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OVERVIEW

Conflicts of interest are an inevitable fact of organisational life and can arise without anyone being at fault. However, when the risks associated with conflict of interest are not appropriately managed, the effects can be serious for the University and for the individuals concerned.

The management of risks associated with any actual, potential or perceived conflicts of interest situations is fundamental to ensuring the highest levels of integrity and public trust are achieved and maintained.

This Conflicts of Interest Framework provides centralised and consolidated information about the management of conflicts of interest by the University.

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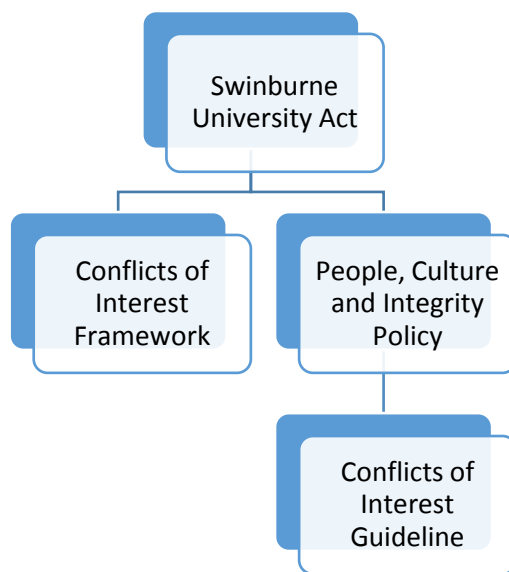
OBJECTIVES

The purpose of the Conflicts of Interest Framework is to provide for effective management of risks of conflicts of interest by:

> ➢ Demonstrating the University's commitment to managing risks of conflicts of interest
> ➢ Identifying the key principles guiding the responsible management of conflicts of interest risks in the University
> ➢ Identifying the responsibilities of all University employees and managers for the management of risks of conflicts of interest
> ➢ Consolidating information about how risks relating to conflicts of interest are addressed across the University to assist in monitoring the University's effectiveness in meeting its commitment to managing risks of conflicts of interest.

Many potentially adverse consequences may result from the improper or inadequate identification, management or monitoring of conflicts of interest. Some key risks include:

> ➢ Poor substantive outcomes arising from decisions in which merit is compromised
> ➢ Poor strategic outcomes arising from a loss of stakeholder confidence and the erosion of proper process

- Considerable expense and loss of efficiency to remedy action which is tainted by undisclosed or improperly managed conflicts of interest
- Loss of employee confidence in management
- Loss of public confidence in the University.

CONTEXT

This Conflicts of Interest Framework gives effect to obligations which arise under the following documents.

PEOPLE, CULTURE AND INTEGRITY POLICY

The People, Culture and Integrity Policy is binding on all University employees.

Clause 6.1 of the Policy prescribes the principal obligations in relation to conflicts of interest

If a person's decision making is influenced or potentially influenced or biased by their private interests, personal circumstances, or their involvement with another organisation, they are in a conflict of interest.

The University accepts that situations arise from time to time where, for various reasons, some responsible persons may have a conflict of interest.

Conflicts or potential conflicts of interest must be declared by staff members, University officers, visitors and directors and company secretaries of University controlled entities.

A responsible person must be free from a conflict of interest when dealing with persons or other organisations on behalf of the University.

Other sections of the Policy also relate directly to the management of risk of conflicts of interest.

- Private and community appointments (clause 6.2.1)
- University nominee appointments (clause 6.2.2)
- External consultancies (clause 6.3)
- Gifts and hospitality (clause 6.4)
- Lobbying, inducements and personal relationships (clause 6.5)

CONFLICTS OF INTEREST GUIDELINE

The Conflicts of Interest Guideline supports the People, Culture and Integrity Policy. Under the Conflicts of Interest Guideline (the Guideline), a conflict of interest arises if a person's professional decision making is swayed, influenced or biased by their private interests (for example through their personal, business or family circumstances) then they are in a conflict of interest.

