

Policy Statement and Objective

The Health Care Complaints Commission (**Commission**) is committed to protecting the confidentiality and privacy of personal information which the Commission collects, stores and administers.

Employees are expected to perform duties in a fair and unbiased way and not to make decisions which are affected by self-interest or personal gain. This involves avoiding actual or perceived conflicts of interest.

This policy outlines the Commission's approach to assessing and managing conflicts of interest, as well as defining the collection, management and storage of information and protecting the Commission against improper or inappropriate use.

Summary

Item	Topic	Key points
1	Objectives	Overview on the objectives of the policy.
2	Scope	Outlines to whom the policy applies.
3	Definitions	Defines fundamental concepts in relation to privacy, confidentiality and conflicts of interest.
4	Responsibilities	Outlines the specific responsibilities for the executive, directors, managers, employees, People & Culture (P&C), and the Director, Corporate Operations and CFO relating to this policy.
5	Privacy and Confidentiality – The Legislative Framework	Overview of confidentiality requirements under relevant legislation.
6	Privacy and Confidentiality	Overview of the collection, use and disclosure of information.
7	Conflicts of Interest	Highlights some of the possible risk areas for conflicts of interest.
8	Risk Management Strategies	Strategies to prevent and manage conflicts of interests.
9	Disciplinary Action	Outlines the possible disciplinary action.
10	Relevant Legislation	Highlights the applicable legislation relating to the policy.
11	Further Information	Pathways for additional information relating to privacy, confidentiality and conflict of interest.
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1. Objectives

- Employees and the public have the right to maintain their privacy and confidentiality (where appropriate) and to have their information administered in ways which they would reasonably expect.

- Confirm the purposes for collecting personal information i.e. for business purposes and may only be accessed for the purposes for which it was collected.
- All employees are to comply with the relevant legislation regarding the management and disclosure of private or confidential information.

2. Scope

This policy applies to all Commission employees, including ongoing, temporary, term or casual employees. It also includes consultants and contractors who are representing or providing a service to the Commission.

3. Definitions

Conflict of Interest

A conflict exists where an employee could be influenced or perceived to be influenced, by any interest that is incompatible with objectivity when carrying out their official duties.

Personal Information

Personal information is defined as information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Sensitive Information

Is information or opinion about an individual's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preferences or practices, criminal record or health, genetic or biometric templates.

4. Responsibilities

Commissioner and Executive

The Commissioner and Executive are responsible for:

- Ensuring conflicts of interest are managed effectively, including directors notifying the Commissioner of necessary conflicts of interests within their division.
- Information on confidentiality, privacy and conflict of interest is communicated with all employees.
- Reviewing and determining appropriate action or approval in relation to conflicts of interests in line with the Delegations manual.
- The Commissioner and executive, including those that are acting are responsible for making a written Declaration of Private Interests at least annually.

Director, Corporate Operations and CFO

The Director, Corporate Operations and CFO is responsible for:

- Undertaking the internal review procedure for any allegations that the Commission has contravened and applicable IPP or privacy code of practice.
- Receiving and processing the Declaration of Private Interest form.
- Maintaining the Declaration of Private Interest register.

Managers and those with Supervisory Responsibilities

All those with managerial or supervisory responsibilities must:

- Ensure the policy is appropriately communicated and implemented within their teams.
- Provide advice and assist employees with appropriate ways to manage any potential or actual conflicts of interest.
- Identify possible risks within their areas of responsibility.
- Ensure the implementation of an adequate system of internal control and monitor compliance.

Employees

All employees are responsible for:

- Complying with the relevant legislation regarding the management and disclosure of private or confidential information.
- Understanding and complying with this policy and communicating any suspected breach with their manager or director.
- Understanding the applicable legislation, policies and procedures relevant to their Division.
- Identifying and assessing conflicts of interest relating to their employment.
- Where possible, avoiding conflicts of interest, managing those conflicts of interest that cannot be avoided, reporting any conflict of interest to their manager or director and cooperating in the management and resolution of conflicts of interest.
- Putting the public interest before their private interest.
- Review and acknowledge this policy annually.
- Sign and acknowledge the confidentiality undertaking upon commencement at the Commission and provide to People & Culture.

