

# Policy Directive



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## Conflicts of Interest and Gifts and Benefits

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 Personnel/Workforce - Conduct and ethics  
 Clinical/ Patient Services - Ethical Behaviour

**Summary** This Policy Directive protects the integrity of the public health system and its staff, this policy and procedures define NSW Health's position in relation to conflicts of interest and gifts and benefits. All staff are expected to avoid actual or perceived conflicts of interest and must not accept gifts or benefits of a non-token value.

**Replaces Doc. No.** Conflicts of Interest and Gifts and Benefits [PD2010\_010]

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**Applies to** Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, Government Medical Officers, NSW Ambulance Service, Ministry of Health, Public Health Units, Public Hospitals, NSW Health Pathology, Cancer Institute (NSW)

**Audience** All of NSW Health and its stakeholders

**Distributed to** Public Health System, Divisions of General Practice, Environmental Health Officers of Local Councils, Government Medical Officers, Health Associations Unions, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres, Tertiary Education Institutes

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**Policy Manual** Not applicable

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### Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

## CONFLICTS OF INTEREST AND GIFTS AND BENEFITS

### PURPOSE

NSW Health is committed to providing a fair, ethical and accountable environment for the conduct of health system operations. To this end, the NSW Health Code of Conduct sets out the CORE values of collaboration, openness, respect and empowerment. These work in tandem with the NSW Public Sector core values of integrity, trust, service and accountability.

The integrity and fairness of the decisions and actions taken by Staff can be undermined where conflicts of interest are not identified and appropriately managed. To protect the integrity of the public health system and its staff, NSW Health's position in relation to conflicts of interest and gifts and benefits is defined in this Policy Statement and the attached individual procedure documents *Managing Conflicts of Interest Procedures* and *Gifts and Benefits Procedures*.

### MANDATORY REQUIREMENTS

Staff are expected to perform duties in a fair and unbiased way and not to make decisions which are affected by self-interest or personal gain; this involves avoiding actual or perceived conflicts of interest and not accepting gifts of a non-token nature.

This policy and the attached procedures apply to all Staff, including those working in any permanent, temporary, casual, termed appointment or honorary capacity within NSW Health. It includes volunteers, patient advocates, contractors, visiting practitioners, students, consultants and researchers performing work within NSW Health facilities.

Health Organisations are required to have systems in place consistent with this Policy Directive address the management of conflicts of interest and gifts and benefits and to ensure staff are aware of these issues and how to deal with them.

A Conflict of Interest Register and Gifts and Benefits Register must be maintained in accordance with the *Conflicts of Interest Procedures* and the *Gifts and Benefits Procedures*.

### IMPLEMENTATION

#### Roles and Responsibilities

**Principal Officers** must ensure:

- Conflicts of interest (which includes gifts and benefits) are managed effectively
- This policy is brought to the attention of staff
- Local procedures are developed and promulgated in accordance with this policy
- An officer with an appropriate level of seniority and experience is nominated to undertake assessments of a conflict of interest and to manage the registers for gifts and benefits and conflicts

- Appropriate processes are in place for managing and maintaining the Conflict of Interest Register and Gift and Benefits Register for the organisation
- Information on conflict of interest and gifts and benefits is routinely disseminated to staff through, for example, through orientation programs and staff newsletters
- The systems and records as outlined in this policy are implemented.

**Managers and Supervisors must:**

- Make staff aware of this policy
- Document the receipt and outcome of disclosures of conflicts of interest reported to them by staff members in the Conflicts of Interest Register
- Identify risks specific to their business unit or work environment, and put measures in place to address these
- Determine and document locally an appropriate strategy for managing any reported conflict of interest
- Record any offer or receipt of a gift or benefit reported to them by staff members and notify in writing the person tasked with maintaining the organisation's Gifts and Benefits Register of the required details, decisions made and actions taken
- Provide advice to and assist staff with appropriate ways to manage any potential or actual conflicts of interest or gift and benefits issue
- Monitor the work of staff and the risks they are exposed to in relation to conflicts of interest or gift and benefits issues, and regularly discuss these issues with staff.

**Chief Audit Executive must:**

- Review and sign off Conflicts of Interest and Gifts and Benefits Registers annually to ensure all actions have been completed and identify any trends and / or instances that require further action, and report on this to the Audit and Risk Committee.

**Staff members** have a responsibility in respect of their public duty to:

- Identify and assess conflicts of interests relating to their employment
- Where possible, avoid conflicts of interest and manage those conflicts of interest that cannot be avoided
- Declare immediately any conflict of interest or potential conflict of interest to their direct supervisor / manager or where appropriate Principal Officer / authorised officer
- Not seek or accept any payment, gift or benefit outside of their employment agreement for themselves or a family member
- Never accept gifts of cash

- Not accept gifts, rewards, travel or meals from suppliers or individuals
- Report as soon as possible to a manager / supervisor or authorised officer any offer or receipt of any gift or benefit
- Treat all persons equally and fairly and not show preference to any individual or organisation.

## REVISION HISTORY

Version	Approved by	
October 2015 (PD2015_045)	Deputy Secretary Governance, Workforce and Corporate	Update referenced PDs, review in line with new Public Service Commission and <i>GSE Act 2013</i> requirements, review language, integration of PD2005_086 and PD2005_167 into Policy Directive.
February 2010 (PD2010_010)	Deputy Director-General Health System Support	Policy updated to incorporate latest detail from the ICAC toolkits. Also included is a procedure on Gifts and Benefits and sets a nominal value for token gifts and benefits.
January 2005 (PD2009_469)	Director-General	New policy

## ATTACHMENTS

1. Managing Conflicts of Interest - Procedures
2. Gifts and Benefits – Procedures
3. Implementation Checklist

## Managing Conflicts of Interest



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**Issue date:** October 2015

PD2015\_045

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## 1 BACKGROUND

### 1.1 About this document

These procedures apply to all **Staff** working in any permanent, temporary, casual, termed appointment or honorary capacity within NSW Health.

The document aims to:

- Assist management to implement a system to satisfactorily and reasonably deal with conflicts of interest
- Help staff members develop an awareness of possible conflicts of interest and how to deal with them.

### 1.2 Code of Conduct and other relevant policies and legislation

The NSW Health *Code of Conduct* (PD2015\_035) sets out the NSW Health CORE Values (Collaboration, Openness, Respect and Empowerment) and also sets out standards with respect to:

- Promoting a positive work environment
- Demonstrating honesty and integrity
- Acting professionally and ethically
- Using official resources lawfully, efficiently and only as authorised
- Maintaining the security of confidential and / or sensitive official information
- Maintaining professional relationships with patients or clients.

Other relevant Policy and legislation relevant to this Policy Directive include:

- PD2015\_026 Recruitment and Selection of Staff to the NSW Health Service
- *PD2014\_042 Managing Misconduct*
- PSCC2014-13 Public Service Commission – Behaving Ethically – A guide for NSW government sector employees
- *Government Sector Employment Act 2013*
- PD2011\_070 Corrupt Conduct - Reporting to the Independent Commission Against Corruption
- PD2015\_027 Public Interest Disclosures
- PD2015\_036 Privacy Management Plan - NSW Health
- NSW Health Privacy Manual for Health Information.

Where staff members do not perform their duties in the public interest and take action for private gain or advantage for themselves or other individuals it may be considered **corrupt conduct** under the provisions of the *Independent Commission Against Corruption Act 1988* and can be subject to disciplinary action.

## 2 WHAT IS A CONFLICT OF INTEREST?

In a work context, a conflict of interest can arise where a staff member could be influenced or perceived to be influenced, by a competing interest when carrying out their public duty. Competing interests may arise through personal or private interests, or through separate professional interests. Having a conflict of interests is not necessarily a problem, it is how it is dealt with that is important.

**Conflicts of interest that lead to partial decision making may constitute corrupt conduct.**

Everyone has interests that are personal to them or someone close to them and sometimes these interests may conflict with the decisions they make or the actions they take at work. The issue of conflict between public duty and personal interest has been the subject of much attention for some years. The community expects that where such a conflict exists, matters must be resolved putting the public interest first.

