Identifying and managing conflicts of interest

This information sheet has been prepared to support individuals to identify and manage conflicts of interest, having regard to obligations under the Code of Conduct, the Behaviour and Conduct Policy and the Conflict of Interest Procedure. Some University staff will have other obligations in relation to conflicts of interest including specific legislative obligations and may need to disclose conflicts to or about other organisations, particularly in relation to research and grant funding.

The public must be confident that as public officers university staff carry out their duties impartially and transparently. All conflict of interest obligations are underpinned by three fundamental principles:

- Identify
- Disclose
- Manage

Identify
A conflict of interest arises when the personal interests of a staff member come into conflict with, or could be perceived as coming into conflict with, their professional duties and responsibilities. The existence of a conflict of interest or a potential conflict of interest is not necessarily unethical. All staff members have interests outside their public roles and it is inevitable that from time to time conflicts of interest will arise. The problem is not generally the existence of a conflict of interest, but how the conflict of interest is dealt with.

Types of conflicts
University duties must be carried out impartially, and university staff members need to be aware of where there may be **actual**, **perceived,** or **potential conflicts**.

A conflict of interest will rarely be only one of these types. Quite often conflicts of interest will overlap between these categories and may even be all three at once. These are simply useful terms to help you identify any conflicts of interest you may have, conflicts that others may perceive you as having, or conflicts you may have in the future.

An **actual** conflict of interest arises when a university staff member's personal interests, or the interests of a person close to them, come into direct conflict with their duties or responsibilities. This is sometimes called a real conflict of interest.

A **perceived** conflict of interest arises where a fair and reasonable person might perceive that a university staff member's actions or decisions when carrying out their duties might be influenced by their private interests. The person with the conflict of interest may believe a conflict does not actually exist, however, this belief is irrelevant. The appearance that the

university staff member's decision-making might be influenced by their personal interests is enough to compromise their actions and decisions.

A **potential** conflict of interest arises when a university staff member's personal interests might conflict with their future official actions and decisions. Private interests can exist for years without conflicting with a university staff member's duties. However, it is still possible that a private interest might one day interfere with the university staff member's actions or decisions. These conflicts are sometimes called **foreseeable** conflicts of interest.

University duties and personal interests
To identify a conflict, it is important to understand what is meant by **University duties**, **personal (or private) interests,** and considerations when undertaking any **secondary employment**.

University duties are the roles and tasks associated with your employment as a staff member, including any power or influence that can be exercised. Generally, the more decision-making responsibilities you have, the more likely you are to encounter conflicts. Common areas where conflicts can arise include, but are not limited to:
- purchasing/procurement
- staff appointments including open recruitment, direct appointment, and casual appointments
- admissions, assessment, awarding of prizes, and other student-related decisions
- managing staff including workload allocation, leave approvals, special payments, and allowances
- conducting research.

A **personal (or private) interest** is where you, or an associate, may personally stand to benefit in some way from the exercise of your university duties. An associate can include a spouse, family member, friend, or colleague. It could even be a business, group, club or other association. A personal interest could also include a grievance or bias that you hold against a person or association.

When identifying personal interests, it can help to think about your financial interests and non-financial interests.

Financial interests are interests that involve some type of financial benefit including financial gain and the avoidance of financial loss. Financial interests can arise from owning property, having business interests, holding secondary employment, having unpaid debts, or receiving hospitality or travel. A financial interest does not need to be direct. The financial interest could be in relation to a family member, a friend, a close associate, or a favoured group.

Non-financial interests are those that do not involve financial benefits. They can arise from people's familial and personal relationships, as well as involvement in sporting, social, cultural, religious, or political activities. They can also include any tendencies you may have to favour or prejudice certain groups of people, as well as any personal biases you may hold that could influence your actions or decisions as a public officer.

Secondary employment can include any engagement outside of the university including consulting, board positions, operating a business, or even volunteering. Secondary employment gives rise to an additional set of interests and commitments, and the conflicts that may arise from these engagements need to be carefully considered both prior to taking on any additional role, and throughout the time the other engagement continues.

