiencing a non-financial loss or receiving a non-financial benefit they would otherwise not be entitled to receive.

Sometimes it can be difficult for a person to know whether they have a conflict of interest or not. It can be helpful to ask:

- How will this look to someone from outside the organisation?
- What would I think if I saw someone else doing this?
- Could my involvement in this matter cast doubt on the integrity of the organisation?

If in doubt, it is always best to stay on the safe side and disclose the interest.

Case study 1 – Sharon

WILD Inc has decided to have a shed built for equipment storage. Sharon is a committee member, and she owns a shed building business with her wife, The Shed Gals. Her business is one of 3 local shed businesses being considered by the WILD Inc committee.

If The Shed Gals are hired, Sharon stands to benefit financially from the extra work, which means she has a direct financial interest in this decision. This conflict is **actual, direct and financial**.

Case study 2 – June

June is on the committee of WILD Inc and her close friend, Simon, is the species coordinator for bats. June is shocked when the committee receives a bullying complaint about Simon from a wildlife rehabilitator.

June's responsibility to act impartially as a committee member is in conflict with Simon's interest in defending the bullying complaint.

This conflict is **actual, indirect and non-financial**.

Case study 3 – Kavindah

Kavindah is the General Manager of WILD Inc and is also on the committee of the local community centre, Eldham Neighbourhood House.

Eldham Neighbourhood House runs a first aid courses for a fee, with discounts for not-for-profit organisations. Although the committee hasn't discussed it, it's probably time for WILD Inc to organise some refresher training for its wildlife rehabilitators.

Kavindah isn't currently conflicted, but a conflict of interest could arise in the future if WILD Inc considers purchasing training from the neighbourhood house.

The conflict is **potential, indirect and financial**.

Case study 4 – John

WILD Inc is having a big party to celebrate the organisation's 30th anniversary. John is a committee member. WILD Inc are considering 2 companies to cater the event, including Frangipani Parties and Events. John's 2 daughters are former employees of Frangipani Parties and Events.

John is sure that he can make an impartial decision in the best interests of WILD Inc, but someone might still perceive that he has a conflict of interest.

This conflict is **perceived, indirect and financial**.

3. Disclosing conflicts of interest

3.1 Policy

All people covered by this policy are required to disclose conflicts of interest to the committee.

The fact that a matter may be known by others, or is considered public knowledge, is no substitute for disclosure to the committee in accordance with this policy.

A person must disclose a conflict of interest as soon as they become aware of it. They may also disclose a personal interest in advance by providing standing notice (see below). A template conflict of interest disclosure form is included in Appendix 1.

The committee must maintain a Conflict of Interest Register that contains the details of disclosures made by committee members as well as other persons covered by this policy. A template Conflict of Interest Register is included in Appendix 2.

For NSW incorporated associations, the register of committee member interests must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the committee in accordance with the *Associations Incorporation Act 2009* (the Act).

3.2 Standing notice of a personal interest

A person may give advance notice of any personal interests that could give rise to a conflict of interest in the future, even if there is no conflict at the time (standing notice).

Every person covered by this policy is encouraged to provide standing notice of their personal interests soon after their election or appointment to their role.

Standing notice must be provided to the committee using the organisation's conflict of interest disclosure form (see Appendix 1 for a template). A person must make ensure they keep any standing disclosures up to date and accurate.

The secretary must record details of all disclosures in the organisation's Conflicts of Interest Register.

Example – Kavindah

Soon after Kavindah is first employed as the General Manager of WILD Inc, she provides a standing notice to the committee disclosing her position as a committee member of the Eldham Neighbourhood House.

3.3 Disclosing interests as they arise

A person covered by this policy must declare a conflict of interest as soon as they become aware of it.

For committee members:

- a committee member should disclose a conflict of interest at a committee meeting as soon as possible after they become aware of the conflict
- ideally, this will occur at the beginning of a committee meeting but may occur during the meeting if the committee member only identifies the conflict during the course of the meeting

- the secretary will include in every committee meeting agenda a standing 'conflict of interest' agenda item
- the secretary must record details of the disclosure in the minutes of the committee meeting and the organisation's Conflicts of Interest Register.

For non-committee members:

- as soon as a person identifies a conflict of interest, they must disclose it to the secretary using the organisation's conflict of interest disclosure form
- the secretary must record details of the disclosure in the organisation's Conflicts of Interest Register.