People & Culture

People & Culture are responsible for:

- Regularly reviewing the policy to determine its relevance, currency and accuracy.
- Ensuring all employees, contractors and consultants have been provided with appropriate and sufficient training to understand their role and responsibilities (under this policy) and the behaviours, values and conduct expected at the Commission.
- Providing support and guidance to employees in relation to matters regarding confidentiality, privacy and conflict of interest.
- Receiving and processing the Conflict of Interest form.
- Receiving and processing the Confidentiality Undertaking form.

5. Privacy and Confidentiality - The Legislative Framework

The Commission observes and respects the privacy of parties to complaints and others and acts strictly within the framework of relevant legislation. Compliance is required under the legislation, this policy and the Commission's Code of Conduct.

Health Care Complaints Act 1993

Under section 99A of the Health Care Complaints Act 1993, it is an offence for any person to disclose

information obtained in exercising the Commission's investigative functions unless the disclosure is made:

- With the consent of the person to whom the information relates; or
- In connection with the execution and administration of the Health Care Complaints Act; or
- For the purposes of any legal proceedings arising out of the Health Care Complaints Act or any report of such proceedings; or
- With other lawful excuse.

Section 99B of the Health Care Complaints Act 1993 explains that the Commission may disclose information to courts, police, authorities regulating health practitioners and others where the public interest in disclosing the information outweighs the public interest in protecting the privacy of any person to whom the information relates.

Privacy and Personal Information Protection (PIIP) Act 1998

The PIIP Act imposes obligations on public sector agencies in their handling of personal information. These obligations are set out in 12 Information Protection Principles (IPP) (section 8-19 of the Act) that govern the collection, use, disclosure, security and retentions of personal information by agencies. The Act also provides individuals with a right of access to, and correction of, personal information held about them by agencies. However, as the Commission is an investigative agency, under section 3 of the Act, the Commission is subject to specified exemptions.

Ombudsman Act 1974

Pursuant to section 42 and 43 of the Ombudsman Act, the Commission is a signatory to a complaint referral arrangement and information sharing agreement with the Ombudsman, Anti-Discrimination Board, Information and Privacy Commission and the Office of the Legal Services Commissioner. These arrangements authorise the referral of complaints and exchanges of information between agencies where appropriate.

Health Records and Information Privacy Act 2002 (HRIPA)

The Act (section 11) allows health service providers to disclose private health information to the Commission if they reasonably believe the disclosure is necessary for the Commission to discharge its functions.

Government Information (Public Access) Act (GIPA)

Some of the Commission's information may be released to external parties who make an application under the Government Information (Public Access) Act. Any such applications must be forwarded immediately to the Executive Officer.

6. Confidentiality and Privacy

Confidentiality Undertaking

The Commission's Confidentiality Undertaking is in place to acknowledge that employees or contractors will, from time to time, have access to confidential information. This information may include personal, medical, financial and resource data on all aspects relating to the NSW public and the planning, control, delivery and administration of the health services in NSW. All Commission employees are required to read and acknowledge their understanding of the Confidentiality Undertaking (appendix B).

Collection, Use and Disclosure of Information

The Commission is exempt from the obligation to collect information directly from an individual where:

- This might detrimentally affect (or prevent the proper exercise of) the Commission's complaint handling or investigative functions.
- Non-compliance is lawfully authorised, required or permitted, necessarily implied or reasonably contemplated under any law.

The Commission is exempt from complying with the requirement to use information only for the purpose for which it was collected if:

- It is reasonably necessary to enable the Commission to exercise its complaints handling or investigative functions, or
- The use is lawfully authorised or otherwise permitted, necessarily implied or reasonably contemplated under any law.

