Conflict of Interest Procedures

Category: Human Resources

1. POLICY/LEGISLATION/ENTERPRISE AGREEMENT SUPPORTED

Code of Conduct

2. IMPLEMENTATION PRINCIPLES

There are five key strategies for managing a conflict of interest:

- **Restrict** - restrictions are placed on the staff member's involvement in the matters associated with the conflict of interest
- **Recruit** - a disinterested third party is appointed to oversee part or all of the process that deals with matters associated with the conflict of interest
- **Remove** - the staff member does not participate at all in matters associated with the conflict of interest
- **Relinquish** - the personal interest concerned is relinquished
- **Resign** - the staff member steps down from the position they hold on a temporary or ongoing basis.

Further information about these strategy options is contained in Appendix 4.

The chosen management strategy must take into account a number of factors, including:

- the nature of the conflict of interest;
- the operating environment;
- legal requirements; and
- general practicality.

3. PROCEDURAL DETAILS

3.1 Disclosing conflicts of interest

3.1.1 Where a staff member considers that they have an interest that may represent a conflict of interest, they must disclose the interest via the online Conflict of Interest Register as soon as practicable.

3.1.2 Where a conflict of interest exists in relation to the recruitment, selection and attraction of staff, this conflict should be declared to the chair of the selection panel who will manage the selection process to ensure impartiality and integrity. This may also include recruitment of members for thesis committees for higher degree by research students.

3.1.3 Where legislation exists in relation to a staff member’s specific profession, the principles for managing conflicts of interest prescribed in that legislation shall be adhered to.

3.2 Assessing disclosed conflicts of interest

3.2.1 The staff member’s line manager is responsible for assessing the disclosed interest to determine whether it represents a conflict of interest, as defined in this procedure. Appendix 1 contains examples of different types of conflict of interest which may assist in this assessment.

3.2.2 The line manager may use the questions outlined in Appendix 3 to assist in the assessment of the conflict.

3.2.3 The line manager may obtain reasonable additional information to inform their assessment, in consultation with the staff member.

3.2.4 The line manager may refer to a third party for specialist advice.
3.3 Managing a conflict of interest

3.3.1 Where a line manager’s assessment confirms a conflict of interest, the line manager must promptly develop a strategy for managing the conflict.

3.3.2 The management strategy must articulate:
- The nature of the staff member's interest;
- The interest/s of the University with which the staff member's interest conflict, could potentially conflict, or could reasonably be perceived to conflict;
- The actions the staff member acknowledges are required to be taken to effectively manage the conflict of interest.

3.3.3 The management strategy must be recorded on the Conflict of Interest Register.

A copy of the management strategy must also be provided to the staff member.

3.4 Reviewing and monitoring conflict of interest management strategies

3.4.1 The line manager is responsible for reviewing and monitoring the conflict of interest management strategy to ensure that the objectives of the strategy are being achieved.

3.4.2 The staff member is required to inform their line manager of any changes in the material personal interest giving rise to the conflict of interest that may affect the management strategy.

3.5 Confidentiality and record keeping

3.5.1 The ISU will maintain the central record of disclosed conflicts of interest and of complaints about conflicts of interest.

3.5.2 Conflict of interest disclosures must be managed with consideration for the staff member's privacy.

3.5.3 All information relating to conflict of interest disclosures and the management of conflicts of interest must be disclosed only in accordance with this Procedure.

3.5.4 Any documentation relating to conflict of interest disclosure and management is subject to legislative requirements which include the Freedom of Information Act 1982.

4. RESPONSIBILITIES

4.1 The staff member is responsible for:
- a) Considering their interests and determining whether or not any such interests conflict, could reasonably be perceived to conflict, or have the potential to conflict with the duties or responsibilities associated with their employment at the University.
- b) Declaring interests via the Conflict of Interest Register.
- c) Declaring the receipt of gifts valued above $150 upon the Conflict of Interest Register.
- d) Adhering to the management strategy devised in consultation with their line manager.