**Personal or private interests** are those interests that can bring personal benefit or advantage, or the perception of a personal benefit or advantage, to a staff member as an individual, or to others whom the staff member may wish to benefit, advantage or disadvantage. This not only includes the personal, professional or business interest that a staff member has, but also the personal, professional or business interests of the individuals or groups a staff member associate with. This might include relatives, friends or even rivals and enemies. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.

A conflict can also arise where a public official has more than one role or roles in a number of organisations. Failure to keep these roles separate may give rise to significant consequences, ranging from poor performance of one or both of the roles, to unethical, unlawful or improper decision making (for example improper use of information which gives an advantage to the second organisation). These types of conflicts can be more difficult to recognise because they do not involve obvious private interests. These situations are usually described as competing interests or a **conflict of duty** and should be managed as conflicts of interest.

An “interest” can either be:

- A **pecuniary interest** - an interest associated with a reasonable likelihood or expectation of appreciable **financial** gain or loss to a person or to someone associated with them – e.g. relatives, friends, partners or work colleagues.
- A **non-pecuniary interest** - an interest which **does not** relate to money but which may relate to a non-financial gain or loss to a person or someone associated with them. Examples of non-pecuniary interests might include kinship, friendship, membership of an association, society or trade union or involvement (or interest) in an activity.

The key issue is where a staff member’s ability to act equally, fairly and impartially has the potential to be compromised, or may be perceived to be compromised.



## Managing Conflicts of Interest



Conflicts of interest can be:

- **Actual** – where a person’s duties as a member of staff (that is the principal goals of the profession or activity, the duties of public office, the protection of clients, the health of patients, or the integrity of research) may be unduly influenced by a secondary interest (such as a personal or competing professional interest, including secondary employment or office)
- **Perceived or apparent** - where it could reasonably be perceived that the competing interests could improperly influence the performance of duties – whether or not this is in fact the case
- **Potential** - where the competing interests have the potential to conflict with official duties in the future.

**Appendix 1 Conflict of interest examples and recommended actions** lists examples of situations where conflict of interest may occur.

## 3 IDENTIFYING AND DECLARING A CONFLICT OF INTEREST

### 3.1 Identifying a conflict of interest

In the everyday work environment, staff members at all levels are exposed to possible conflicts of interest. It is not always easy to recognise where interests may be in conflict with each other.

Just because a staff member has other interests outside of work does not automatically mean that there will be a conflict of interest. The key test is whether, in carrying out their public duty, the individual could be influenced, or appear to be influenced, by that other interest.

**Staff are responsible for identifying and declaring their own conflicts of interest, including actual, potential or perceived conflicts.** The following questions will help in making an assessment:

- Do I, a relative, friend or associate stand to gain / lose financially from a health organisation’s decision or action on this matter?
- Do I, a relative, friend or associate stand to gain / lose in any way from the health organisation’s decision / action?
- Am I in a position to influence decision making about a matter related to a potential private interest?
- Have I made any promises or commitments in relation to the matter outside my normal duties?
- Have I received a benefit or hospitality from someone who stands to lose or gain from the decision / 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 lose or gain from the health organisation’s consideration of the matter?
- Could there be benefits for me in the future that could cast doubt on my objectivity?

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- If I do participate in assessment or decision-making, would I be happy for my colleagues and the public to be aware of any association or connection?
- Would a fair and reasonable person perceive that I was influenced by personal interest in performing my public duty?
- Do I need to seek advice or discuss the matter with an objective party?
- Am I confident of my ability to act impartially and in the public interest?
- Do I need to declare a matter to a senior officer?

### 3.2 Declaring a conflict of interest

Staff members must declare all conflicts of interest (whether actual, potential, perceived, pecuniary or non-pecuniary).

A disclosure must be made at the first available opportunity and must be in writing (an email will be sufficient). Disclosures are to be treated as confidential where ever possible.

#### 3.2.1 Staff members reporting their own actual or potential conflict of interest

In the first instance if a staff member has an actual, potential or perceived conflict of interest it should be reported in writing to their immediate supervisor and/or an authorised officer.

There may be circumstances where making an initial written declaration is not possible. For example if a conflict of interest arises whilst a staff member is participating in a recruitment panel, tender evaluation panel, inspection or investigation. In these situations a verbal declaration should be made by the staff member either to their immediate supervisor or the senior officer managing the event, and must, as soon as possible, be recorded in writing.

Where a matter requires assessment, staff members should exercise caution and not participate in decision-making related to the conflict until a determination has been made and any required resolution put in place (see section 4 for managing conflicts).

#### 3.2.2 Staff members who become aware of another staff member's possible conflict of interest

Staff members who become aware of a conflict of interest involving another staff member should raise the matter with the staff member concerned. If they are uncomfortable raising it with the individual concerned or, if after raising the issue it becomes apparent that a conflict has not been declared, they should consider raising it with their immediate supervisor or an authorised officer.

If the matter involves possible corrupt conduct, Staff must report the matter through their organisation's internal reporting system or the external reporting systems available on ICAC's website (refer PD2011\_070 Corrupt Conduct - Reporting to the ICAC).

If the matter involves possible corrupt conduct, maladministration and / or serious and substantial waste of public resources, employees should also be aware of protection provided in relation to public interest disclosures under the Public Interest Disclosures

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Act – refer PD2015\_027 Public Interest Disclosures and refer to local procedures.

Members of the general public should also be able to make a complaint if they have reason to believe that management or a staff member has a conflict of interest. Where this occurs, procedures as contained in NSW Health's *Complaint Management Policy* (PD2006\_073) and *Complaint Management Guidelines* (GL2006\_023) should be followed.

## 4 MANAGING CONFLICTS OF INTEREST

The responsibility to ensure a system is in place to assess conflicts of interest and deciding what action (if any) is necessary, rests with the Principal Officer or authorised officer.

The Principal Officer must nominate in writing the level of officer who may undertake the assessment of a conflict of interest.

Once declared, a conflict of interest should be reviewed without delay and discussed with the staff member involved. A decision should be communicated to the staff member within seven calendar days. Where it is not possible to make a determination within this timeframe, the staff member concerned is to be kept informed of progress on the matter.

If the staff member disagrees with the decision, the matter is to be discussed between the staff member and the supervisor or authorised officer in an attempt to seek a resolution. If, following this discussion, the matter remains unresolved, local grievance procedures are to be followed.

Reporting and managing conflicts of interest may involve disclosing and / or collecting personal information. Where personal information is involved, such information is to be handled in a way that privacy is appropriately managed in accordance with the NSW Health Privacy Management Plan and Health Privacy Manual, having regard to the circumstances.

### 4.1 Assessing a possible declared conflict of interest

Staff members should not assess a conflict of interest if it relates to themselves or someone with whom they have a close personal relationship.

Matters are to be assessed against established criteria by an authorised officer who must be experienced, objective, and have sound judgement. The assessment should be done in consultation with the staff member and the assessment process must be documented (refer section 6 Record Keeping).

Criteria for assessment should include:

- Does the matter fall within the definition of a non-pecuniary or pecuniary interest?
- Has appropriate legal and other advice been obtained?
- Is all the relevant information available to ensure a proper assessment?
- What is the nature of the relationship / association that could give rise to the conflict?
- Is the matter / issue one of great public interest? Is it controversial?

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- Could the individual's involvement in this matter cast doubt on his / her integrity?
- Could the individual's involvement cast doubt on the health organisation?
- How would it look to a member of the public?
- What is the best option to ensure impartiality, fairness and protection of the public interest?

The Chief Audit Executive should be consulted for advice if required, especially if there is the possibility of corrupt conduct.

If a matter cannot be resolved by these processes, it should then be referred to the Principal Officer or an authorised officer for resolution.

### 4.2 Options for dealing with a conflict of interest

The options available to deal with a conflict of interest are dependent on the type of conflict (i.e. pecuniary or non-pecuniary). A broader range of options exists for dealing with conflicts of interest that do not have a pecuniary component.

Generally, if a pecuniary interest is disclosed, the individual with the interest must not be involved in consideration or discussion of the matter in which he or she has the interest and must not participate in decision making relating to the matter.