Identifying a conflict

The reasonable person test should be applied when considering what might be perceived as a conflict of interest. This means asking yourself: *Would a fair and reasonable person perceive me as having a conflict of interest?*

The following questions can also assist you to identify if you may have an actual, perceived, or potential conflict of interest:

- Would I or anyone associated with me benefit from or be detrimentally affected by my proposed decision or action?

- Could there be benefits for me in the future that could cast doubt on my objectivity?

- Do I have a current or previous personal, professional, or financial relationship or association of any significance with an interested party?

- Would my reputation or that of a relative, friend, or associate stand to be enhanced or damaged because of the proposed decision or action?

- Do I or a relative, friend, or associate stand to gain or lose financially in some covert or unexpected way?

- Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?

- Have I contributed in a private capacity in any way to the matter my faculty / division / the University is dealing with?

- Have I made any promises or commitments in relation to the matter?

- Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?

- Am I a member of an association, club, or professional organisation, or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose by my proposed decision or action?

- Could this situation have an influence on any future employment opportunities outside of my current official duties?

- Could there be any other benefits or factors that could cast doubts on my objectivity?

Disclose

Once you have identified that you may have a conflict, your obligation is to respond appropriately to that conflict.

Responding appropriately to a conflict involves:
- disclosing it to your supervisor as soon as you identify the conflict
- completing a Disclosure of a Conflict of Interest Form which sets out the agreed approach to managing the conflict
- ensuring your form is approved and signed by your supervisor and Head of School / Branch and then uploaded into Staff Services Online
- ensuring you implement the agreed management plan.

The Conflict of Interest Procedure sets out the University's requirements in relation to the disclosure and management of conflicts.

Manage

Making an appropriate disclosure of a conflict of interest is not generally the end of the matter. Once a conflict has been identified and properly disclosed, it needs to be managed and monitored.

A management plan must be developed in conjunction with, and approved by, the relevant manager in accordance with the Conflict of Interest Procedure.

A management strategy will depend on how the conflict of interest is assessed, the nature of the conflict, and the complexities, subtleties, and significance of the conflict. It will also depend on whether there are any legislative requirements for managing the conflict.

The Six R's

There are six key types of actions that can be used to manage a conflict.

Register: This involves a staff member formally registering any identified actual, potential, or perceived conflicts of interest. It is a required first step for all conflict of interest management, but for most staff members it is rare that this will be the only management strategy required.	
This strategy should be used: • for very low-risk conflicts, or potential conflicts • where recording the conflict is sufficient to ensure transparency and remove bias.	This strategy should not be used: • for more significant or higher risk conflicts of interest • when the perceived or potential effects of the conflict on the public officer's duty require more proactive management.
Restrict: This involves restrictions being placed on a staff member's involvement in a matter, or exclusion from parts of a process involving a conflict of interest.	
This strategy should be used: • when the staff member can be effectively separated from some part of a matter, activity, or process	This strategy should not be used: • if the conflict is likely to arise more frequently

• when the conflict of interest is not likely to arise frequently.	• the staff member is regularly unable to perform significant aspects of their duties due to the conflict.

Recruit: This involves the recruitment of an independent third party to oversee all or part of a matter involving a conflict of interest.

Where the strategies being used are to *recruit* another person, the person taking on these duties should not report to the person with the conflict.

This strategy should be used:	This strategy should not be used:
• when it is not feasible for the staff member to remove themselves from a matter, activity, or process • in small or isolated communities or areas of expertise where the expertise of the staff member is necessary, but not easily replaced.	• if the conflict is serious and ongoing, making recruitment impracticable • where recruitment of a third party is not an appropriate way to handle the matter, or a suitable third party cannot be found.

Remove: This involves a staff member being removed from any involvement in a matter where there is a conflict of interest.

This strategy should be used:	This strategy should not be used:
• if the conflict of interest is serious and ongoing, and restriction and recruitment are not appropriate or available options.	• if the conflict of interest's perceived or potential effects are of low-risk or low significance • if the staff member is prepared to relinquish the private interest creating the conflict.

Relinquish: This involves a staff member relinquishing the private interest that is creating the conflict.