4.2 The Line Manager is responsible for:
- a) Assessing the disclosed interest.
- b) Determining whether the disclosed interest represents a conflict of interest.
- c) Developing a strategy for managing the conflict of interest.
- d) Recording the management strategy upon the Conflict of Interest Register.
- e) Determining whether a gift or benefit with a commercial value between $150 and $300 may be accepted by a staff member. Appendix 2 provides guidelines for receiving gifts, benefits or hospitality.
- f) Reviewing and monitoring the conflict of interest management strategy to ensure that the objectives of the strategy are being achieved.
- g) Maintaining the confidentiality of a disclosed interest. A line manager may disclose matters relating to a disclosed interest to others:
  - in order to assess whether a conflict of interest exists;
  - where that disclosure is necessary or appropriate to properly manage the conflict of interest;
  - to comply with a lawful obligation to disclose those matters; or.
• to report the conflict of interest to the central register of disclosed conflicts of interest.

4.3 The Executive Manager is responsible for:
   a) Determining whether a gift or benefit with a commercial value of over $300 may be accepted by a staff member.

4.4 The ISU is responsible for:
   a) Maintaining the Conflict of Interest Register.

5. SCOPE OF PROCEDURES

All Staff
Members of Council
Members of University, School or Department Advisory Boards
Members of research advisory boards

6. DEFINITIONS

Benefit
Means a non-tangible item of value that one person or organisation confers on University staff. Benefit includes hospitality.

Conflict of Interest
An actual, perceived or potential situation in which a staff member has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties or powers as an employee.

Conflict of Interest Register
Means the official University record that details the interest declared by the staff member and how that interest is to be managed.

Gift
Means any item of value which a person or organisation presents to a member of the University as a consequence of their employment. It does not include gifts forming part of employment terms.

Hospitality
Means meals, refreshments, entertainment or accommodation.

University Associate
Means a person engaged by the University, and includes the positions of adjunct, visiting scholar/researcher and volunteer, who is affiliated with the University and may provide services to the University.

7. SCHEDULES

Appendix 1 - Types of Conflict of Interests
Appendix 2 - Guidelines for receiving Gifts, Benefits or Hospitality
Appendix 3 - Guidelines for determining if a conflict of interest exists
Appendix 4 - Strategy options for managing conflicts of interest

8. RELATED DOCUMENTS/LINKS/FORMS

Conflict of Interest Employee Declaration Form
Conflict of Interest Manager Declaration Form
<table>
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<tr>
<th>Revision / Ref. No.</th>
<th>Approved/ Amended/ Rescinded</th>
<th>Date</th>
<th>Committee / Board / Executive Manager</th>
<th>Resolution</th>
<th>Document Reference</th>
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<tr>
<td>New</td>
<td>Approved</td>
<td>13/08/2012</td>
<td>Vice President, Corporate Relations and Development</td>
<td>EM1216</td>
<td>Conditional upon PMC rescinding the current policy and procedures at its 31 July 2012 meeting, effective 14 August 2012</td>
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<tr>
<td>Administratively Updated</td>
<td>02/09/2014</td>
<td>A/Director, Legal and Compliance Services</td>
<td>Department name change, Professional Standards and Conduct Unit changed to Integrity Standards Unit</td>
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Types of Conflict of Interests

1. Financial Interests

Financial interests might include investments, ownership or directorship of companies, consultancies, provision of good or services, receipt of royalties or other consideration, etc.

Staff members performing finance or audit related duties must be impartial and be seen to be impartial in the performance of these duties, and must not use information obtained in the course of their work for their own personal benefit or disclose such information to a third party except where consent has been obtained or there is a legal or professional duty to disclose.

Financial conflict of interest might arise where a staff member who has a financial interest in a company holds a position within the University where they could influence, or could be perceived to influence, the awarding of contracts by the University to that company, where a staff member holds a directorship of a company which is in a position to exert significant influence over the University, where the University is providing services to an organisation in which a staff member has interests, where a staff member controls the designation of course texts or materials to be used by students and is also the author or developer of such texts or materials, or where a staff member is required to perform an audit on an operation in which they have a personal interest.

