

Division:	CEO & Governance	Ref. No.	REG-1020
Department:	President & Council Support		
Title:	Conflict of Interest		

1 PURPOSE

This policy is part of the Royal Australasian College of Surgeons (RACS) commitment to good governance and ethical conduct. It emphasises freedom from any conflicts of interest which may result in personal gain and those related to any disclosable relationships like close associates, such as friends, family, and other businesses or organisations. Outside engagements or work commitments like paid or voluntary work also need to be disclosed. When working with, and representing RACS, the interests of the organisation are paramount.

The following framework is designed to support RACS to effectively identify, disclose, and manage any actual, potential, or perceived conflicts of interest in order to protect the integrity of RACS. It supports RACS to manage risk and safeguard the organisation's reputation and the trust placed in it by stakeholders and the public. The policy also supports RACS's compliance with its legislative and statutory obligations, and good governance standards.

2 SCOPE

Managing perceived, potential, and real conflicts of interest is the responsibility of all **RACS people** that participate in the work of RACS and/or represent RACS, including:

- Councillors and committee members (including members of the Specialty Training Boards);
- Members of any other committee, working or advisory group, or sub-group formed under the auspices of the above
- RACS staff, Fellows, Trainees, Specialist International Medical Graduates (SIMGs) and volunteers; and
- consultants and contractors.

3 DEFINITIONS

Conflict of Interest: Any situation where an individual stands to, or may be perceived to actually or potentially, benefit or alternatively be disadvantaged by a particular decision, either personally or professionally, to the extent it is reasonably possible that the decisions of the person affected may be influenced. Such benefit or detriment may be financial or non-financial, direct, or indirect. A conflict of interest based upon a relationship can also exist if a relative, family member, close associate or related business entity has the potential to derive a benefit or suffer a detriment from a particular decision.

Disclosable relationship: Relationships including those with close associates, such as friends, family, and other businesses or organisations that could be perceived to/could potentially create a conflict of interest between an individual's personal interests (connected to these relationships) and the best interests of RACS.

Outside engagement or work commitments: Any external paid or voluntary engagement or commitments that could be perceived/could potentially create a conflict of interest between an individual's commitment to RACS and to fulfilling the agreed scope of their work with RACS, and to meeting their external commitments.

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4 LEGISLATIVE FRAMEWORK AND STANDARDS

RACS people will act with reasonable care and transparency when disclosing any conflicts of interests. RACS complies with the following legislation and standards noting that Councillors of RACS are Directors:

- Corporations Act 2001 (Cth),
- the New Zealand Companies Office,
- Australian Securities Investment Commission (ASIC),
- Australian Charity and Not-for-profit Commission (ACNC) under their Standards 5: *'Duties of Responsible Persons'*,
- Australian Council for International Development (ACFID) Code of Conduct, and
- the Australian Medical Council (AMC) accreditation standards.
- [MCNZ Doctors and Financial Conflicts of Interests Review of Standards](#)
- [Charities Government NZ - Conflict of Interest](#)

5 POLICY STATEMENT

It is the policy of RACS, as well as a responsibility of the Council, that ethical, legal, financial, education and training, or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with the obligations to RACS. All conflicts and potential conflicts must be disclosed.

6 POLICY IN ACTION

6.1 Council and Governance Committees

The Council's role is to establish a system to identify, disclose and manage conflicts of interest pertaining to all Councillors and committee members within RACS. The CEO and Council Secretary will ensure that Councillors and committee members are aware of the ACNC governance standards, and that they disclose any actual or perceived material conflicts of interests as required by ACNC governance Standards 5.

On appointment to Council or a committee, and each year of membership, all Councillors and committee members will complete the **Conflict of Interest Disclosure Form** provided in Appendix 2 of the Conflict of Interest Procedure. This will include any relationships and work commitments that could potentially impact on their role with RACS.

6.1.1 Identifying, and Disclosing Conflicts of Interest

The Chair of any RACS Council and Committee, prior to the deliberation of that Council or Committee, as a standing agenda item, seeks confirmation from everyone present that none of the matters being considered or about to be considered create a conflict of interest for any person in that meeting.

A useful way to decide whether or not a conflict of interest exists is to apply the impartial observer test, which involves asking the question: "Would a reasonable person (properly informed about the nature of your personal interests) believe that you might be influenced by your personal interests when making decisions on behalf of RACS?" If the answer is yes, you are likely to have a conflict of interest that needs to be disclosed."¹

¹ *'Managing Conflicts of Interest: A Guide for Charity Board Members'*, ACNC website.

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6.1.2 Managing and Documenting Conflicts of Interest

Once a conflict of interest has been identified, the Council or committee must decide what needs to be done to address the conflict. They will consider whether the conflicted Council or committee member should:

- vote on the matter (exclusion from voting is the minimum measure),
- have access to related documentation
- participate in any debate, or
- be present in the room during the debate and the voting.

In exceptional circumstances, such as where a conflict is very significant or likely to prevent a Council or committee member from regularly participating in discussions, the Council or committee may consider it appropriate for the person conflicted to resign from the relevant Council or committee. The approval of any such action requires the agreement of at least a majority of the Council or committee (excluding any conflicted member/s) who are present and voting at the meeting. The action and result of the voting will be recorded in the minutes of the meeting and in the **Conflict of Interest Register** provided in Appendix 3 of the Conflict of Interest Procedure. This register is maintained by the Council/Board Secretary in consultation with the Council and Committees. The register must include the nature and extent of the conflict of interest and any steps taken to address it.