This strategy should be used:	This strategy should not be used:
• when the staff member's commitment to public duty outweighs their attachment to their private interest.	• if the staff member is unable or unwilling for whatever reason to relinquish the relevant private interest.

Resign: This involves a staff member resigning from their position in order to relieve a conflict of interest.

This strategy should be used:	This strategy should not be used:
• when no other options are practicable • if the staff member cannot or will not relinquish the private interest causing the conflict • when the staff member prefers this approach as a matter of personal preference.	• if the conflict of interest and its potential and perceived effects are low-risk or of low significance • other options exist that are workable for the public officer, their agency, and the public at large

Creating an effective management plan

An effective management plan will consider all aspects of the individual's University duties that may be influenced or may be perceived to be influenced by the conflict and will specify strategies for each.

The management strategies adopted should be proportionate to the risk posed by the conflict. In considering the risk, regard should be had to:

- the potential risks to the University's objectives, interests, and policies
- what the likelihood is of the identified risk happening
- the impact of the consequences of the conflict of interest
- the extent to which the person declaring a conflict has direct or indirect scope to influence decision-making to advance their own personal or financial interests.

Scenarios

The following section outlines some common conflict of interest scenarios within the University, and some of the things to consider when developing management strategies. They are intended as a guide only and do not capture every possible instance that might give rise to a conflict of interest at the University.

Research and Academic

In addition to obligations under the University's Behaviour and Conduct Policy, those involved in research have obligations under the Australian Code for the Responsible Conduct of Research, and under project funding agreements (where applicable) that require conflicts of interest to be declared and appropriately managed.

Remember to talk to your contact in Research Services about conflicts relating to funded research.

Academic and Research related conflict scenarios include:
- Peer Review of Research Grants or Publication – when an author, reviewer, or editor allows personal conviction, financial interests, or close personal relationships to influence the work improperly.
- Private tutorials – refers to instances where an academic accepts payment for private tutorials from students enrolled at the University which is generally not permitted.
- Thesis examination - refer to the Conflict of Interest Guidelines for the Nomination of Higher Degree by Research Thesis Examiners.

Conflicts that may arise specifically as a result of research commercialisation activities (including IP development, IP licencing and industry collaborations) when the researcher or conflicted person:
- holds equity of greater than 5% in a private company which is related to, has an interest in, or will benefit from their research field
- is involved in the founding and/or management of a private company or other entity which is related to, has an interest in, or will benefit from their research field
- is appointed to the Board of Directors of a private company which is related to, has an interest in, or will benefit from their research field
- is entitled to receive a share of income generated by any entity, based on commercialisation of University IP by that entity, in accordance with the University IP policy for example where the researcher was an inventor on IP licensed to an entity, and thus will receive a distribution of any income received from the company by the entity

- has a beneficial interest such as employment, consulting, / equity, or revenue share in a company that is co-located on the University premises and benefits from access to University resources including staff members and/or equipment.

In each of these examples, a conflict arises (whether actual or perceived), as the researcher becomes incentivised to act in the best interests of the company with which they have an embedded relationship, and which may be in contrast to their obligation to act in the best interest of the University.

Examples of how these scenarios lead to conflicts of interest for the researcher:
- Time management: incentive to support the company/commercial interests on University time, rather than meet obligations as an employee of the University.
- Publication strategy: incentive to withhold unfavourable research results from academic publication if it may have a negative impact on researcher's commercial interests. Added incentive to include some biases in academic publications in favour of commercial interests.
- Use of student/staff labour: incentive to use student or other laboratory labour/resources to generate deliverables for the benefit of the company, without adequate funding provided for which the students/employees will not directly benefit, but researcher may.
- Integrity of research results: incentive to produce and/or publish false/misleading research results for the benefit of the researcher's commercial interests.
- Intellectual property management: incentive to withhold disclosure of IP developed by research in researcher's capacity as a University employee, and instead have IP leakage, whereby researcher passes University IP to related company without going through proper University process in relation to IP disclosure, ownership, and transfer.
- Funding: incentive to improperly use funding secured in capacity as a University researcher to conduct research/activities for the benefit of related company which is outside the approved purpose of the funding provided.
- Facilities: incentive to improperly use University facilities without a contract to conduct research/activities for the benefit of related company.
- Competing contracts: incentive to contract through the company/commercial interest instead of through the University.