2. Personal and Family Relationships Between Staff Members

The Equal Opportunity Amendment Act 1992 (WA) prevents discrimination against a person on the ground of their family status generally. However, it does allow for alterations in employment arrangements in circumstances where the employment of a relative of an employee might result in damage to the business of an organisation. Section 35M allows an employer to:

"restrict the employment of a person if-

- that person is a relative of an employee of the employer; or
- that person is a relative of an employee of another employer, and
- the first mentioned employer can demonstrate, after making reasonable enquiries, that there is a significant likelihood of collusion between that person and the person's relative which would result in damage to the business of the first mentioned employer."

Family responsibility or family status in relation to a person is defined in the Act as:

"(a) having responsibility for the care of another person, whether or not that person is a dependent, other than in the course of paid employment;
(b) the status of being a particular relative; or
(c) the status of being a relative of a particular person."

A relative is defined in the Act as:

"a person who is related to the first mentioned person by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the first mentioned person"

*(Note that this definition includes de facto, extended family and same sex relationships.)*

While legislation prevents discrimination against staff on the ground of family status, it must be recognised that supervisory and managerial staff have a responsibility to all staff to operate fairly, objectively and consistently in relation to all staff in the work area. A personal (romantic, sexual, financial etc.) or family relationship between a supervisor/manager and a staff member has the potential to compromise this responsibility directly where the supervisor/manager is responsible for the recruitment, selection, promotion, transfer, conditions of employment, access to staff development, benefits, supervision, performance appraisal, reward management, or dismissal of an employee, or indirectly by affecting the staff member's interaction with the University. For example, a conflict of interest exists where a person who is in a family or personal relationship with another member of staff is responsible for that person's performance review, or where a person who is in a family or personal relationship with another member of staff is in a position where they supervise the person with whom
the relationship exists and where the responsibilities of that person involve the receipt or expenditure of money, or the allocation of financial resources.

3. Personal and Family Relationships Between Staff Members and Students

The *Equal Opportunity Amendment Act 1992 (WA)* prevents discrimination against a person on the ground of their family status generally (see above). Specifically, it is unlawful for an educational authority to discriminate against a person on the ground of a person's family status:
- by refusing or failing to accept the person's application for admission as a student
- in terms of the conditions on which it is prepared to admit the person as a student
- by denying a student access, or limiting a student's access, to any benefit provided by the educational authority
- by expelling the student
- by subjecting the student to any other detriment.

While legislation prevents discrimination against staff and students on the ground of family status, it must be recognised that academic staff are required to assess work fairly, objectively and consistently across the candidature of the particular subject/course. A personal (romantic, sexual, financial etc.) or family relationship between an academic staff member and a student has the potential to compromise this responsibility directly where the academic is responsible for the supervision, teaching and/or any level of assessment of that student, or indirectly by affecting the student's interaction with the University. In addition, mutual trust between academic staff and students is central to maintaining an academic culture that fosters intellectual, professional and personal growth. This trust can be put at risk when persons of unequal power within the University engage in personal relationships because the person with greater power is in a position of authority to assess and make decisions about the other person in the relationship. In such situations a conflict of interest occurs because the potential exists for decisions to be made which have been influenced by the fact that a relationship exists, and biased decisions, or the even the perception among other staff and students that biased decisions have been made, can seriously damage the academic culture.

4. Use of Official Facilities and Equipment

Staff members are expected to use all facilities and equipment efficiently and effectively and not to permit their abuse by others. Official facilities and equipment should only be used for private purposes when official permission has been given. Guidelines for the use of facilities and equipment in relation to consultancies are contained in the University *Consultancy Policy*.

5. Use of Official Information

Staff members are expected to maintain confidentiality, integrity and security of official information for which they are responsible. However, it should be noted that:

- the University is subject to the *Freedom of Information Act 1992* under which the University can be required to give individuals access to information. Staff should refer any requests for information from persons not normally authorised to have such access to their Head of School/Area. Staff should refer all requests for information made under the FOI Act to the FOI Co-ordinator.
- the *Crime and Corruption Commission Act (2003)* provides for the voluntary reporting to the Commission by an employee of any statutory authority of a matter which the employee suspects on reasonable grounds concerns, or may concern, a corrupt act or an offence as defined in the Act.