Choosing the right option to deal with the conflict will depend on the circumstances of the matter and an objective assessment of it. Options can include:

- **Registering the conflict of interest in the COI register.** All conflicts of interest must be registered however for minor or perceived conflicts of interest no further management action may be needed after the conflict is disclosed and registered. The conflict may be eliminated by disclosure or effective supervision.  
Health organisations are required to maintain a conflict of interest register that records details of conflicts of interest and how they have been managed (Section 6)
- **Restricting involvement in the matter that gives rise to the conflict.** This may include the conflicted individual abstaining from voting, withdrawing from discussion of affected proposals or having restricted access to sensitive information. This strategy can be useful when it is possible to separate the individual with the conflict from parts of the activity or process, or when the conflict is not likely to arise frequently
- **Removing the individual with the conflict from the matter entirely.** This may be appropriate where the conflict is serious and ongoing and ad hoc restriction or recruitment of others may not be feasible
- **Relinquishing or divesting the private interest.** This may be appropriate where the individual is more committed to their public duty than their private interest. Options may include liquidating or withdrawing from the private interest
- **Recruiting a disinterested third party to oversee part or all of the process that deals with the matter.** This can be useful when it is not practical or desirable to remove the individual with the conflict from the decision-making

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process, such as in small communities, or when there is specific expertise that needs to be retained (eg. for tendering or recruitment selection panels)

- **Reviewing or restarting the decision making process.** In rare situations this may not be possible, for example, if a conflict of interest is identified at or near the conclusion of a process
- **Resigning from the public sector agency.** This is the most extreme solution to a serious conflict of interest, which may need to be considered if the conflict cannot be resolved in any other way.

While the above example does not completely remove the potential conflict of interest it at least reduces the likelihood of an unfair process and biased outcome. If an accusation of conflict of interest is raised externally to question or discredit the decision made, the health organisation has evidence available to refute it.

Refer to **Appendix 2** for additional options for managing conflicts of interest.

### 4.3 Access to Support and Advice

The relationship between conflicts of interest and gifts and benefits should be considered at all times as there will often be a link between them; for example, in some circumstances receiving a gift may give rise to a conflict of interest.

One way of preventing or proactively addressing conflicts of interest is by ensuring access to advice on these issues. A supervisor, manager, internal audit or authorised officer may provide advice to staff and management on conflict of interest matters

Advice may also be obtained from the Ministry of Health Legal and Regulatory Services Branch.

### 4.4 Breaches

A breach of this policy directive may result in a range of consequences, depending on the seriousness of the breach. A breach of this policy may also be a breach of NSW Health's Code of Conduct.

Examples of non-compliance with this policy range from a failure to register a relevant conflict of interest, to refusal to resolve or properly manage a conflict of interest of which a staff member is aware, to a staff member actually acting on a conflict of interest.

Possible penalties for breaches of this policy include disciplinary action ranging from counseling to dismissal. Some breaches of policy may be required to be reported outside the organisation, e.g. in accordance with reporting obligations under section 11 of the *Independent Commission Against Corruption Act 1988*, or reporting to Police in accordance with *PD2014\_042 Managing Misconduct*.

A staff member who becomes aware of a matter that breaches this policy must make a report to the authorised officer or supervisor who would assess the situation then report the outcome to the Principal Officer or authorised officer.

### 4.5 Monitoring

Where a conflict of interest has been identified, assessed and an option for

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managing the conflict has been determined, it is important for the manager / supervisor of the conflicted staff member to regularly review and assess, in consultation with the staff member, the:

- Original situation that has given rise to declaring the conflict of interest
- Initial determinations and management decisions
- Strategy put in place to manage the conflict of interest
- Actions taken in implementing the management strategy
- Changes in the situation that may have an impact on the management strategy
- Perceptions held by others that the conflict of interest is having an improper influence on the matter
- Reassessments and management decisions made about the continued management of the conflict of interest
- Changes made to the management strategy and its implementation.

If changes to the situation are quite significant, the process may need to be re-started. That is, commencing with a formal identification of the current situation and any conflicts of interest that may apply before adopting a revised management strategy. Formal records should be kept of all reassessments and decisions made and actions taken in accordance with section 6.

## 5 STAFF AWARENESS

Health Organisations and the Ministry of Health are to:

- Incorporate the provisions of this policy into their respective Human Resources Manuals
- Present information handouts at orientation programs for new staff (see *Appendix 1 Conflict of interest examples and recommended actions* for an example)
- Consider awareness programs / staff development on corruption prevention, fraud control and conflict of interest generally or in higher risk areas, such as areas running major procurement projects<sup>1</sup>
- Consider other ways to raise awareness such as including information about conflicts in organisational newsletters with “edited” examples of possible conflicts of interest
- Provide staff with fact sheets on conflict of interest and gifts and benefits available on the Ministry of Health intranet site:  
[http://internal.health.nsw.gov.au/cgrm/rmra/risk\\_management/conflicts\\_interest.html](http://internal.health.nsw.gov.au/cgrm/rmra/risk_management/conflicts_interest.html)  
[http://internal.health.nsw.gov.au/cgrm/rmra/risk\\_management/managing\\_corruption\\_training\\_kit.html](http://internal.health.nsw.gov.au/cgrm/rmra/risk_management/managing_corruption_training_kit.html)
- Include conflict of interest / corruption prevention as an agenda item for specified meetings e.g. Tender Review meetings

<sup>1</sup> See the Training Resource section of the *ICAC Managing Conflicts of Interest in the Public Sector Toolkit November 2004, Managing the Risk of Corruption (ICAC and NSW Health) August 2007.*



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- Include examples of conflict of interest in the fraud control policy and corruption prevention plans
- Include in any risk assessment / risk management processes the requirement to identify conflict of interest issues.

## 6 RECORD KEEPING

Identification, assessment and management of conflicts of interest should be fully documented. To ensure accountability and transparency when managing conflicts of interest the following must be included in the formal documentation:

- Disclosure of the conflict of interest
- Record of relevant private interest (if required)
- 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

Once a matter is resolved details must be included in the Conflict of Interest Register as described at 6.1.

Retention of records relating to the management of conflicts of interest and the conflict of interest register should be in accordance with the NSW State Records Authority General Retention and Disposal Authority for Administrative Records

The Conflicts of Interest Register is subject to applications under the GIPA Act. As the Registers can contain a range of information relevant to the public as well as personal and private information, decision makers will need to carefully weigh these competing interests.

### 6.1 Conflict of Interest Register

Each Principal Officer or authorised officer must nominate how the Conflict of Interest Register will be maintained within their area of responsibility, e.g. either centrally within the Health organisation or at individual facilities. The Chief Audit Executive is to review and sign off the Register annually to ensure all actions have been completed and to identify any trends and / or instances that require further action e.g. one firm offering gifts to a number of staff members. A report on this should be submitted to the Audit and Risk Committee.

The Principal Officer is to ensure that a Conflict of Interest Register is maintained which records all conflicts of interest (actual, potential or perceived). The authorised officer may fulfill this role.

The Register is to include, as a minimum:

- The name of the person declaring the conflict of interest
- To whom the conflict was declared (name and position)
- The date of declaration
- The nature of the declared conflict, including if relevant the name of the organisation

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or individual the conflict relates to involved

- A brief description of matter
- Any action taken
- Any additional comments

## 7 REFERENCE DOCUMENTS

- Independent Commission Against Corruption - *Managing Conflicts of Interest in the Public Sector - Guidelines and Toolkit*
- Independent Commission Against Corruption – *Identify and managing conflicts of interest in the public sector*
- NSW Audit Office - 2.2.1 Potential Conflicts of Interest - Our Audit and Assurance Policies Audit Office Audit and Assurance
- NSW Ombudsman fact sheet - *Recognition and Managing Conflicts of Interests*
- NSW Ombudsman - Public Sector Agencies fact sheet No. 3 – *Conflict of Interests*
- NSW Ombudsman publication – *Good Conduct and Administrative Practice (2<sup>nd</sup> edition) 2006*
- Policy Directive PD2015\_035 - *NSW Health Code of Conduct*

## 8 DEFINITIONS

The definitions for terms used in this document are the set out in the Gifts and Benefits Procedures – Definitions 1.2.