Conflicts of interest must be declared by staff members, University officers and visitors so that they can be eliminated, avoided or managed. This is to ensure that in all dealings Swinburne observes the highest standards of business ethics to protect the integrity and good name of Swinburne's staff, officers and visitors and also Swinburne's own positive reputation.

It is the responsibility of the individual Swinburne staff member to declare in advance a conflict of interest and unless resolved or managed, take no further part in any decision on the matter.

GOVERNANCE FRAMEWORK

The Governance Framework sets out further provisions dealing with the avoidance of conflicts of interest for Council members as well as the obligations to avoid conflicts of interest in relation to academic freedom.

SWINBURNE UNIVERSITY ACT

The Swinburne University Act (the Act) binds the operations of the University. In particular, the Act sets out the responsibilities of Council members and binds appropriate activities of Council and the University.

APPLICATION

The Conflicts of Interest Framework applies to all employees of the University, contractors and Council members.

GENERAL RISKS

Conflicts of interest may arise in the performance of day to day University duties. While not exhaustive, situations where a conflict of interest may arise are set in the People Culture and Integrity Policy as well as the Conflict of Interest Guideline. In particular, these include:

- ➢ Directorship (private, community and University nominee)
- ➢ Gifts and hospitality
- ➢ Lobbying, inducements and personal relationships
- ➢ Information, confidentiality and privacy

AT-RISK FUNCTIONS WARRANT SPECIAL CONSIDERATION

Conflicts of interest risk may arise in the performance of any University duty. This Framework provides general principles which apply to management of all risk of conflicts of interest and outlines the obligations on all University employees in identifying, managing and monitoring risks of conflicts of interest responsibly. However, some roles such as senior executives and certain work functions such as procurement carry a higher risk of conflicts of interest. Operational areas throughout the University should conduct assessments of conflicts of interest risk in relation to particular duties and roles in order to develop additional guidelines, where appropriate, to assist in responsible management of these risks.

Risks of conflicts of interest across the University are typically significant in relation to the following types of activities:

- ➢ Recruitment and selection
- ➢ Procurement
- ➢ International (Agency)

Other areas of high risk include:

- ➢ Contractor management
- ➢ Other (external) employment
- ➢ Complaints management and disciplinary processes
- ➢ Research and publications

UNIVERSITY COUNCIL MEMBERS

University Council members who are not employees of the University are not bound by its policies and guidelines. However, they are bound by the Act and the Governance Framework.

Clause 15(2)(c) of the Act requires Council members *take all reasonable steps to avoid all conflicts of interest unless they are declared*.

Clause 53 (2)(f) of the Act also requires members of Council to avoid real or apparent conflicts of interest in considering matters related to commercialisation.

The Governance Framework makes the following provisions in relation to conflicts of interest:

➢ Take reasonable steps to avoid all conflicts of interest unless they are declared (section 4.7.1)
➢ Declare any actual or potential conflicts of interest including a conflict between their status as a Council member and their status where it could be perceived they represent any stakeholder group (section 4.7.2)
➢ The Chair will determine in conjunction with other Council members at the meeting if any Council member who has a conflict of interest situation is entitled to be present during any deliberation on the matter (section 4.7.2)
➢ The right to academic freedom is balanced amongst other things with the obligation to disclose private interests and affiliations and to avoid conflicts of interest (section 9)

CONTRACTORS AND EXTERNAL STAKEHOLDERS

The University expects organisations with which it partners and contractors it engages to comply with responsible practices in relation to managing conflicts of interest. Where possible, this expectation should be incorporated into documents which determine or influence mutual expectations, such as memorandum of understanding and contracts for services.

DEFINITIONS

CONFLICTS OF INTEREST

Conflicts of interest arises in circumstances where an employee's duty is influenced, or can be seen to be influenced by a private interest. While such situations can lead to corruption and fraud, they mostly arise innocently and independently of any fraudulent intent. Even in the absence of fraud, however, conflicts of interest can have a detrimental effect on organisational performance and reputation. Therefore, conflicts of interest is a problem for the University when it is not addressed in reasonable, consistent and transparent manner.