6. Personal Beliefs

The *Equal Opportunity Act 1984 (WA)* prohibits discrimination on the grounds of religious or political conviction in the areas of employment and education.

The University's *Guiding Ethical Principles* state that “all individuals have the right to express their ideas, theories, beliefs and values” but that they “should respect the rights of others, including students, to do the same”. While the recognition and exercise of freedom of ideas and speech are recognised as being fundamental to a democratic community, it is noted that “some extremely personal or quirky beliefs outside a person’s professional or other function may not legitimately be considered to fall within this brief.” While the University cannot dictate the beliefs of its employees, the *Guiding Ethical Principles* state that “members of staff should ... consider carefully whether the
dissemination of such beliefs or ideas might not be regarded as ethically outside the University’s intellectual, administrative or social obligations”. The University recognises that all staff perform the duties associated with their positions diligently, conscientiously and to the best of their ability, and that any decisions made will be without bias and based on the best factual information available.

7. Public Comment

Public comment includes public speaking engagements, comments to the media, letters to the media, books, journals articles, notices and use of electronic communications media such as facsimile machines, E-mail, Internet etc. where it might reasonably be expected that the publication or circulation of the comment will spread to the community at large.

All staff have the right to express their views as private citizens on any matter of public interest. Written or oral statements made in this context should not suggest in any way that the views expressed are those of the University as a body

The University letterhead should be used for official communications only.

8. Multiple Roles

Staff members may perform other roles in addition to the duties of the position to which they are appointed (e.g. Occupational Health and Safety Representative, Union or Staff Representative). In some cases, the dual roles performed by a staff member may come into conflict, or may result in the staff member feeling they are not able to fulfil the responsibilities of each role in their entirety.

9. Outside Employment

All employees are permitted to engage in outside employment under certain conditions. However, staff members should ensure that outside employment does not adversely affect their work performance in the University. Conditions governing consultancies can be found in the University’s Consultancy Policy.

A staff member may accept a teaching role at another Western Australian institution, subject to prior approval from their Head of School.

Inter-institutional teaching should not interfere with normal duties and permission should only be granted where the staff member has specialist knowledge unavailable at the other institution. Such teaching should be short and specific, involving special skills and so should not involve routine teaching or duties. Staff should seek advice from their Head of School/Department/Centre/ Area.
Guidelines for Receiving Gifts, Benefits or Hospitality

Staff shall not, in connection with their employment solicit any gift or benefit from any person or organisation.

Subject to the above, staff may accept a gift, benefit or hospitality subject to the following:

Value of the gift, benefit or hospitality is under $150

If a gift, benefit or hospitality has a commercial value below $150, then that staff member is not required to declare that gift, benefit or hospitality.

Value of the gift, benefit or hospitality is between $150 and $300

If a gift, benefit or hospitality has a commercial value between $150 and $300, then that gift, benefit or hospitality must be declared upon the Conflict of Interest Register. The gift, benefit or hospitality may only be accepted by that staff member upon receipt of approval from their line manager.

Value of the gift, benefit or hospitality is over $300

If the commercial value of a gift, benefit or hospitality totals more than $300, then that gift, benefit or hospitality must be declared upon the Conflict of Interest Register. The gift, benefit or hospitality may only be accepted upon receipt of approval from an Executive Manager.

Value of gifts, benefits or hospitality over a 12 month period

If gifts, benefits or hospitality from the same person or organisation have a cumulative value which exceeds $300 within a 12 month period, then those gifts, benefits or hospitality must be declared upon the Conflict of Interest Register at the point that the cumulative value reaches $300. Subsequent gifts, benefits or hospitality within that 12 month period may then only be accepted upon receipt of approval from an Executive Manager.