## 9 LIST OF ATTACHMENTS

Appendix 1	Conflict of interest examples and recommended actions
Appendix 2	Options for managing conflicts of interest



### Appendix 1 Conflict of interest examples – options for action

Listed below, under various classifications, are situations where conflicts of interest may potentially occur and a recommended action to avoid or deal with the conflict.

These examples have been collated from matters raised with the MoH from time to time, and are provided by way of examples for consideration.

Some classifications have additional information under the title **Improper actions**, which are examples of conflict of interest or possible corruption considered to be in breach of the NSW Health Code of Conduct:

#### Purchasing Goods and Services or Letting of Contracts

Situation	Recommended action
<p><b>Accepting gifts or benefits</b> from suppliers, or other individuals, involved in the provision of goods and / or services could present a conflict of interest or obligation. Gifts and benefits can take many forms eg lucky door prizes, raffles, travel, meals, opportunities to attend educational meetings etc.</p> <p>Having a <b>relationship with a potential supplier</b> (eg. socially or through a family member etc.) could present a conflict of interest.</p> <p>Having a <b>financial or other interest</b> (eg. through a family member / friend) in a company that is a potential supplier to the health organisation is a conflict of interest.</p>	<p>Do not accept gifts from businesses or suppliers to the health system.</p> <p>Withdraw from any part of the tendering / purchasing process or declare the conflict and refrain from voting (if acceptable to other personnel involved).</p> <p>Withdraw from any part of the tendering / purchasing process or declare the conflict and refrain from voting (if acceptable to other personnel involved).</p>

If gifts or other benefits are accepted and / or preferential treatment is given to one supplier or person then this is **corrupt conduct** and depending on the degree of the situation, may be a case for dismissal.

#### Improper actions

- Preferentially selecting individual suppliers
- Evaluating new products and being biased towards a supplier
- Inviting quotes / tenders and then informing a particular supplier of the quote price they have to better
- Providing information etc that gives a supplier an advantage over other suppliers either at that time or later on
- Going to a supplier, who is a relative, without ensuring competitive prices are being obtained
- Developing specifications that are directed at a particular supplier's product because of a personal association
- Receiving short supply of goods and paying full cost from a firm in which the staff member has a financial interest, or in expectation of a 'kick-back'
- Accepting an invitation from a supplier to a social engagement which could lead you to being feeling obligated to that supplier.

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### Recruitment

Situation	Recommended action
<p><b>Sitting as a member on selection panels</b> where applicants for the position are known to the member personally, as either family, friend or close associate, to an extent that could be considered to be a conflict of interest. Selections are to be conducted equally, fairly and based on merit in accordance with the principles of EEO and affirmative action.</p> <p>Being in a position to <b>influence</b> the selection, or non-selection, of an applicant for a position where the applicant is known personally, involvement would be a conflict of interest.</p>	<p>Declare the interest and withdraw from any part of the recruitment process is the preferred option; however in some situations it may be necessary to include the person with the conflict on the panel (for example in cases where they have specific expertise that is required). In these cases it may be an option to involve an independent in the recruitment process, or segregate the advice of the person with the conflict.</p> <p>Declare the interest and do not offer advice or get involved in the recruitment process.</p>

### Improper actions

- Manipulating / coercing selection panels to select or not select a particular applicant
- Withholding information that would affect the selection or non-selection of the most appropriate applicant
- Providing information such as selection questions to one applicant and not others.

### Staff administration

Situation	Recommended action
<p>Having a <b>close personal and / or family relationship</b> with another staff member over whom control is exercised.</p>	<p>All staff members are to be treated equally and fairly and any relationships that could be perceived to be of possible concern should be brought to the attention of a more senior officer. If staff members are being given preferential treatment the person responsible should be disciplined.</p>

### Improper actions

- Promoting friends or relatives where other staff members are more deserving
- Preferentially rostering staff to the advantage of particular individuals due to personal association with those persons. This can have financial (penalty rates etc.) advantage to the favoured individual/s to the disadvantage of other staff members
- Assessment and / or inappropriate recommendation of particular individuals over others because of personal associations, for such things as:
  - Training courses
  - Attending conferences
  - Job or advancement opportunities.
- Recommending incremental progression, or non-progression, of particular officers due to personal interests, or attitudes, that are not aligned to the work situation
- Giving preference for the taking of leave by individuals to the detriment of others due to personal association
- Not applying the same rules equally to all staff members because of personal association eg. failure to address issues of late attendance, non-performance, etc.

## Managing Conflicts of Interest



### Secondary employment

Situation	Recommended action
<p>Being privately employed in a <b>second job</b> where the second position could affect the performance of the duties in the health organisation and / or give the impression that favouritism was being given to the private employer.</p>	<p>Full time staff members are required to seek approval for any secondary employment. Part time staff members are required to notify and provide details of any secondary employment. Where full time staff members seek approval for secondary employment and any conflicts of interest associated with the secondary employment cannot be managed, approval will be denied.</p> <p>Where a part time staff member notifies of secondary employment and a conflict of interest is identified and all efforts to resolve the matter have been unsuccessful the part time staff member should be given the option of ceasing the secondary employment if they wish to continue in their current employment.</p> <p>Further actions may be needed to address any conflict of interest where the private employer can be engaged by or provide services to the health organisation. Such actions may include excluding the company concerned from providing services to the health organisation.</p>

Refer to the NSW Health Code of Conduct for more information

#### Improper actions

- Use health organisation resources, including staff, to support private work outside health organisation employment
- Using your position within the health organisation to unfairly obtain opportunities for future or outside employment.

### Client / Patient Relationship

Situation	Recommended action
<p>Providing information or making recommendations to client/patient re service providers where one of the service providers is a <b>close friend, relative or business associate</b>, etc.</p>	<p>Staff are not to give preferential treatment to personal associates at the expense of others. Staff are not to recommend any one service provider or firm. They should provide "lists" of available service providers / firms. If a staff member is found to have received a financial return for recommending one service provider, or firm, it may be a case for dismissal. Staff members who recommend particular service providers, or firms, due to personal preference should be subject to appropriate management counseling.</p>

#### Improper actions

- Recommending service providers or firms to patients / clients, relatives or other individuals due to personal relationships, or preferences, whether for financial gain or not
- Receiving a financial or other form of gain in recommending a particular service provider
- Giving preferential treatment to patients / clients due to personal association at the expense of others.

## Membership of Associations, Clubs, Professional Organisations, Political Parties

Situation	Recommended action
Being involved in decision-making processes of the Health Organisation that could have an effect on the method of operation of an association, club, professional organisation etc that the staff member is a member of, or has an interest in.	Declare the interest and allow management to determine the extent of involvement. If a staff member is found to have made or influenced a decision of the Health Organisation to the detriment of the Health Organisation then that staff member could be subject to at least disciplinary action and possible dismissal depending on the extent of the breach of conduct.

### Improper actions

- Using the position in the health organisation to favour the private organisation, or a member of the private organisation
- Being involved in an association, club or professional organisation and making decisions which impact adversely on the Health Organisation
- Making known confidential information from the Health Organisation, without approval, to the advantage of the private / outside organisation and to the detriment of the Health Organisation

**Note:** Release of confidential information without appropriate approval is at least a disciplinary offence and depending on the extent and nature of the information could be a case for dismissal.

## Managing Conflicts of Interest



### Clinicians and Other Health Professionals

Health professionals encounter a variety of circumstances in their day-to-day work, which could give rise to potential conflicts of interest. The giving and receiving of gifts is a controversial element of the relationship between the pharmaceutical industry and medical suppliers – Medical practitioners should make themselves aware of the *AMA Code of Ethics* and Position Statement – *Doctors' Relationships with Industry*.