Conflicts of interest refers to situations where private interests can be seen to unreasonably influence employee duties. The test in any given circumstance is whether a reasonable and fair minded person would consider that the private interest is likely to influence the exercise of the employee's duty such that it would undermine University values unless appropriate mitigating steps were taken.

Conflicts of interest can be actual, potential or perceived. These include:

➢ An **actual** conflict of interest refers to the situation where an employee's private interest is capable of unduly influencing the exercise of their employment duties. Actual and potential conflicts of interest are also known as real conflicts of interest.
➢ A **potential** conflict of interest describes circumstances where an actual conflict of interest may arise in future if a certain condition is fulfilled.
➢ A **perceived** conflict of interest occurs where a reasonable person might suspect that an employee is subject to a real conflict of interest whether or not one actually exists. Perceived conflicts of interest is also known as apparent conflicts of interest.

PRIVATE INTEREST

Private interest includes not only an employee's own interest but also the personal, professional or business interests of individuals or groups with whom they are closely associated such as relatives and friends.

Pecuniary interests involve an actual, potential or perceived financial gain or loss. Money does not need to change hands for an interest to be pecuniary. People have a pecuniary interest if they (or a relative or close associate) own property, hold shares, are tendering for work, receive benefits from a particular source.

Non-pecuniary interests include professional or personal affiliation, such as membership of a club or religious or ethnic group. Personal values may also lead to a conflict of interest where they are likely to impact on the proper performance of employee duty or be reasonably seen to do so.

Both pecuniary and non-pecuniary private interests can conflict with an employee's duties. It is particularly important to identify situations where an employee's duties may conflict with pecuniary interests since these situations could give rise to legal consequences if they are not appropriately managed.

IDENTIFYING A CONFLICT

Identifying conflicts of interest is an important step in managing conflicts appropriately. The key test is whether an individual could be influenced, or appear to be influenced by a private interest in carrying out his/her University duty.

This is an objective test based on an impartial examination of the individual's role and private relationship and interests of the person concerned, and whether these create an opportunity for corrupt conduct or have the capacity to influence the individual's role.

RESPONSIBILITY

All employees have a responsibility to manage risk of conflicts of interest which may affect their duty. Managers and executive officers have additional responsibilities.

The University, its Executive Group and managers play an essential role in supporting all employees to identify and manage conflicts of interest appropriately.

The University is responsible for:

- ➢ providing a sound framework, policies and procedures to guide employees in the exercise of their obligations to address the risks associated with conflicts of interest
- ➢ building an organisational culture that supports implementation of conflicts of interest principles through appropriate communication, training and enforcement activities
- ➢ reviewing the Framework regularly to ensure that it meets the needs of its employees and the University community in effectively managing conflicts of interest
- ➢ implementing appropriate disciplinary procedures in relation to alleged breaches of conflicts of interest
- ➢ monitoring compliance with conflicts of interest principles and responses to alleged breaches.

The Executive Group is responsible for:

- Ensuring University compliance with the Framework, People, Culture and Integrity Policy and associated guidelines.
- Modelling a commitment to managing conflicts of interest by
  - identifying and managing conflicts of interest affecting the members of the Executive Group
  - seeking and considering periodic reports on the effectiveness of the Framework, provisions and related areas
  - taking opportunities to reinforce a commitment to the key principles in the management of conflicts of interest.

Managers are responsible for facilitating the compliance of those they supervise by:

- being aware of the risks of conflicts inherent in the work of the staff they manage
- making staff they manage aware of relevant policies and guidelines
- identifying training needs of their staff in relation to conflicts of interest
- advising staff about appropriate ways to manage conflicts of interest
- recording the receipt of disclosures of conflicts of interest reported to them by staff
- assisting staff to select and implement appropriate management strategies
- continually monitor the work of staff they manage and assessing the risks to which they might reasonably be exposed
- taking appropriate disciplinary action in relation to employees who fail to meet their obligations.

All employees are responsible for:

- being aware of their conflicts of interest obligations
- continually assessing their private interests and employee duties to identify conflicts of interests
- reporting identified conflicts of interest to their manager
- assessing the risks related to identified conflicts and taking reasonable steps to address these.