Administrative

Listed below are common administrative activities that can be influenced, or be perceived to be influenced, by a conflict of interest. Many of these activities have robust policies and processes that set out how the decision will be made which can assist in mitigating the risk. Ensuring the relevant policy and process is adhered to is the first step to managing any of these risks, followed by consideration of what role the individual with the conflict will play in the process.

Perception of a conflict of interest can arise both where the individual has a delegated responsibility, and where an individual has an administrative responsibility relevant to the process. For example staff working in Human Resources, Finance, and Procurement may be perceived to have a conflict in relation to a broad range of matters that are administered by their areas. This includes:
- Recruitment of staff new to the University. In relation to new appointments, all decision-making points should be considered including:
  - Creation of a role
  - Shaping of a position description
  - Development of the recruitment approach including how the position has been advertised

- o Establishment of a recruitment panel
- o Role on a recruitment panel
- Changes to the position of existing staff including:
  - o Promotion
  - o Tenure process
  - o Changes/extensions to fixed term appointments
  - o Reclassification
  - o Payment of allowances, including attraction/retention allowances
- Management responsibilities for existing employees, including:
  - o Managing complaints, grievances, and performance concerns
  - o Workload allocations and flexible work arrangements
  - o Approval of professional development, travel and leave requests
- Student-related responsibilities including:
  - o Admissions
  - o Supervision
  - o Assessment
  - o Examination
  - o Awarding of prizes, scholarships, or other awards.
- Procurement/purchasing:
  - o purchasing of goods or services for the University.

Secondary employment, outside earnings, commercial activity, and other commitments

Any secondary employment, outside source of earnings, or other professional commitment can give rise to a conflict of interest. In developing strategies to manage the conflict for secondary employment, consideration needs to be given to whether carrying out the secondary role is necessary for the maintenance of professional memberships, qualifications, or accreditations necessary for the performance of the individual's University role and thus of benefit to the University. Where it is of benefit to the University for the individual to undertake this work, suitable adjustments to their University employment may need to be made such as restricting the staff member's involvement in certain aspects of their normal duties to manage a conflict of interest.

Where the role is unrelated to the performance of University duties, it would usually be expected that the individual would only pursue the role where the conflict of interest can be managed without substantially impacting their usual duties.

Common conflict of interest scenarios include:

- Consulting or contract research – consulting or providing services in a commercial setting to derive either personal financial benefit or non-financial benefit derived from the association with the recipient of those services.
- Undertaking commercialisation activity in your own capacity.
- Memberships or Directorships – accepting paid or unpaid memberships, directorships, or executive management roles on boards of directors, committees, advisory groups (or similar bodies) of governmental, for-profit, or not-for-profits entities, including University controlled entities and associated companies. Acceptance of such roles requires the approval of the appropriate delegate, and should only occur where it has been determined that the role will not give rise to conflicts of interest that cannot be reasonably managed.

- Accepting gifts, director's fees, shares, share options, equity holdings, or other forms of securities in companies where the University has, or could be reasonably anticipated to have in the future, commercial relationship with those companies.
- Using information received as a University employee for personal purposes or benefit.

Where an individual is engaged in any form of secondary employment, the following questions can assist in identifying the areas of the roles that may give rise to a conflict:

- Does the individual have access to confidential information that may be relevant to their secondary employment?
- Is there University IP that could be relevant to the performance of the secondary role?
- Is there clarity about when each role will be performed and how the individual will maintain their University commitments?
- Does the individual have access to University equipment relevant to their secondary role?
- Does the individual intend to utilise their University colleagues or networks to promote or recruit for their outside employment? It will not usually be appropriate for a staff member to provide services targeted at University students for example tutoring.
- Is there the potential for further conflicts to arise? For example if the individual is working in a business, is there the potential for the business to become a supplier to the University in the future? Are there other potential changes to the individual's University duties or other employment that can be reasonably anticipated and may give rise to a conflict?

Further Information
For further information, please speak with your supervisor or contact your HR Advisor.