1. PURPOSE AND SCOPE

The Royal Australasian College of Surgeons (RACS) is committed to the highest levels of integrity. The College consists of Fellows and staff and these, together with any bodies or individuals representing RACS, must conduct their relationships with each other, RACS and external organisations with honesty and objectivity, free of conflict of interest as defined in 3.1.

This policy details a framework for RACS to deal with either real, perceived or potential conflicts of interest.

2. KEYWORDS

Conflict, Councillors, Corporations Act, Code of Conduct, interest, gifts, pecuniary, perceived, close associate.

3. BODY OF POLICY

Fellows and staff 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 practicable. Individuals must not participate in decisions or vote on an issue that involves a conflict of interest. However, individuals, having declared a conflict of interest, may, with permission, participate in the discussion prior to any vote being taken.

This policy is required to be compatible with both the College Code of Conduct and the Corporations Act 2001 which should be read in conjunction with this policy. Regarding conflict of interest, Councillors of RACS are Directors and as such they must comply with sections 191-193 and 195-196 of the Corporations Act. Non-compliance risks both fines and imprisonment.

3.1. Definition

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 can reasonably be expected decisions of the person affected may be influenced. Such benefit, or detriment, may be pecuniary or non-pecuniary, direct or indirect. A conflict of interest also exists if a relative, family member, close associate or related business entity has the potential to derive a benefit, or detriment, from a particular decision. Examples of close associate include:

- the employer (including a hospital) or an employee of the Fellow;
3.2. **Code of Conduct**

Fellows and staff are subject to the RACS Code of Conduct 2016.

3.3. **Conflict of Interest**

3.3.1. A Councillor, Fellow, committee member, senior officer, staff member and other representative of RACS involved in formal business of RACS has an interest in a matter before Council, a Committee of RACS or other dealings with RACS if:

   a) The member, or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive, be perceived to receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit, or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment.

   or

   b) The member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or be perceived to, or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment.

3.3.2. The Chair of any RACS Committee, prior to the deliberations of that Committee, will request disclosure of real, perceived or potential conflicts of interest to be declared by drawing attention to the following –

- a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
- a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;
- a company in which the Fellow or senior officer is a shareholder or has a commercial interest;
- a body corporate of which the Fellow or senior officer is a director or a member of the governing body.
“Any individual present, or associate of the individual, who stands to be advantaged or disadvantaged or perceived to be advantaged or disadvantaged by a decision on a particular matter by this committee has a conflict of interest. The advantage or disadvantage may be a direct or indirect pecuniary or non-pecuniary.”

If an individual becomes aware that they have, or may have, a conflict of interest in a matter being considered, or about to be considered, they must disclose the nature of that interest as soon as practicable.

Any disclosures will be recorded in the minutes.

The Chair/President will decide on the materiality of the disclosure and whether or not a conflict of interest exists. If the Chair is uncertain, a conflict of interest will be deemed to exist. If the Chair makes a disclosure, the Deputy Chair will make the decision.

3.3.3. The provisions of this policy recognise that Councillors act as directors of RACS as a company and that the Corporations Act specifically provides for all decisions of Council (as the board of directors) that:

a) Directors must give notice of all "material personal interests" in matters relating to the affairs of RACS (which may be narrower than a general conflict of interest);

b) It is not a material personal interest if all directors have the same interest (eg. Fellow of RACS);

c) Notice must be given of the nature and extent of the interest and its relation to the affairs of RACS. Notice must be given as soon as the interest arises, or the director becomes aware. A standing notice of all such interests may be given;

d) An individual with a declared conflict of interest may be present during discussion of an issue provided other members of the meeting are satisfied that the disclosed conflict of interest should not disqualify him or her. An individual with a declared conflict of interest must not be present during a vote on the issue.

(SS. 191-195 Corporations Act – Cth.)
3.3.4. The fact that an individual member of a RACS committee has failed to comply with this policy does not, of itself, invalidate the decisions of that committee.

3.3.5. On appointment to Council and each year of membership of Council, all Councillors will complete the Conflict of Interest Disclosure form. This information is updated and submitted annually to the Australian Charities and Not for Profits Commission.

3.4. **Acceptance of Gifts or Benefits.**

Gifts or benefits arising by way of an individual's involvement with RACS which 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 immediately to the Executive Director of Surgical Affairs in the case of Fellows and Trainees, or to their manager in the case of staff.

Gifts to the organization/work area of more than nominal value e.g. a painting, or a piece of equipment, are acceptable, but should be disclosed to Council.

If RACS is engaged in a tender process, no gift, no matter how small or insignificant, should be accepted from the tenderers.

4. **ASSOCIATED DOCUMENTS**

   - Code of Conduct
   - Acceptance of Gifts by Staff Policy
   - Conflict of Interest Disclosure Form
   - Corporations Act 2001 (Cth)
APPENDIX ONE – EXAMPLES OF CONFLICTS OF INTEREST

The following activities illustrate types of potential or actual conflicts of interest that should be avoided and disclosed, as applicable, in accordance with this policy. The list is not all inclusive and is intended to provide guidance only.

- **Conflicting duties:** Participating in decisions relating to an employer that may conflict with the interests of RACS, e.g., consideration of a hospital inspection report by the Accreditation Committee of a Councillor’s hospital.

- **Self-benefit:** Using your position or relationship within RACS to promote your own interests or those of your family, including using confidential or privileged information gained in the course of your participation on the Council, another committee or employment at RACS for personal benefit or gain or for the personal gain or benefit of family members.

- **Conflicting relationships:** In a situation where the relationship between an supervisor, assessor (or examiner) and a trainee may compromise an unbiased assessment.

- **Influence peddling:** Soliciting benefits for yourself or your family from outside organisations in exchange for using your influence to advance the interests of that organisation within RACS.

- **Other business relationships and dealings:** Approving grants or contracts with organisations in which you or your family have a significant financial or other interest or relationship, particularly if you are in a position to influence major decisions, are responsible for review, negotiation and approval of grants or contracts, or otherwise direct RACS’s business dealings with that entity or business.

- **Intellectual Property:** Inappropriate or unauthorised use of materials developed under the auspice of RACS or potential conflicts relating to the development and use of educational material (for those Councillors and Fellows employed by universities).

- **Outside commitments:** Participating in social or political activities is not restricted as long as you participate as an individual and not as a representative of RACS.

- **Property transactions:** Directly or indirectly leasing, renting, trading, or selling real or personal property to RACS.

- **Use of RACS property for personal advantage:** Using or taking RACS resources, including facilities, equipment, personnel, and supplies, for private use or other unauthorised non-RACS activities.

- **Recording or reporting false information:** Misrepresenting, withholding, or falsifying relevant information required to be reported to external parties, or used internally for decision-making purposes, in order to derive personal benefits.

- **Gifts:** Personally accepting anything of value, including without limitation, payments, gifts, or loans from organisations or individuals that have dealings with RACS or that...
have applied for or have received grants from RACS during the preceding three years.

It is usually not considered a conflict if the matter under consideration involves:

- Matters which will need to be approved by the Fellows – for example Constitution changes;
- Membership of another professional organisation or institution where there is no actual, potential or perceived benefit which may impact on the person’s professional obligations;
- Collaboration with another organisation or institution approved by the Council; or
- A situation described under section 191(2) of the Corporations Act 2001 (Cth), for example a Councillor’s benefit which is common to all Fellows (eg. Fellowship/membership)