Situation	Recommended action
<p>Establishing a relationship with a <b>pharmaceutical company or medical equipment supplier</b> where it could be perceived that preference was given to that particular company during a procurement / tendering process.</p> <p>Accepting <b>travel and accommodation fees</b> to present research findings.</p> <p>Accepting <b>payment of fees</b> and / or honorariums for sitting on committees.</p> <p>Participating on <b>professional boards, committees, societies</b>, etc. which could constitute a conflict of interest with position held in health organisation. Membership of unions or associations would not normally be considered a conflict of interest.</p> <p>Having <b>directorships</b> and <b>share holdings</b> in private companies, associations, etc which deal with the health organisation.</p> <p>Management of allegations of sexual assault, physical or emotional abuse of a child where the alleged offender is a NSW Health Staff member. (Child related allegations, charges and convictions Policy Directive PD2006_025)</p>	<p>Declare any potential conflict of interest to the Principal Officer or authorised officer[s].</p> <p>Obtain approval from the Principal Officer or authorised officer[s] for accepting travel and accommodation fees and releasing of possible confidential information.</p> <p>If a fee-for-service is received and the service is provided during working hours, then the income must be declared and provided to the organisation for inclusion in "Other Revenue". (This includes payment for jury duty, unless the staff member does not receive their usual salaries and wages during the course of the trial.)</p> <p>If the member considers there is an advantage to the board, committee etc due to their clinical role then obtain approval from the Principal Officer or authorised officer[s] to participate in external boards etc performed in the health organisation.</p> <p>Declare the interest to the Principal Officer or authorised officer[s] who would then decide whether a conflict of interest existed and possibly restrict the person's involvement in health organisation processes or request resignation from external involvement.</p> <p>Where an incident has been identified at a particular health organisation it is to be reported to the Chief Executive, Secretary or authorised officer[s] who is to arrange medical and / or counseling for the alleged victim and family to be undertaken by a health organisation / hospital not connected with the alleged incident. This action is to be taken due to the possible conflict of interest by a health professional in providing services that could affect another person who is an associate or known to the health professional. In addition, appropriate reporting to the authorities is required e.g. NSW Police, DFACS, NSW Health.</p>
<p>Evaluating new <b>products / drugs</b> where decisions may be influenced by personal associations / offers of samples or equipment, whether to the individual or the organisation</p> <p>Making referrals to an <b>aged care facility</b>, group home or boarding house in which the person making the referral (or a family member or associate) has an interest.</p> <p>Processing payments for private patients seen under <b>part time employment</b> (e.g. staff specialists) at a public hospital.</p>	<p>Declare any potential conflict of interest to the Principal Officer or authorised officer[s].</p> <p>Declare any potential conflict of interest to the Principal Officer (or authorised officer[s])</p> <p>Ensure privately referred patients are billed correctly through the hospitals as per health organisation policy and conditions of employment</p>

#### Improper actions

- Using health system resources to support private practice work
- Inappropriately accessing private confidential information to establish a private practice
- Recommending service providers or firms to patients / clients, relatives or other individuals due to personal relationships, or preferences, whether for financial gain or not

**Note:** Gifts and benefits are not to be accepted.

## Managing Conflicts of Interest



### Composition of a Medical Credentials Committee

Situation	Recommended action
<p>Composition of a Credentials (Clinical Privileges) Subcommittee is to take into account potential conflicts of interest that may arise, e.g. where a medical practitioner is a significant competitor in economic terms to an applicant. (Policy Directive PD2005_497)</p>	<p>The member of the Credentials Committee should report the possible conflict of interest to the Principal Officer (or authorised officer[s]) who will assess if the possible conflict warrants the medical practitioner not being involved in the credentialing. If it is found a medical practitioner has not reported a conflict and has influenced the non-selection of a person who otherwise would have been accepted then that person's contract should be terminated or if a staff member at least disciplined and not permitted to be involved in future Credentials Committee actions.</p>

### Conducting Financial Transactions and / or Dealing with Money / Property for Patients / Clients

Situation	Recommended action
<p>Whilst providing health/support services an NSW Health employee may be approached by a patient / client requesting assistance to undertake a financial transaction or provide advice in relation to the management of the patient's/client's money/property.</p>	<p>NSW Health employees should not become formally or informally involved in any transaction for or with a patient / client of the health system which involves dealing with cash, bank accounts, credit cards or property on behalf of a patient / client.</p>

### Improper actions

#### Under no circumstances should a NSW Health employee:

- Obtain the electronic or other PIN number for a bank account etc. of a patient / client or use a credit card of a patient / client. Apart from potentially being an illegal act this would also breach bank or other account conditions of use
- Obtain or accept a power of attorney for a patient / client
- Facilitate an arrangement whereby a friend, relative or business associate of the employee obtains a power of attorney for the patient / client
- Accept cash from a patient / client in order to undertake any transaction on the patient / client behalf
- Be involved in preparing a patient's / client's last Will or Testament (refer to IB2014\_022 – *Will Making in Public Health Facilities*)

## Making Recommendations of Service Providers to Patients by Staff of Health Organisations

Staff of Health Organisations are frequently required to make recommendations of service providers to patients. The provision of such recommendations, will be either in direct response to the request of the patient or relative or offered by the health professional when in his / her judgment the information may assist the patient manage their health care/psycho-social situation more effectively. At all times, when making recommendation the Health professional must adhere to the Code of Conduct ensuring conflicts of interest are considered and appropriately managed, in particular by ensuring all relevant information and options are provided to the patient.

Situation	Recommended action
<p>When recommending a service provider either at the request of a patient / carer or where the Health practitioner judges it appropriate to assist the patient</p>	<p>Health professionals must present all relevant information when recommending providers. Whenever possible, a request should be responded to by the provision of information that seeks to reasonably represent the range of services/service providers (both public and private) that relate to the request and circumstances of the patient. Where information about a private service or service provider is given, the health professional should also inform the patient of the availability of public services, where these exist.</p> <p>When making a recommendation, an assessment should be undertaken to consider, as a minimum, the geographical location, cost and cultural appropriateness of the recommended provider. The rationale for the recommendation should be communicated and documented by the health professional in the patient's health record.</p> <p>Patients should, whenever possible, be informed in writing about the nature of the service - an information sheet introducing the service and its operating rules would meet this requirement.</p> <p>Where Professional or Service Peak Bodies exist and can be identified, contact details of these bodies should be given with an explanation that contact with that body may assist further with the patient's request. Where such a body does not exist in the area of enquiry, the health professional should provide any other useful information that relates to the patient's request, e.g. the Yellow Pages, local services directory.</p>

## Managing Conflicts of Interest



### Appendix 2 Options for managing conflicts of interest

Management Strategy	When most suitable	When Required	When least suitable
<p><b>Register</b></p> <p><i>Where details of the existence of a possible or potential conflict of interest are formally registered Eg senior staff must complete a declaration</i></p>	<ul style="list-style-type: none"> <li>• for very low-risk conflicts of interest and potential conflicts of interest</li> <li>• where the act of transparency through recording the conflict of interest is sufficient</li> </ul>	<ul style="list-style-type: none"> <li>• <b>All conflicts are to be registered</b></li> <li>• <b>Remote family / friend</b></li> <li>• <b>Minor share holdings (less than 5%)</b></li> </ul>	<ul style="list-style-type: none"> <li>• the conflict of interest is more significant or of higher risk</li> <li>• the potential or perceived effects of a conflict of interest on the proper performance of the staff member's duties require more proactive management</li> </ul>
<p><b>Restrict</b></p> <p><i>Where restrictions are placed on the staff member's involvement in the matter.</i></p> <p>Where restrictions are placed on the actions a staff member can take in relation to declared private interests</p>	<ul style="list-style-type: none"> <li>• the staff member can be effectively separated from parts of the activity or process</li> <li>• the conflict of interest is not likely to arise frequently</li> <li>• formal written advice is provided to other decision makers advising of the conflict of interest and decision for managing the conflict.</li> <li>• the staff member can undertake not to trade during and after major tender decisions. Period for restriction to be determined on an individual basis.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Minor shareholdings</b></li> <li>• <b>Personal or business connection</b></li> <li>• <b>Competing interests</b></li> </ul>	<ul style="list-style-type: none"> <li>• the conflict is likely to arise more frequently</li> <li>• the staff member is constantly unable to perform a number of their regular duties because of conflict of interest issues</li> </ul>