For all people covered by this policy:

- a person must disclose a conflict of interest to the committee when the conflict arises, even if the person has previously provided standing notice of a personal interest
- when disclosing a conflict of interest, a person must be full and frank about the nature and extent of their interest and how it relates to the organisation's affairs
- the committee should create a culture of disclosure by educating people about their responsibilities under this policy, encouraging people to disclose conflicts of interest, and facilitating open and respectful discussions about how to manage those conflicts.

Example – John

John looks at the agenda for the next committee meeting and realises that Frangipani Parties and Events is one of the catering companies being considered by the committee. At the beginning of the committee meeting, John discloses the nature of his conflict of interest.

4. Managing conflicts of interest

4.1 Policy

Once a person discloses a conflict of interest, it is the responsibility of the committee to decide how to manage the conflict.

The process and considerations will be different depending on whether the person is a committee member or not.

4.2 Managing conflicts of interest – committee members

After a committee member discloses a conflict of interest in relation to a matter, the committee member must leave the committee meeting as soon as that matter comes up for discussion.

Unless the rest of the committee agrees otherwise, the committee member who has declared a conflict of interest ('the disclosing person') must not:

- vote on the matter
- take part in any discussion on the matter
- be present at the meeting during the discussion and vote.

If the conflict of interest will be ongoing, the committee may wish to adopt a strategy to manage the conflict. Suggested strategies are outlined in part 4.3 below.

The minutes of the committee meeting must record the decision made by the committee, including the disclosing person's absence from discussions and any vote by the rest of the committee.

Example – Sharon

At the beginning of the committee meeting Sharon declares her interest in the Shed Gals business. When the relevant agenda item comes up for discussion, Sharon leaves the committee meeting.

The rest of the committee decide that Sharon should not vote, take part in any discussion of the matter or be present during the discussion and voting process. The committee discusses the proposals received and resolves to engage a different shed building business.

After the resolution is passed, the committee invites Sharon back into the meeting and informs her of the committee's decision.

The secretary records Sharon's disclosure in the organisation's Conflict of Interest Register, and records the actions taken by the committee in the meeting minutes, including:

- Sharon's disclosure of a conflict of interest
- the time that Sharon left the meeting
- the committee's decision that Sharon should not vote, take part in any discussion of the matter or be present during the discussion and vote
- the committee's resolution to engage the shed building business
- the time that Sharon returned to the meeting.

4.3 Managing conflicts of interest – non-committee members

After a non-committee member discloses a conflict of interest to the secretary, the secretary must ensure the committee considers the disclosure at the next committee meeting.

The committee must either decide on an appropriate strategy to manage the conflict or delegate this decision to another person in the organisation (for example, a senior manager).

The disclosure and the action taken to manage the conflict must be recorded in the organisation's Conflict of Interest Register.

4.4 Strategies for managing a conflict of interest

Depending on the circumstances, appropriate strategies may include:

- **recording** the conflict: in low-risk situations, the act of documenting the conflict in the Conflicts of Interest Register may be enough to ensure transparency
- **restricting** the person's involvement in the matter: this strategy is appropriate if the person can be effectively separated from parts of the process

- **removing** the person from involvement in the matter: this is suitable for serious or ongoing conflicts where other strategies are not appropriate
- **relinquishing** the interest: in some circumstances the conflict may be avoided if the person is willing to relinquish the private interest that is creating the conflict.

When deciding what approach to take, the committee should consider:

- whether the conflict will realistically impair the disclosing person's capacity to participate in decision-making impartially
- whether the conflict needs to be avoided or whether the act of documenting it is enough to ensure transparency
- whether there are alternative options to avoid or manage the conflict
- the level of risk the organisation is willing to assume
- the organisation's purposes and resources
- the possibility of creating an appearance or perception of improper conduct that might impair trust or confidence in, or the reputation of, the organisation.

Example – John

John has declared his indirect interest in Frangipani Parties and Events in accordance with this policy.

The rest of the committee unanimously decide that John can vote and participate in discussions about which catering company to choose. They reach this decision on the basis that:

- the risk to the organisation's integrity and reputation is low
- john's interest in the business is relatively remote
- WILD Inc operates in a small regional community with a limited number of catering companies to choose from
- the committee is satisfied that the act of disclosing and recording the interest creates sufficient transparency.

Example – June

June declares her conflict of interest in relation to the bullying complaint against Simon.