6.2 Impact of Policy on Quorum and Voting Requirements

Where a conflict of interest has been identified in accordance with clause 6.1, the removal, exclusion or inability to vote imposed on any member or members of the Council or committee shall not create the absence of a quorum for the meeting or any resolution at that meeting, where a quorum existed immediately prior to the decision to exclude any persons from the meeting or part thereof, or not permit any person(s) to vote, by reason only of the conflict of interests. This Policy shall override any provisions of Terms of Reference of any committee with respect to the existence of a quorum in circumstances addressed by clauses 6.1 and 6.2 of this Policy.

6.3 Fellows, Trainees, SIMGs, Staff, Volunteers, Consultants and Contractors

Fellows, Trainees, SIMGs, staff, volunteers, consultants and contractors of RACS must actively seek to avoid conflicts of interest. If this is unavoidable with respect to a particular issue, there is an obligation for the individual to declare the real, perceived or potential conflict of interest as soon as possible to management. RACS may take steps to manage the conflict of interest which may include ensuring the individual is not involved in decisions relating to themselves or another party, conflict does not lead to favouritism or disadvantages to others and or self-benefit.

6.4 Confidentiality

All individuals - including members of committees and RACS staff - are required to adhere to principles of confidentiality. Information contained in a declaration of interest, committee papers and committee minutes, or any other resources/materials, are provided and received in confidence and is only to be used for the purposes of governing and administering RACS business.

Information obtained by individuals through participating in RACS business must not be used to gain advantage for either themselves or a third party, or to cause detriment to RACS, or for any other purpose.

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Matters relating to the administration and governance of the RACS Council or committees should not be discussed by any individual involved in decision making with any external party unless specifically authorised to do so. Examples of where this may be appropriate include:

- Requests to disclose relevant information made by a Commonwealth authority or a State or Territory authority, for the purpose of assisting the authority in the performance of its functions or duties
- Requests to disclose relevant information made by regulatory and/or legislative authorities; or
- Requests to disclose relevant information regarding any legal proceedings of any nature and to any third parties connected with those proceedings.

All declarations of interest and information obtained while carrying out RACS business will be treated as confidential in perpetuity

6.5 Acceptance of Gifts or Benefits

Gifts or benefits arising by way of an individual's involvement with RACS that might in any way appear to compromise or influence them in their official capacity, must not be either solicited or accepted. The offer of gifts or benefits arising as a result of an individual's involvement with RACS must be reported as soon as reasonably practicable to an Executive Director of Surgical Affairs or Surgical Adviser in the case of Fellows, Trainees and SIMGs or to their manager in the case of staff, volunteers, consultants and contractors. If RACS is engaged in a tender process, no gift or benefit, no matter how small or insignificant, should be accepted from the tenderers.

6.6 Disclosable Relationships

Disclosable relationships (defined in Section 1 of this Policy) should be effectively managed to avoid conflicts of interest. Decisions relating to the recruitment/appointment and management of RACS people must be transparent, based on merit, without any real, potential or perceived conflict of interest. A failure to disclose a disclosable relationship, during recruitment or while working with RACS may lead to disciplinary action including termination of employment or contract. Further detail is outlined in the **Recruitment and Selection Policy**. Staff members, volunteers, consultants or contractors must disclose disclosable relationship to their manager. Councillor and Committee members must disclose disclosable relationships to their relevant chairs. All other Fellows, Trainees and SIMGs must disclose disclosable relationships to an Executive Director of Surgical Affairs or Surgical Adviser. All disclosures will be recorded and treated confidentially in accordance with the **Privacy of Personal Information Policy**.

6.7 Outside Engagements and Working Commitments

It is important that RACS people's outside engagements and working commitments (defined in Section 1 of this policy) do not undermine an individual's ability to fulfil the reasonable requirements of their role at RACS, do not adversely impact on their endeavours to protect the interests and public image of RACS, or create a conflict between their personal interests and the best interests of RACS.

6.8 Failure to comply

Where there is reason to believe that an individual subject to this policy has failed to comply, RACS will investigate the circumstances and take what action, if any, is required pursuant to this policy.

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If it is found that an individual has failed to disclose a conflict of interest, RACS may take action against them. This may include terminating their position on a committee or disciplinary action pursuant to RACS Code of Conduct or Professional Conduct Committee Regulation.

Where a person believes that a committee member has failed to disclose a conflict of interest, they should:

- Notify the Chair of the Committee (where the person is a member) or
- Notify the Chief Executive Officer

7 ASSOCIATED DOCUMENTS

- Constitution
- Governance Charter
- Conflict of Interest Procedure
- Conflict of Interest Disclosure Form
- Conflict of Interest Register
- Privacy of Personal Information Policy
- Purchasing of Goods and Services Policy
- RACS Code of Conduct
- RACS Workforce Conduct Policy
- Recruitment and Selection Policy
- Whistleblower Policy

Approver: Council