## Managing Conflicts of Interest



Management Strategy	When most suitable	When Required	When least suitable
<p><b>Recruit</b></p> <p><i>Where a disinterested third party is used to oversee part or all of the process that deals with the matter.</i></p>	<ul style="list-style-type: none"> <li>it is not feasible or desirable for the staff member to remove themselves from the decision-making process</li> <li>in small or isolated communities where the particular expertise of the staff member is necessary and genuinely not easily replaced</li> </ul>	<ul style="list-style-type: none"> <li><b>All instances where the employee cannot be divorced from the process or where there could be a perception that cannot be defended even after registering and declaring to other members of evaluation and steering committees etc</b></li> </ul>	<ul style="list-style-type: none"> <li>the conflict is serious and ongoing rendering ad hoc recruitment of others unworkable</li> <li>recruitment of a third party is not appropriate for the proper handling of the matter</li> <li>a suitable third party is unable to be sourced</li> </ul>
<p><b>Remove</b></p> <p><i>Where a staff member chooses or is directed to be removed from the matter.</i></p>	<ul style="list-style-type: none"> <li>for ongoing serious conflicts of interest where ad hoc restriction or recruitment of others is not appropriate</li> </ul>	<ul style="list-style-type: none"> <li><b>Directorship of a company that has occasional dealings with NSW Health or is bidding for a particular tender</b></li> <li><b>Ongoing close personal relationship that cannot be changed.</b></li> </ul>	<ul style="list-style-type: none"> <li>the conflict of interest and its perceived or potential effects are of low risk or low significance</li> <li>the staff member is prepared to relinquish the relevant private interest rather than radically change their work responsibilities or environment</li> </ul>
<p><b>Relinquish</b></p> <p>Where the staff member relinquishes the private interest that is creating the conflict</p>	<ul style="list-style-type: none"> <li>the staff member's commitment to public duty outweighs their attachment to their private interest</li> </ul>	<ul style="list-style-type: none"> <li><b>Directorship or major shareholder of a company that has major and regular dealings with NSW Health</b></li> </ul>	<ul style="list-style-type: none"> <li>the staff member is unable or unwilling, for various reasons, to relinquish the relevant private interest</li> </ul>
<p><b>Resign</b></p> <p>Where the staff member resigns from their position with NSW Health.</p>	<ul style="list-style-type: none"> <li>private interest and changes to their work responsibilities or environment are not feasible</li> <li>the staff member prefers this course as a matter of personal principle.</li> </ul>	<ul style="list-style-type: none"> <li>the conflict of interest and its potential or perceived effects are of low risk or low significance</li> <li>other options exist that are workable for the staff member and the agency.</li> </ul>	

## Gifts and Benefits



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## 1 BACKGROUND

### 1.1 About this document

These procedures apply to all **Staff** working in any permanent, temporary, casual, termed appointment or honorary capacity within NSW Health. Staff may be offered gifts or benefits for a variety of reasons and in many different circumstances. The way that the health system and its staff members handle these situations is crucial to avoiding unprofessional and unethical conduct or the perception that such conduct has occurred.

This procedure expands on the Conflict of Interest and Gifts and Benefits Policy Directive by outlining specific requirements relating to dealing with gifts and benefits.

### 1.2 Definitions

<b>Authorised Officer</b>	an individual or role assigned by the Principal Officer as having authority to receive, advise on, and make decisions on matters involving conflicts of interest, and may manage a register of conflicts of interest and gifts and benefits. There may be more than one authorised officer where the Principal Officer determines this is required. It would be appropriate for the Chief Audit Executive or Head of Corporate Governance to fill this role.
<b>Benefit</b>	is a service or intangible item which is of value to the receiver. Examples include access to a private box at sporting events, a new job or promotion, preferential treatment (such as 'queue jumping'), or access to confidential information.
<b>Bequest</b>	is property or money left to a person in a Will, and under this policy, refers to a bequest from a patient or client to a staff member
<b>Bribe</b>	is a gift or benefit offered to, or solicited by, a staff member to influence that person to act in a particular way.
<b>Corrupt Conduct</b>	is deliberate or intentional wrongdoing, not negligence or a mistake, that involves or affects a NSW public official or public sector organisation. Corrupt conduct can take many forms, and occurs when: <ul style="list-style-type: none"> <li>▪ A public official improperly uses, or tries to improperly use, the knowledge, power or resources of their position for personal gain or the advantage of others</li> <li>▪ A public official dishonestly exercises official functions, improperly exercises official functions in a partial manner, breaches public trust or misuses information or material acquired during the course of his or her official functions</li> <li>▪ A member of the public influences, or tries to influence, a public official to use his or her position in a way that is dishonest, biased or breaches public trust.</li> </ul>
<b>Gift or Benefit</b>	any item, service, prize, hospitality or travel, offered or provided by a customer, client, applicant, supplier, potential supplier or external organisation, which has an intrinsic value and / or a value to the recipient, a member of their family, relation, friend or associate, and includes bequests.

## Gifts and Benefits



<b>Gift Register</b>	is an official written record that captures all gifts and a benefits received by or offered to a staff member and details the decisions made and action taken.
<b>Health Organisation</b>	means a Public Health Organisation (local health district, specialty health network, statutory health corporation and affiliated health organisation), Units of the Health Administration Corporation (including NSW Ambulance, HealthShare NSW, eHealth NSW, Health Infrastructure, NSW Health Pathology), health bodies established under their own statute (including the Cancer Institute of NSW and the NSW Institute of Psychiatry) and the NSW Ministry of Health.
<b>Nominal Value</b>	is the monetary limit of acceptable token gifts. The Nominal value for NSW Health is \$75.
<b>Non-token gifts</b>	have a greater value or is a gift that can be seen to be given as an inducement.
<b>Principal Officer</b>	means for a Health organisation, the Chief Executive, and for the NSW Ministry of Health, the Secretary.
<b>Staff</b>	for the purposes of this policy staff refers to any person working in a permanent, temporary, casual, termed appointment or honorary capacity within NSW Health. It includes volunteers, patient advocates, contractors, visiting practitioners, Visiting Medical Officers, students, consultants, researchers performing work within NSW Health facilities.
<b>Token gifts</b>	are inexpensive gifts of gratitude such as a bunch of flowers, of nominal value.

### 1.3 Related policies, reference documents and relevant legislation

- PD2015\_035 NSW Health Code of Conduct
- PD2015\_026 Recruitment and Selection of Staff to the NSW Health Service
- PD2007\_070 Fraud Control Strategy, Ministry of Health
- PD2005\_415 Sponsorship Policy, NSW Health
- PD2009\_067 Fundraising Policy
- PSCC2014-13 Public Service Commission – Behaving Ethically – A guide for NSW government sector employees
- *Government Sector Employment Act 2013*

## 2 GIFTS AND BENEFITS

Staff should not seek or accept any payment, gift or benefit intended or likely to influence, or that could be reasonably be perceived by an impartial observer as being intended or likely to influence the staff member:

- To act in a particular way (including making a particular decision)
- To fail to act in a particular circumstance or
- To otherwise deviate from the proper exercise of their official duties.

## Gifts and Benefits



Staff must:

- Not to solicit gifts and benefits
- Not to accept gifts of money
- Always consider the value and purpose of a gift or benefit before making any decisions about accepting it.

Managers must:

- Provide staff members with guidance on responding to various situations when being offered a gift, benefit or bribe
- Maintain a register of gifts and benefits

Staff should avoid all situations in which the appearance may be created that any person or body (including companies), through the provision of hospitality or benefits of any kind, is securing or attempting to secure the influence or favour of the individual staff member, the Ministry, or the Health Organisation. For example:

- A medical equipment company offers a doctor a donation towards the staff Christmas party
- A pharmaceutical company offers to meet the expenses of a pharmacist in attending a professional conference
- A supplier of a piece of equipment being evaluated by a health organisation offers to pay for a staff member to attend the supplier's overseas office to view a demonstration of the equipment
- A company tendering for a project within the public health system provides gifts and/or promise of future employment to staff involved in the project.