DISCLOSURE

GENERAL CONFLICT OF INTEREST DISCLOSURE

Where any actual, potential or perceived conflict of interest may arise, the staff member must disclose it to their manager as soon as is reasonably practicable after becoming aware of it. If the staff member's manager has a conflict of interest in the matter, then the staff member will disclose the conflict of interest to the next higher level of authority.

ANNUAL CONFLICT OF INTEREST DECLARATION

Clause 6.1 of the People, Culture and Integrity Policy requires Individuals in the following categories to make declarations of private interest in advance that may have current, potential or perceived conflicts of interest on appointment and then annually thereafter:

- Council members
- Directors, company secretaries, nominee directors and nominee secretaries of controlled entities
- University senior executives
- Head of management units
- Other staff as identified by head of management unit.

Each head of management unit will identify staff which require annual conflict of interest declarations. These individuals will typically be decision making staff or staff with higher than usual risk exposure. The identified staff members will be reviewed annually by the head of management unit and will be communicated to the Governance and Assurance Unit prior to the beginning of each year.

This process is managed and monitored by the Governance and Assurance Unit. Any conflicts of interest which develop after completion of an annual declaration will still need to be disclosed.

CONTROLS

OPERATIONAL AREA ASSESSMENT OF CONFLICTS OF INTEREST RISK

Conflicts of interest may arise in many different situations. This Framework and the relevant sections of the People, Culture and Integrity Policy do not attempt to be prescriptive or restrictive about certain activities; instead, they outline an overall process for risk assessment and management and identify the principles which should guide identifying and reporting of conflicts of interest as well as determining appropriate management strategies for mitigating risks.

Faculty and operational areas throughout the University are encouraged to undertake periodic assessments of the risk of conflicts of interest in relation to their area of work in order to inform the development of explicit, tailored advice to employees about resolving conflicts of interest in their areas of responsibility.

PROCESS FOR MANAGING RISKS OF CONFLICTS OF INTEREST

The following flowchart outlines the process for managing risks associated with conflicts of interest:

QUICK GUIDE: Conflict of Interest Wheel
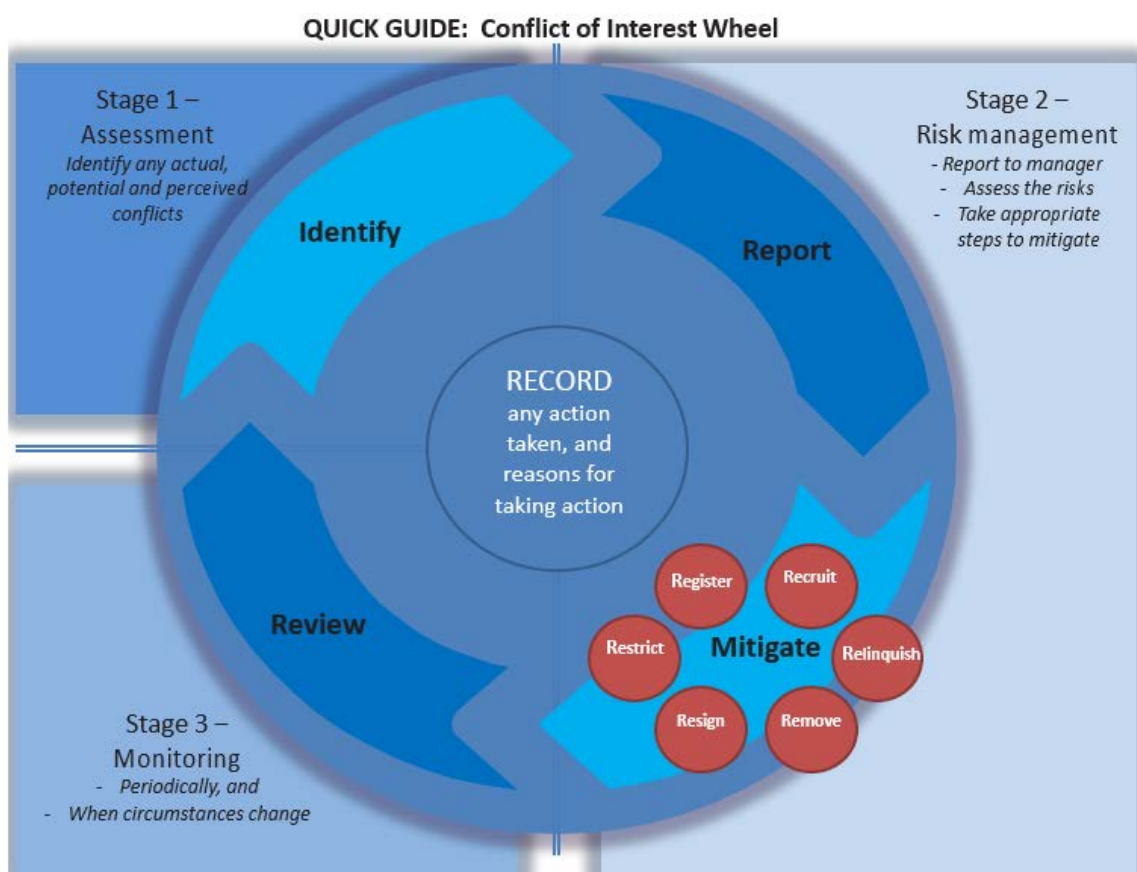
1. **Assessment: Identifying Conflicts of Interest**
   - ➢ Scrutinise private interests and University duties to identify actual, potential or perceived conflicts of interest.
   - ➢ Managers can be consulted for advice.
2. **Risk Management: Report and Address the Risks of Identified Conflicts of Interest**
   - ➢ **Report** identified conflicts of interest (actual, potential or perceived) to a senior authority, usually the line-manager. In certain circumstances conflicts can be reported to a relevant committee or board. However, it would rarely be sufficient for reports only to be made to peers or subordinates.
   - ➢ **Assess** the risks to University interest arising from any identified conflict. Consider in particular risks to stakeholder confidence and public confidence in the University.
   - ➢ **Register** the details of any identified actual, potential or perceived conflicts of interest.
   - ➢ Take reasonable steps to address the risks of identified conflicts of interest. Where necessary, these include:
     - o **Restrict** the employee's involvement in their duties subject to the conflict
     - o **Recruit** a disinterested third party to oversee part of the employee's duties
     - o **Remove** the employee from all responsibilities in relation to their University duties
     - o The employee **relinquishing** their private interest
     - o The employee **resigns** their University duties either temporarily or permanently
   - ➢ Record any decisions in relation to the management of conflicts of interest including decisions not to take any action in a manner which ensures transparency and accountability. Decisions may, for example, be recorded on the employee's personnel file. Document reasons for any decisions to take or not to take certain action.
   - ➢ Maintain confidentiality in managing private information obtained in the assessment and management of conflicts of interest.
3. **Monitoring**
   - ➢ The identification and management of conflicts of interest should be subject to regular and periodic reviews as well as in response to any changes in circumstances (such as changes in line-management).

LINE-MANAGER'S ROLE

Identified conflicts must be reported to the employee's line-manager. It is rarely sufficient for conflicts to be disclosed only to subordinates or peers. Employees may also consult with their manager for assistance in identifying conflicts or with any conflicts of interest matters.

Line-managers can provide guidance to employees about taking appropriate action to mitigate identified conflicts of interest. This ensures both integrity and parity in the protection of the University's interests.

WHOSE RESPONSIBILITY IS IT TO TAKE ACTION?

While it is an employee's responsibility to take appropriate action to resolve an identified conflict of interest, line-managers play a critical role in moderating these decisions and adding perspective to the options available.

In some circumstances, however, line-managers may consider it necessary to direct an employee to take action they do not wish to take to mitigate a conflict of interest. For example, they might direct the employee to relinquish a private interest while the employee does not consider this to be reasonably necessary. In such circumstances, the line-manager's direction may be a lawful and reasonable direction which the employee must follow or face disciplinary action. An employee who

has been directed by their line-manager to take an action due to a potential conflict of interest which they do not consider to be reasonably necessary may apply for a review of the decision from their respective Director, Dean, Head of Management Unit or where necessary, the relevant Executive Group member.