The rest of the committee agrees that June cannot be involved in any discussion or decision in relation to the complaint. They decide this because:

- the close friendship is likely to impair her ability to look at the matter impartially
- transparency and fairness are important in complaint management
- it is also important that the organisation be seen to avoid conflicts to interest in complaint management – people may lose trust in the organisation if it does not handle complaints in an impartial manner
- June should not be privy to confidential information about the management of the complaint that she may pass on to Simon.

5. Confidentiality

Disclosures made in accordance with this policy and any decisions made as a result will be treated confidentially so far as is reasonably practicable. Information will be shared with those persons who need to access it for the purpose of fulfilling their duties to the organisation. Information will also be shared in accordance with the organisation's constitution and applicable law.

If the organisation is a NSW incorporated association, its members have the right to inspect the register of committee member interests.

6. Breach of this policy

If a person fails to disclose a conflict of interest under this policy, the committee may decide to take action, such as:

- requiring the person to undertake further training and education about conflicts of interest
- issuing a warning
- if the situation is serious or there are repeat instances, the committee may seek to terminate the person's relationship with the organisation.

The committee should comply with any relevant disciplinary policy that applies to the person in breach, as well as the organisation's constitution and applicable law.

If a person suspects that someone subject to this policy has failed to disclose a conflict of interest, they should discuss the matter with the person at first instance. If the person still neglects to declare a conflict of interest, it may be appropriate to notify the committee, who will investigate the circumstances and take appropriate action.

7. Further information

7.1 Regulatory context

For incorporated associations:

- committee members must disclose and manage conflicts of interest in accordance with section 31 of the *Associations Incorporation Act 2009* (NSW)
- a committee member commits an offence under the Act if they use their position, or information obtained as a committee member, dishonestly with the intention of gaining an advantage for themselves or for any other person, or causing detriment to the association (sections 32 and 33).

For companies limited by guarantee:

- company directors have obligations under the *Corporations Act 2001* (Cth) to disclose and manage any material personal interest in a matter that relates to the affairs of the company
- if the company is also registered as a charity, these provisions do not apply. Instead, a charity must comply with the relevant Governance Standard described below.

For registered charities:

- Under Governance Standard 5, a registered charity must take reasonable steps to ensure that board/committee members comply with the duty to disclose perceived or actual material conflicts of interest. This includes the duty to disclose a related party transaction.

7.2 Related documents

This may include your organisation's Constitution, Code of Conduct and Board Charter.

7.3 Responsibility and review

The committee is responsible for this policy, and for maintaining the Conflict of Interest Register.

The committee must review this policy at least every 2 years.

Date reviewed	Result of review/changes made

Appendix 1: Template conflict of interest disclosure form

Name	
Position	
Date	
<p>Description of personal interest.</p> <p>Please provide full details of the nature and extent of your personal interest.</p> <p>A personal interest can include your own interests as well as the interests of your family, friends or other associates.</p> <p>Your personal interests can also include your interests in another organisation, for example, as an employee, volunteer, member, shareholder, business partner, director or committee member.</p>	
Type of interest	<p><input type="checkbox"/> Actual conflict of interest</p> <p><input type="checkbox"/> Potential conflict of interest (including any standing disclosure)</p> <p><input type="checkbox"/> Perceived conflict of interest</p> <p><input type="checkbox"/> I'm providing standing notice of a personal interest</p> <p><input type="checkbox"/> I'm not sure</p>
Declaration	<p>To the best of my knowledge and belief any conflict of interest between my duties to the organisation and my private and/or business interests have been fully disclosed in this form in accordance with the requirements of the organisation's Conflict of Interest Policy. I agree to notify the committee if the nature or extent of my personal interest changes.</p> <p>Signed:</p>

Appendix 2: Template Conflicts of Interest Register

Committee members

NSW incorporated associations must maintain a register of interests disclosed by committee members. All committee members are required to tell the committee about any direct or indirect interest which could conflict with their duties to the incorporated association (known as a conflict of interest).

Note: The register must be open at all reasonable hours for inspection by any member of the incorporated association on payment of the fee determined by the committee in accordance with the *Associations Incorporation Act 2009* (NSW).

Name	Position	Description of interest	Has the committee been notified? (Yes/No)	Date of disclosure	Standing disclosure (Yes/No)	Steps taken by committee to manage the conflict	Is the interest current?
Sharon Bloggs	Committee member	Partner in business, the Shed Gals	Yes	01.01.19	Yes	Sharon not allowed to participate in discussions or vote in decision to choose shed building company, as per meeting minutes dated 31.03.19	No – Sharon sold the business in March 2021.