Where the value of the gift, benefit or hospitality is unknown

If a staff member is unsure of the valuation of gift, benefit or hospitality, then that gift, benefit or hospitality must be declared upon the Conflict of Interest Register.

Where the gift, benefit or hospitality is offered to a group of staff rather than an individual staff member

If a gift, benefit or hospitality is offered to a number of staff members together rather than to an individual, the above guidelines relating to individual staff members should still be followed.
Guidelines for determining if a conflict of interest exists

There are some important questions for line managers to ask when considering whether there is or may be a conflict of interest.

The test when assessing the situation overall is to ask “Could this be or be perceived to be in conflict with the staff member’s employment”.

- Would the staff member or anyone associated with the staff member benefit from or be detrimentally affected by the proposed decision or action?

- Could there be benefits for the staff member in the future that cast doubt on the staff member’s objectivity?

- Does the staff member have a current or previous personal, professional or financial relationship or association of any significance with an interested party?

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

- Does the staff member or a relative, friend or associate stand to gain or lose financially in some covert or unintended way?

- Does the staff member hold any personal or professional views or biases that may lead others to reasonably conclude that the staff member is not an appropriate person to deal with the matter?

- Has the staff member contributed in a private capacity in any way to the matter that the University is dealing with?

- Has the staff member made any promises or commitments in relation to the matter?

- Has the staff member received a benefit or hospitality from someone who stands to gain or lose from the staff member’s proposed decision or action?

- Is the staff member a member of an association, club or professional organisation or does the staff member have particular ties and affiliations with organisations or individuals who stand to gain or lose by the staff member’s proposed decision or action?

- Could the situation have an influence on any future employment opportunities outside the staff member’s current duties?

- Could there be any other benefits or factors that could cast doubts on the staff member’s objectivity?
Strategy options for managing conflicts of interest

Restrict

It may be appropriate to restrict the staff member's involvement in the matter, for example, refrain from taking part in debate about a specific issue, abstain from voting on decisions, and/or restrict access to information relating to the conflict of interest. If this situation occurs frequently, and an ongoing conflict of interest is likely, other options may need to be considered.

When suitable:
- The staff member concerned may be effectively separated from parts of the activity or process.
- The conflict of interest is not likely to arise frequently.

When not suitable:
- The conflict of interest is likely to arise frequently causing ad hoc restrictions to be an unworkable option.
- The staff member is constantly unable to perform a number of his/her regular duties because of conflict of interest issues.

Recruit

If it is not practical to restrict the staff member's involvement, an independent third party may need to be engaged to participate in, oversee or review the integrity of the situation affected by the conflict of interest.

When suitable:
- The perceived or potential effects of a conflict of interest on the proper performance of the staff member are more significant and require more proactive management.
- It is not appropriate or desirable for the staff member to remove themself from the decision-making process.

When not suitable:
- The conflict is serious and ongoing, rendering ad hoc recruitment of others unworkable.
- Recruitment of a third party is not appropriate for the proper handling of the matter.
- A suitable third party is unable to be sourced.

Remove

Removal from involvement in the matter altogether is the best option when ad hoc or recruitment strategies are not feasible, or appropriate.

When suitable:
- For ongoing serious conflicts of interest where ad hoc restriction or recruitment of others are not feasible or appropriate.

When not suitable:
- The conflict of interest and its perceived or potential effects are recognised as low risk or low significance.
- The staff member is prepared to relinquish their relevant private interests rather than radically change their work responsibilities or environment.

NOTE: where possible, removal strategies should be considered in tandem with relinquishment.
Relinquish

Relinquishing the personal or private interests may be a valid strategy for ensuring there is no conflict with the staff member’s employment. This may, for example, include the relinquishment of shares, membership of a club or association, or directorship of a company.

When suitable:
- When the staff member deems commitment to their employment to outweigh their attachment to private interest.

When not suitable:
- The staff member is unable or unwilling to relinquish the relevant private interest.
- The conflict of interest and its perceived or potential effects are of low risk or low significance.

Resign

The temporary or permanent resignation of a staff member from a position is a last resort strategy, when all other options have been exhausted.