The Commission may not disclose personal information to a person (other than the person to whom the information relates) or another body unless:

- The information is disclosed to the Independent Commission Against Corruption, Information & Privacy Commission, NSW Ombudsman or Office of the Legal Services Commissioner.
- Lawfully authorised or required to do so, or non-compliance is otherwise permitted, necessarily implied or reasonably contemplated under any law.
- The information is correspondence more properly dealt with by another public sector agency.
- The disclosure is reasonably necessary for the exercise of our investigative or complaints handling functions.

The Commission is exempt from restrictions regarding disclosure of personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities.

The Commission also has a number of ICT policies relating to the management of sensitive information and confidentiality on the [HCCC intranet](#).

7. Conflicts of Interest

A conflict exists where an employee could be influenced or perceived to be influenced, by any interest that is incompatible with objectivity when carrying out their official duties. A conflict of interest may include:

- A potential conflict of interest – arises where an employee has interests that could conflict with their official duties in the future
- A perceived conflict of interest – exists where a reasonable and informed person perceives that an employee's interest could improperly influence the performance of their duties, whether or not this is the case.
- An actual conflict of interest – involves a direct conflict between an employee's current duties and any interest that is incompatible with objectivity.
- Threat to professional independence – independent of mind and appearance.

Factors that may put an employee at risk of a conflict of interest include:

- Financial and economic interests
- A family or private business
- Outside employment commitment
- Affiliations with for-profit and non-profit organisations, sporting bodies, clubs and associations.
- Affiliations with political, trade union or professional organisations, and other personal interests

- Obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity
- Obligations because of relationships to people living in the same household
- Enmity towards, or competition with, another individual or group
- Significant family or other relationships with clients, contractors or other employees working in the same (or related) organisation.
- Highly specialist skills in an area where demand for the skills frequently exceeds supply
- Future employment prospects or plans (i.e. post separation employment)
- Connections with parties to particular complaints

A conflict of interest can arise from several situations, this may include (not limited to):

Personal Interests

- Financial interests – where there is the potential to gain financially, whether direct or indirect.
- Non-financial interests – where there is potential to gain from a decision or action, or to be biased. For example, a personal belief or involvement towards a cause, a person could be conflicted between their role at the Commission and personal views.
- Personal relationships – can involve interests of an individual’s immediate or close family members, friends, business partners or associates where these interests are known by the individual. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.
- Political activities – political expression, association or activity may conflict with the primary duty as an employee.

Outside Employment or other activities

Outside employment refers to a situation where an employee engages in paid or unpaid work for another organisation (private or public). It includes self-employment, operating a private business and providing paid consultancy services as well as partnerships and directorships of companies. It also includes any steps that an employee might take to establish a business or attract customers to a business.

Employees must not engage in outside employment without permission, and should seek advice from their manager or director prior to engaging in any outside employment. Employees must not make any commitment, nor engage in outside employment, until formal approval has been given by the delegated officer.

Voluntary activities, including those of a sporting, charitable or community, are not generally considered to be outside employment. However, these activities must be disclosed if they constitute a conflict of interest.

In certain cases, outside employment may be approved where the conflict of interest can be resolved or adequately managed. See Appendix A for more information.

Inducements or Intimidation

Inducements are an object, situation or action that is used to improperly influence an employee’s behaviour and actions such as the offer of a gift, benefit or hospitality. Inducements can range from minor acts of hospitality between business colleagues to acts that result in non-compliance with laws and regulations. Such influence can be directed either to the employee or through someone the employee has personal relationship with. It can create a sense of obligation that may compromise impartial and honest

decision making and may be perceived as a bribe. Such inducements are not to be accepted. Refer to the HCCC Gifts and Benefits Policy for further information.

Intimidation occurs when an employee may be deterred from acting objectively because of pressure or threats being made. If an employee feels intimidated, they must promptly report it to their manager or director.