Things that could influence the perception of a gift or benefit would include:

- The scale, lavishness or expense / cost / value
- The frequency of occurrence and
- The degree of openness surrounding the occasion or gift.

As a general rule gifts and benefits **are not** to be accepted from commercial organisations. It should be recognised that gifts or benefits are rarely offered by commercial organisations, where the giver would not expect to receive or to have received some advantage or reward and staff should be wary of accepting any such offers and the inherent debt can result.

### 2.1 Types of gifts and benefits

Gifts or benefits include, but are not limited to, free (or less than market value) accommodation, entertainment (e.g. tickets to major sporting events, concerts, etc), hospitality (e.g. meals, alcohol, invitations to use a corporate box at a major event) or travel.

#### 2.1.1 Token gifts or benefits

Generally speaking, **token** gifts and moderate acts of hospitality would be of nominal value (under \$75) and could include:

## Gifts and Benefits



- Box of chocolates or flowers from a grateful patient / client
- Free or subsidised meals and / or refreshments provided infrequently (and / or reciprocally) by representatives of other public sector agencies or Federal Government departments or agencies
- Gifts of a single bottle of reasonably priced alcohol to individual public officials at public occasions or in recognition of a presentation

Token or inexpensive gifts may only be accepted if offered as a gesture of appreciation, and not to secure favour. Acceptance of the gift must be declared, managed and documented in line with this policy. To deal with inappropriate offers of gifts without causing offence, staff should politely decline the offer, explaining that accepting it would breach the health organisation policy. Gifts or benefits should never be accepted from or given to detainees or inmates.

Regular offers and / or acceptance of a token gift or benefit by a particular individual or organisation may be present a more significant issue. Alone these gifts or benefits may be considered 'token', however when the cumulative value and frequency by which they are being offered is considered, the gifts or benefits may be non-token and the staff member or Health Organisation may be compromised. Given this, it is important that *offers* of a gift or benefit are reported (i.e. not only gifts or benefits that are accepted).

### 2.1.2 Non token gifts or benefits

Gifts or other benefits not essentially token or inconsequential in kind and exceeding the nominal value of \$75 **must not** be accepted unless:

- It is not obtained by virtue of a staff member's office or position
- Where a gift is given to a staff member in a public forum in appreciation for the work, assistance or involvement of the staff member or health organisation, and refusal to accept the gift would cause embarrassment or affront (the issue of causing embarrassment or affront does not apply to gifts offered by commercial organisations) or
- In circumstances generally approved and communicated by the Principal Officer or authorised officer, or on any other occasion with the formal written approval of the Principal Officer or authorised officer, preferably obtained beforehand.

Staff members if accepting gifts in these circumstances must indicate that they are accepting the gift on behalf of the health organisation for which they work. Any offers or receipt of a gift or benefit must be reported as soon as possible to their manager / supervisor and listed on the register.

Approval of the Principal Officer or authorised officer should only be given where the acceptance of the gift is unlikely to be seen by a reasonable 'impartial observer' to create a conflict of interest, or influence the performance of duties or functions. The Principal Officer or authorised officer is to determine what use the gift is to be put to, which would normally be for the benefit of the health organisation but could include retention by the staff member, in exceptional circumstances.

## Gifts and Benefits



### 2.1.3 Gifts of cash

Accepting gifts of cash is strictly prohibited. This includes offers of money to cover expenses for trips to view samples of work, gift vouchers etc. If a gift of money is offered, it must be refused and the incident reported immediately to your supervisor. If you are not in a position to refuse receipt of such a gift (for example it is received in the mail) you must immediately declare the gift and make every effort to return it.

### 2.1.4 Bequests

From time to time, staff may be offered or receive a bequest from a client (or the family of a), carer, visitors or organisations. Any bequest, regardless of value, accepted by staff could lead a reasonable person to conclude that acceptance implies a relationship that may interfere with integrity, objectivity or independence, and in some cases may result in accusations of bias, conflicts of interest or corrupt conduct.

Staff must not seek out or solicit a bequest under any circumstances in the course of their work. Doing so may be considered corrupt conduct on the part of the staff member. While staff may develop strong working relationships, they are not permitted to use those relationships for personal gain or benefit.

## 2.2 Situation-specific reporting requirements

There are very real risks for staff members associated with being offered and accepting gifts or benefits in the course of their work. A gift may be offered to influence a staff member's behaviour inappropriately and may cause a staff member to act partially in the interests of the person or business that offered the gift. Examples of these situations include:

### 2.2.1 Prizes and gifts

A staff member may be the recipient of a gift or prize as a result of entering a competition while engaging in official duties, or example, by winning a raffle or lucky door prize drawn at a conference or win a prize that was promoted as an incentive to complete a survey. Staff members should be aware that receiving a prize or gift under these circumstances is not acceptable. Other relevant circumstances include where the staff member is officially on duty or representing NSW Health, and / or where the attendance at the event (e.g. conference or course) has been paid for the employer.

Staff members should not voluntarily enter competitions while working in an official capacity, e.g. at a conference by submitting business cards as an entry for a prize draw or signing up for further information about a product.

If in receipt of a prize or gift a staff member must declare the prize in accordance this policy. Decision making by management regarding a gift or prize that was received should ensure the prize becomes the property of the Ministry or the Health Organisation and not the individual.

Staff involved with procurement and tendering should also be aware that unsolicited gifts could also be offered by a company offering a free gift to clients who order a certain quantity of a product i.e. a purchase incentive scheme. To ensure impartiality is preserved, the bonus / gift should not be accepted. Options available include not proceeding with the purchase or negotiating a refund for the value of the item offered.



## Gifts and Benefits



The only exception for accepting a free gift of this type would be if the gift could be **appropriately used** by NSW Health as it would ultimately benefit the public purse. The receipt of the gift must be reported and managed as per this policy. Staff involved in procurement should note PD 2014\_005, Goods and Services Procurement Policy, in particular the probity requirements.

Where a gift is offered to, or received by, the Ministry or a Health Organisation, the individual who receives the offer or accepts the gift on behalf of the Ministry or Health Organisation is responsible for ensuring that the offer or receipt is listed on the register.

### 2.2.2 Gifts that cannot be returned

A situation where a gift cannot be returned would be rare but could occur where a staff member:

- Is in receipt of a gift that arrives anonymously through the mail
- Receives a gift left for the staff member without a return address
- Accepts a gift, for reasons such as for cultural, protocol or other reasons, where returning it would be inappropriate, or in a public forum where attempts to refuse or return it would cause significant embarrassment.

If attempts to return the gift fail, the process for declaring and documenting receipt as outlined in this policy should be followed and a decision made by management regarding the use or disposal of the gift. The gift **must not** be retained by the staff member.

If the gift can be useful to the health organisation it can become the property of the health organisation as it would ultimately benefit the public purse. However it is preferable that the gift is not allocated for the sole use of the staff member who received the gift. Other options to dispose of a gift can include donating it to a charity or using it for fund raising within the organisation.

### 2.2.3 Gifts to family members

Staff members should ensure that immediate family members are not the recipients of gifts and benefits that could be perceived to be an attempt to influence your behaviour as a staff member of the public health system.

If a gift or benefit is offered to an immediate family member by a business or individual with an association to you as a staff member of the public health system, and it could be perceived as an attempt to influence you in relation to your public duties, the matter must be reported and managed in accordance with this policy as if the offer had been directly to a staff member.

### 2.2.4 Loyalty cards or benefits programs

Loyalty and benefit programs are structured marketing efforts that reward users / members and have the effect of influencing decisions on buying behaviour. Loyalty programs provide a benefit to the member in exchange for purchases or similar business relationships. For this reason, staff must not use personal loyalty or benefit program memberships in relation to NSW Health purchases or arrangements between a supplier and NSW Health, for example, buying refreshments for a meeting using a personal Flybuys card, accruing points and claiming the expenditure on petty cash. This includes supermarket loyalty programs

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(such as Woolworths, Franklins, Flybuys programs), credit card loyalty programs and travel loyalty programs (such frequent flyers).

