

Policy: Conflict of Interest

Introduction

CCEA board, committee and working group members and employees undertake their roles for the benefit of the public. Therefore, representatives are expected to act in the public interest. It is an expectation of CCEA that representatives have an obligation to ensure that their powers and influence are used ethically.

CCEA business may require representatives to make decisions or implement policies in circumstances where their personal values and beliefs, or their individual interests, may be in conflict with the public interest. Or it may be necessary to determine or recommend a course of action in a matter involving conflicts of interests. Given these expectations and responsibilities, concern will be likely to arise where representatives become involved in conflicts between their personal interests and their role with CCEA. It is therefore essential that representatives have a clear policy in relation to disclosure of interests. For Directors this is described in Rule 49 of the CCEA Constitution, which reads as follows:

49. Directors' interests

49.1 The Council may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.

49.2 Subject to rule 48, a Director or a body or entity in which a Director has a direct or indirect interest may:

(a) enter into any agreement or arrangement with the Council;

(b) hold any office or place of profit other than as auditor in the Council; and

(c) act in a professional capacity other than as auditor for the Council,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Council or from holding an office or place of profit in or acting in a professional capacity with the Council.

49.3 A Director may be or become a director or other officer of, or otherwise interested in, any Related Body Corporate promoted by the Council or in which the Council may be interested as a vendor, shareholder or otherwise and is not accountable to the Council for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

49.4 Any interest of a Director shall be dealt with in accordance with the relevant legislation and internal policy documents, being:

(a) any Conflict of Interest Policy (if any);

(b) the Corporations Act; or

(c) the ACNC Regulation,

which shall include disclosing an interest and having the Secretary (or in absence of the Secretary, another Director) record all declarations in the minutes of the relevant meeting.

49.5 Subject to rules 49.4 and 49.6, a Director who has an interest in a contract or arrangement made by the Council and has disclosed this interest to the Board shall:

(a) be present while the matter is being considered at a meeting;

(b) not vote on the matter;

(c) still be counted in determining whether or not a quorum is present at any meeting of the Directors considering that contract or arrangement or proposed contract or arrangement;

(d) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

(e) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

49.6 Notwithstanding rule 49.5, the Board may pass a resolution to allow a Director who has an interest in a contract or arrangement made by the Council to:

(a) vote on the matter; and

(b) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement.

49.7 A Director's failure to make disclosure under this rule 49 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

49.8 Subject to rule 49.9, a general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Council and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest.

49.9 Notice under rule 49.8 shall only be sufficient provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

Conflict of interest definitions

There are many possible reasons for conflicts of interest. In general, only an actual conflict of interest should prevent a representative from participating in a decision-making process. However, all potential conflicts of interest must be identified, and appropriate actions taken by the Council to ensure that representatives are protected from allegations of conflict of interest adversely affecting the public interest that may later arise.

Actual conflict of interest:

An actual conflict of interest exists when a reasonable bystander, in possession of the relevant facts, would conclude that the representative's private interests are likely to interfere with the proper performance of their Council duties.

Apparent conflict of interest:

An apparent conflict of interest exists when it appears that a representative's private interests have the potential to interfere with the proper performance of their Council duties.

Direct pecuniary conflict of interest:

A direct pecuniary conflict of interest exists wherever there is potential for a representative to gain financially from the results of a decision-making process. This includes circumstances where the accreditation of chiropractic programs is being discussed.

Indirect pecuniary conflict of interest:

An indirect pecuniary conflict of interest arises from the representative's employment, professional interests or from their personal relationships. In such cases, the conflict of interest would exist if the employer, professional body or the related person would gain financially from the results of a decision-making process.

Non-pecuniary conflict of interest:

A non-pecuniary conflict of interest arises from the representative's employment, professional interests or from their personal relationships. In such cases the conflict of interest would exist if the employer, professional body or the related person would be affected by the results of a decision-making process.

Who decides whether an actual conflict of interest applies?

A potential conflict of interest can be identified either by the representative involved or by other representatives participating in a decision-making process. The decision as to whether the representative has an actual conflict of interest will be determined by the Board of Directors (or committee) as a whole, in accordance with the procedure in support of conflict of interest guidelines below.

Procedure in support of conflict of interest guidelines

Dealing with possible conflicts of interest, bias or professional misconduct is not simple. For example, the most competent persons in a field are often also persons holding a variety of positions and some of these positions may be easily construed as a possible conflict of interest – while in reality that position may bring much needed insights and expertise. For these reasons it is not wise to adopt a set of rigid standards and procedures to be followed at all times, but to address each potential conflict of interest within its context. Conflicts of interest should be openly and effectively managed.

It is the responsibility of the member to declare this conflict of interest as soon as possible.

For meetings, the following will appear as a separate item at the commencement of the agenda paper: "Conflicts of interest: Declarations of interest with the agenda. Declare & note." Where a member declares a conflict of interest at a meeting the declaration must provide details of the nature and extent of the interest, and how the interest relates to the affairs.

In considering potential conflicts of interest, it is important that members are able to self-identify conflicts. However, a member might have identified a conflict that another member is unaware of. In this circumstance, it is appropriate for a member to query the potential for a conflict of interest of another member.

If a potential conflict of interest is identified, the board or committee will determine if the conflict of interest is an actual conflict of interest and select an appropriate action to be followed (with reference to Rule 49 of the CCEA Constitution). Appropriate actions may include the representative:

- abstaining from voting on the matter, or
- physically removing himself/herself from the meeting during deliberation and voting on the matter.

Recording conflict of interest considerations

It is vital that all considerations and decisions reached by the Board of Directors (or committee) regarding potential or actual conflict of interest determinations be transparent. Minutes must record the:

- identification of all potential conflicts of interest,
- deliberations of members regarding conflicts of interest, and
- actions taken to prevent any actual conflicts of interest from adversely influencing the public interest.

Maintenance of the Conflict of Interest Register

The Executive Officer will maintain a Conflict of Interest Register for all Directors, committee members and employees. It is the responsibility of the Directors or committee members to ensure that changes in activities, which may constitute a conflict of interest, are provided to the Executive Officer for inclusion in the register. Directors may request to see the register at any time.

CCEA Incorporated

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CCEA Limited

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