8. Risk Management Strategies

It is important that the following strategies are implemented to prevent and manage any conflict of interest with the Commission's work:

- Any identified conflicts of interest should be recorded on the 'Conflict of Interest Form' and risk management strategy recorded, so the Commission can demonstrate how each conflict of interest was managed.
- To ensure that processes are in place to ensure that the conflict of interest form is updated at regular intervals.
- To ensure that employees complete a conflict of interest form (such as outside employment, business dealings) on commencement, annually or at another appropriate time.
- To ensure that information on processes for managing conflicts of interest in documents aimed at external stakeholders (such as a statement of business ethics, client service letters).
- If employees are unsure if a conflict of interest exists, they should consult with their manager or director.

9. Disciplinary Action

A breach of this policy may lead to disciplinary action, up to and including termination. The nature of the breach will be considered in conjunction with the Public Sector Commission Code of Ethics and Conduct for NSW government sector employees, the Commissions Code of Conduct and relevant Commission policies.

There is also possible legal action in accordance with state and federal laws.

10. Relevant Legislation

- [Government Sector Employment Act 2013](#)
- [Public Interest Disclosures Act 1994](#)
- [Government Information \(Public Access\) Act 2009 \(GIPA\)](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [Health Care Complaints Act 1993](#)
- [Ombudsman Act 1974](#)
- [Health Records and Information Privacy Act 2002](#)
- [Privacy Act 1988 \(Cth\)](#)
- [Public Service Commission – The Code of Ethics and Conduct](#)
- [Public Service Commission – The Ethical Framework](#)
- [Public Service Commission – Behaving Ethically Guide](#)

11. Further Information

- HCCC – Fraud and Corruption Prevention Policy
- HCCC – Code of Conduct
- HCCC – ICT Policy
- HCCC – ICT Security Policy

Procedure for Managing Conflicts of Interest

Employees are to formally register details of the possible conflict of interest (including outside Employment) and report it to their manager. The employee must complete a Conflict of Interest form (see appendix C) and the following information should be provided:

- The names of the parties involved
- An outline of the nature of the conflict
- An outline of the proposed solution to manage or resolve the conflict

For outside employment, the following must be adhered to:

- Conflicts of Interests must be provided to People & Culture and records are maintained of all outside employment including the projected hours of work in employees' personnel files.
- Review all outside employment approvals every 12 months.
- Remind employees if required of their statutory obligations in relation to outside employment e.g. annually with performance reviews.

For Political, Community and Personal Activity conflicts, it is the employees responsibility to ensure their manager is made aware of any association that may affect, or be perceived to affect the employees day to day work or work at the Commission.

In the event where an employee has a connection with parties to particular complaints, the matter should generally be dealt with at the director level, with the director determining the appropriate solution for managing the conflict of interest.

For other possible conflicts, the manager is to liaise with People & Culture before making a recommendation to the relevant director or executive director in regards to the appropriateness of the proposed situation to manage the conflict. The director will make a determination on the appropriateness of the proposed solution and will either agree to the solution or provide an alternative solution.

Declaration of Private Interests

In addition, the Public Sector Commission Code of Ethics and Conduct for NSW government sector employees requires a senior executive (including an acting senior executive) to make a written declaration of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence decisions made or advice given by the senior executive. See Appendix D for the Declaration of Private Interests form.

Where a senior executive has no such private interests to declare, they must declare a "nil return". New declarations must be made following any relevant changes in the senior executive's private interests or assignment to a new role or responsibility.

These declarations must be done at least annually and records are maintained in the Declaration of Private Interest register and managed by the Director, Corporate Operations and CFO. Whilst the Declaration of Private Interests is to be used for those in senior executive roles, it is also used as a record for any other conflicts of interest within the Commission.

Information relating to conflicts of interest must be managed so that confidentiality is maintained at all times. All documents must be secured within the relevant individual's personnel file. Anyone that an

individual reports a conflict of interest to, or seeks advice from, in an official capacity must treat the information as strictly confidential.

Internal Review Procedure

Under the Privacy and Personal Information Protection Act 1998 and the *Health Records Information Privacy Act 2002*, a person (applicant) is entitled to ask the Commission to review allegations that the Commission has contravened an applicable IPP or privacy code of practice. Applications for review must be in writing. The Commission will appoint an officer to conduct the review or deal with it personally. The officer is typically the Director, Corporate Operations and CFO.