MANAGING SPECIFIC CONFLICTS OF INTEREST

PROCUREMENT

A staff member will not deal with, call tender from or obtain prices from anyone he or she is in close personal relationship with or any company or other entity in which the staff member has a pecuniary interest (such an interest does not include the holding of shares purchased through normal stock exchange dealings) or in any circumstances where the staff member may benefit financially.

A staff member will disclose any interest he or she, or anyone he or she is in a close personal relationship with, has in a company or other entity providing or likely to provide goods or services to the University in circumstances where that staff member is in a position to decide or to influence the decision to purchase those goods or services.

HUMAN RESOURCES

Employees involved in the different stages of the recruitment or selection processes must ensure, prior to involvement in recruitment or selection processes that they do not have any undisclosed real, potential or perceived conflict of interest. Such conflicts may include:

- family or friendship relationships with an applicant
- close working relationship with an applicant
- financial interests (either in relation to an applicant or the outcome)
- an acrimonious relationship with the applicant.

RESEARCH

A researcher has a conflict of interest in any circumstances where that person has a real, perceived or potential opportunity to prefer their own interests or those of any other person or organisation to the interests of the University. These can include situations

- where the research is sponsored by a related body
- where the researcher or related body may benefit, directly or indirectly from any inappropriate dissemination of research results
- where the researcher or a related body may benefit, directly or indirectly from the use of University resources
- where the researcher conducts a clinical trial which is sponsored by any person or organisation with significant interest in the results
- where private benefits or significant personal or professional advantage are dependent on research outcomes.

A researcher must make a full disclosure of a conflict of interest or of circumstances that might give rise to a perceived or potential conflict of interest as soon as reasonably practicable. For the conduct of clinical trials, full disclosure includes the nature of sponsorship, the relationships between the sponsor, trial subjects and the clinical investigator.

ENFORCEMENT

Employee's failure to identify or mange conflicts of interest appropriately may have serious consequences for the University. It is the responsibility of all managers to monitor compliance with the framework and associated policy.

Failure to disclose conflicts of interest can lead to:

> ➢ misconduct, serious misconduct or other disciplinary proceedings against the staff member
> ➢ action under the *Protected Disclosure Act 2012* (Vic)
> ➢ action by agencies such as the Ombudsman or the Independent Broad-based Anti-corruption Commission
> ➢ legal action against the University or the individuals concerned.

CONTINUAL IMPROVEMENT, REPORTING, TRAINING AND COMMUNICATIONS

ANNUAL REVIEW

This Framework is to be reviewed every year at a minimum in order to ensure continual improvement and adaptation to changing circumstances.

REPORTING

The University will provide an annual report to Executive Group and Council on conflicts management activities taken in the past year including but not limited to:

> ➢ communications
> ➢ training
> ➢ reviews
> ➢ conflicts reporting activities
> ➢ enforcement activities.

TRAINING

Conflict of interest training is provided to all new and existing staff on a periodic basis in the Employee Training Modules. In addition to training provided through the Employee Training Modules, the University will also provide face to face conflicts of interest training to high risk areas on a periodic basis.

In addition to any in-house training, managers are to identify the training needs of the staff they manage in relation to managing risks of conflicts of interest and take reasonable steps to meet these needs through both in-house and external training.

COMMUNICATION

The University will provide staff and managers periodic communication about managing conflicts of interest.

ADDITIONAL RESOURCES

INDUCTION TRAINING

All new employees are inducted into how the University manages conflicts of interest through the Conflict of Interest Employee Training Module.

PEOPLE CULTURE AND INTEGRITY POLICY

The Policy identifies relevant definitions, responsibilities, activities and steps on how conflicts of interest risk should be managed. All employees are expected to be familiar with the responsibilities and processes set out in the Policy and associated guidelines.

AUSTRALIAN CODE FOR THE RESPONSIBLE CONDUCT OF RESEARCH

The Code has been issued to guide Australian institutions and researchers in responsible research practices, promote integrity in research and explains wider community expectations for research.