### 2.3.5 Bequests

If a staff member becomes aware that a client, carer, family member or other member of the public is considering leaving something to the staff member in their Will, whether actually or potentially, the staff member must tell their manager / supervisor immediately.

The manager / supervisor must immediately report the matter to the authorised officer, who should review the details of the bequest in consultation with management and provide advice as to how the situation should be managed. The authorised officer should consider whether it is appropriate to consult internal audit and a legal advisor.

## 2.3 Giving gifts to other agencies or individuals

There may be occasions where the Ministry or a Health Organisation considers providing a gift or benefit to individuals from other public or private agencies for services rendered or as part of representational duties. It may be appropriate to offer a modest lunch to visitors to the workplace as part of work-related activities or to give a token of appreciation to a private individual who has given a presentation to health organisation staff.

Health Organisations must give consideration to the proposed recipient or organisation having a continuing business relationship and how an offer of a gift may be perceived i.e. the recipient's responsibilities under a similar policy within their organisation.

## 2.4 Access to Support and Advice

The relationship between conflicts of interest and gifts and benefits should be considered at all times as there will often be a link between them; for example, in some circumstances receiving a gift may give rise to a conflict of interest.

One way of preventing or proactively addressing conflicts of interest is by ensuring access to advice on these issues. A supervisor, manager, internal audit or authorised officer may provide advice to staff and management on conflict of interest matters.

Advice may also be obtained from the Ministry of Health Legal and Regulatory Services Branch.

## 3 BRIBES

A gift or benefit is considered a bribe if it is offered or sought in order to influence the behaviour of a staff member. Bribery is a crime, therefore if an offer or suggestion of a bribe is made directly or indirectly to a staff member, the staff member is required to take the following action:

- Reject the offer and stop interacting with the person
- Immediately inform your manager or supervisor
- Keep a record of events consider reporting the matter directly to the ICAC. The Principal Officer has an obligation to notify the ICAC, however individuals can contact the ICAC directly

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- Prepare a formal report on the event
- Discuss with your manager / supervisor any future relations with the person who offered the gift and what action is taken by the organisation.

Under the Independent Commission Against Corruption Act 1998 the Principal Officer is required to report possible corrupt conduct to the ICAC. This would include reporting incidents that constitute bribery. The health organisation must also report the matter to the police.

To protect the integrity of the NSW Health system and support staff members in managing situations where a gift or benefit is offered, it is NSW Health policy that:

- If offered a bribe a staff member must immediately report the incident to their supervisor and a senior officer must also be advised. The ICAC, and where relevant, the police, must be informed immediately. For further information refer to the ICAC brochure *Bribery, corrupt commissions and rewards*.
- Soliciting personal gifts or benefits is strictly prohibited under all circumstances. If a staff member becomes aware of another staff member soliciting gifts or benefits, the staff member should report it immediately to their supervisor. The Principal Officer should also inform the ICAC through a section 11 report (*refer to PD2011\_070 Corrupt Conduct Reporting to the Independent Commission Against Corruption*).
- Gifts that may not be outright bribes but are nevertheless suspected of being offered for the purposes of influencing a staff member's behaviour in his or her official capacity are to be declined. Your supervisor must be notified if such an incident occurs and the Principal Officer should consider whether to make a section 11 report to the ICAC.

Further information is available from the ICAC refer <http://www.icac.nsw.gov.au/>.

## 4 TRAINING AND EDUCATION

Health Organisations and the NSW Ministry of Health are to:

- Incorporate the provisions of this policy into their respective Human Resources Manuals
- Present information hand-outs at orientation programs for new staff
- Provide ongoing awareness programs / staff development on corruption prevention, fraud control and conflict of interest (e.g. *Managing the Risk of Corruption (ICAC and NSW Health) August 2007*, refer <http://www.icac.nsw.gov.au/>.)
- Issue information to re-enforce policy eg organisational newsletters with "edited" examples of possible conflicts of interest
- Provide staff with fact sheets on conflict of interest and gifts and benefits available on the MoH intranet site [http://internal.health.nsw.gov.au/cgrm/rmra/risk\\_management/conflicts\\_interest.html](http://internal.health.nsw.gov.au/cgrm/rmra/risk_management/conflicts_interest.html)
- Include gifts and benefits / conflict of interest / corruption prevention as an agenda item for specified meetings e.g. Tender Review meetings.

## 5 RECORD KEEPING

The decisions made, including the assessment process undertaken, should be fully documented. To ensure accountability and transparency when managing offers or receipt of gifts or benefits the following must be included in the formal documentation:

- Details of how the gift or benefit was offered or received
- Decisions and arrangements made for dealing with the situation
- Steps taken in implementing the chosen management strategy.

Health organisations are required to maintain a Gifts and Benefits Register to record details of all matters declared and how they have been managed. (Described at 5.1)

Each Principal Officer must nominate how the register will be maintained within their area of responsibility, e.g. either centrally within the Health Organisation or at individual facilities. The Chief Audit Executive is to review and sign off both Registers annually to ensure all actions have been completed and identify any trends and / or instances that require further action (e.g. the same firm offering gifts to a number of staff members or offering gifts on a regular basis). A report on this should be submitted to the Audit and Risk Committee.

Retention of records relating to managing offers or receipt of gifts or benefits and the gifts and benefits register should be in accordance with the NSW State Records Authority General Retention and Disposal Authority for Administrative Records

The Gift and Benefits Register is subject to applications under the GIPA Act. As the Registers can contain a range of information relevant to the public as well as personal and private information, decision makers will need to carefully weigh these competing interests.

### 5.1 Gifts and Benefits Register

A Gifts and Benefits Register is to be maintained by the person / facility nominated by the Principal Officer to record the details of when gifts or benefits have been offered and/or accepted. As a minimum the Register is to record the following details:

- Date of the offer
- Name of the staff member in receipt of the gift or benefit
- Details of the person and / or organisation offering the gift or benefit, including any relationship – personal or professional - between the giver and receiver (Conflicts of interest should also be entered on the Conflicts register)
- Reason for the offer
- Description of the gift or benefit
- Estimated value
- Was the gift or benefit accepted
- Signature of the staff member who was offered the gift
- Decision regarding what should happen with the gift or benefit and reasons for

## Gifts and Benefits



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that decision

- Signature of a senior officer (the recipient's supervisor or other appropriate senior officer)

## 6 OTHER RESOURCES

The following resources are available on the NSW Ministry of Health Corporate Governance and Risk Management intranet page:

[http://internal.health.nsw.gov.au/cgrm/rmra/risk\\_management/managing\\_corruption\\_training\\_kit.html](http://internal.health.nsw.gov.au/cgrm/rmra/risk_management/managing_corruption_training_kit.html)

- A Training Kit for the NSW Public Health Sector - Managing the Risk of Corruption (ICAC & NSW Health)
- Gifts and Benefits fact Sheets
  - *General Purchasing staff*
  - *Offered by patients or clients*
- Gifts and Benefits decision making guide (*extract from ICAC Gifts and Benefits tool kit*)
- Gift Register samples (*extract from ICAC Gifts and Benefits tool kit*)
- NSW Public Service Commission "[Behaving Ethically: A guide for NSW government sector employees](#)"

## Conflicts of Interests and Gifts & Benefits



### Attachment 1: Implementation checklist

This checklist can be used to review the implementation of this policy directive in NSW Health Organisations.

Assessed by:		Date of Assessment:	
IMPLEMENTATION REQUIREMENTS	Not commenced	Partial compliance	Full compliance
1. Principal Officer nominate how registers will be managed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes:		
2. Principal Officer nominate the level of officer who may undertake assessment of a Conflict of Interest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes:		
3. Information is routinely disseminated to staff. - indicate what methods are used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes:		
4. Registers have been established as determined by the Principal Officer and maintained as per policy requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes:		
4. Internal Audit have reviewed the register (eg annually) and have reported on this to the Audit and Risk Committee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes:		
5. Policy has been included in training and education programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Notes:		