Upon receipt of a complaint, the officer responsible for managing the review process will acknowledge receipt of the complaint within 5 working days and will notify the Privacy Commissioner (as required by the PIPP Act).

The officer undertaking the review is to seek details from the applicant (where necessary); obtain complaint/ investigation files (if appropriate), policies and procedures; interview relevant Commission employees; identify applicable privacy legislation, policies, guidelines and principles; and take into consideration any information provided by the applicant and the Privacy Commissioner. The officer also determines the outcome of the review within statutory timeframes, documenting the investigation and reasons for the findings.

Within 14 days of finalising the review, the officer is to notify the applicant, including the review's findings, any action to be taken (and reasons) and that the applicant is entitled to seek a review of the findings and proposed action by the Administrative Decisions Tribunal. They are also to advise the Privacy Commissioner of the findings of the review and any proposed action to be taken.

Complaints about privacy may also be made to the Privacy Commissioner. The Privacy Commissioner may deal with the complaint by referring it to the Commission for action or a response; conducting an investigation; or seeking a resolution through conciliation.

Confidentiality Undertaking



CONFIDENTIALITY UNDERTAKING

I, understand that whilst I am employed by, or contracted to, the Health Care Complaints Commission, I will, from time to time, have access to confidential information. This information may include personal, medical, financial and resource data on all aspects relating to the planning, control, delivery and administration of health services in this state.

I undertake to my best endeavour to preserve the confidentiality of this material, and acknowledge my statutory duty under Section 99a of the *Health Care Complaints Act 1993* (see below), in relation to the disclosure of information. In order to fulfil this undertaking, I will not divulge any confidential information obtained in the course of my employment, except as authorised under Section 99a.

I also understand that there are obligations under the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* (HRIP Act) governing the protection of personal and health information. In this regard, I confirm that upon my commencement with the Commission I will read, and abide by, the [Commission's Privacy Management Plan](#) which sets out the key requirements of this legislation.

I have also been made aware of the Commission's [Code of Conduct](#) and I undertake to follow any specific security procedures, stipulated by the Commissioner or my supervisor in relation to any confidential information which I handle, or process, in the course of my duties.

I have read and understand the Commission's [Management of Sensitive Information Policy](#).

I further undertake to inform my supervisor immediately if I become aware of any breach of confidentiality, or security, relating to the information which I handle, or process, in the course of my duties.

Signed: in the presence of

Witness Name:

Witness Signature:

Witness Position:

Date:

HEALTH CARE COMPLAINTS ACT 1993

Section 99a

Offence: improper disclosure of information

99A Offence: improper disclosure of information

- (1) If a person discloses information obtained in exercising a function under this Act and the disclosure is not made:
- (a) with the consent of the person to whom the information relates, or
 - (b) in connection with the execution and administration of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) with other lawful excuse,
- the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) A person may not be compelled in any legal proceedings to give evidence about, or produce documents containing, any information obtained in exercising a function under this Act.

- (3) Subsection (2) does not apply to the following proceedings:

- (a) proceedings under the [Royal Commissions Act 1923](#),
- (b) proceedings before the Independent Commission Against Corruption,
- (c) proceedings under Part 3 of the [Special Commissions of Inquiry Act 1983](#),
- (d) an inquiry under the [Ombudsman Act 1974](#).

Conflict of Interest Form

Conflict of Interest Disclosure Form		 HEALTH CARE COMPLAINTS COMMISSION
Overview and Instructions:		
<p>The purpose of this form is to formally record employee's conflicts of interest, which includes other employment, as well as any steps taken to manage or resolve such conflicts. Before completing this form, you should read the Commission's Code of Conduct and Conflict of Interest & Privacy Policy. The employee must make specific reference to the names of the parties involved, the nature of the conflict and the proposed solution to manage or resolve the conflict.</p> <p>These disclosure forms must be reviewed at least annually and records maintained in personnel files.</p> <p>All declarations are to be emailed to people@hccc.nsw.gov.au.</p>		
PART A: EMPLOYEE TO COMPLETE		
Name:		
Position title:		
Division:		
Manager:		
Details of Conflict		
The conflict has been identified as:	<i>For definitions see Conflicts, Privacy & Conflict of Interest Policy</i>	
<input type="checkbox"/> A potential conflict of interest	<input type="checkbox"/> An actual conflict of interest	
<input type="checkbox"/> A perceived conflict of interest	<input type="checkbox"/> Threat to professional independence	
Timeframe the conflict is expected to last:		
<input type="checkbox"/> 0-3 months	<input type="checkbox"/> 3-6 months	<input type="checkbox"/> 6-12 months <input type="checkbox"/> 1+ years
Describe the conflict (e.g. parties involved, nature, role / duties, occurrence)		
Describe the proposed solution to manage or resolve the conflict		
Declaration		
I declare that the above details are correct to the best of my knowledge and am aware of my responsibilities to take reasonable steps to avoid any real or apparent conflict of interest in connect to my employment at the HCCC and agree to advise my manager of any changes in relation to this conflict. <input type="checkbox"/>		
I acknowledge, and agree to comply with, any approach identified in this form for removing or managing a conflict. <input type="checkbox"/>		
Employee's Signature		Date:
PART B: MANAGER TO COMPLETE		
Recommendation		
Describe the action proposed to mitigate the conflict which has been disclosed and the reasons for this decision.		
I confirm that I approve the above declared conflict of interest and endorse the proposed resolution / management plan. <input type="checkbox"/>		
I decline the approval for the above declared conflict of interest. Comments for decline: <input type="checkbox"/>		
Manager's Signature		Date:
PART C: DIRECTOR TO COMPLETE		
Recommendation / Declaration		
I confirm that I agree with the manager recommendation in Part B. Further comments or recommendations: <input type="checkbox"/>		
Director's Signature		Date:

Declaration of Private Interest Form Conflict of Interest Form

Declaration of Private Interest Form		
Overview and Instructions:		
<p>The Code of Ethics and Conduct for NSW government sector employees requires a senior executive (including an acting senior executive) to make a written declaration of private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence decisions made or advice given by the senior executive.</p> <p>These declarations must be completed at least annually and records maintained in the Declaration of Private Interest register.</p> <p>All declarations are to be emailed to people@hccc.nsw.gov.au.</p>		
PART A: EMPLOYEE TO COMPLETE		
Name:		
Position title:		
Division:		
Manager:		
Declaration		
<p>I have read and understood the requirements under the Code of Ethics and Conduct for the NSW government sector employees (the Code) to declare any private financial, business, personal or other interests or relationships that have the potential to influence, or could be perceived to influence, decisions made or advice given by me. <input type="checkbox"/></p>		
<p>I will take prompt action to manage any actual and/or reasonably perceived conflicts of interests, as required by the Code. <input type="checkbox"/></p>		
Tick the option that applies:		
Option A		
<p>Annex A lists my private interests for the purpose of this declaration. In preparing this list I have had regard to:</p> <ul style="list-style-type: none"> • My private financial, business, personal and other interests or relationships <input type="checkbox"/> • The functions and responsibilities of the Health Care Complaints Commission • My role and responsibilities in the Health Care Complaints Commission 		
Option B		
<p>I have no such private interests to declare. <input type="checkbox"/></p>		
Employee's Signature		Date:
ANNEX A: LIST OF INTERESTS		
<p>List any private financial, business, personal or other interests or relationships which have the potential to influence, or could be perceived to influence, decisions made or advice given by you.</p> <p>The types of interests and relationships that may need to be disclosed include real estate investments or holdings; shareholdings; trusts or nominee companies; company directorships or partnerships; other significant sources of income; significant liabilities; gifts; and private business, employment, voluntary, social, family or personal relationships.</p>		
List of Interests		
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