



Conflict of interest (“bias”) policies

What is a conflict of interest / bias?

‘Conflict of interest’ and ‘bias’ are often interchangeable terms.

Generally, a conflict of interest occurs where a person:

- has more than one interest, and the person can not deal with one interest without involving the other interest , or
- owes duties to different parties, and the person can not act in favour of one party without detrimentally affecting the duty owed to other party.

A conflict of interest might be an actual conflict, or an apparent conflict if a reasonable person objectively believes that a conflict might arise.

Bias occurs where a person has an actual interest in one result or favours one party over another (actual bias), or objectively might appear to favour one result or party over another (apparent bias).

Given the closeness of these two concepts, this policy simply refers to ‘conflicts of interest’ for both conflicts and bias.

How do conflicts arise?

A conflict of interest might arise through, or by reason of various types of relationship, friendship, enmity or commercial / financial interest. These categories are not limited and often overlap. Examples include:

Financial interests

A person might gain financially by undertaking a certain course of action. For example:

- A College Councillor or employee contracts on behalf of the College with themselves or with an entity which they have a financial interest in
- An examiner is responsible for examining their own employee, where if the employee passes it will allow their business to charge more
- In some circumstances an examiner overseeing a business rival
- Where a person has been given gifts by another in the past

Family interests and relationships

Where a member of the person's immediate family benefits from a person's actions. For example:

- A College Councillor or employee contracts on behalf of the College with a family member or entity which a family member has an interest in
- A person dealing with a family member

Friendships

Where an examiner or Councillor has a friendship with a Candidate that goes beyond mere occasional acquaintances.

Where a person feels an enmity towards another.

College Relationships

A person who has supervised a Candidate should not also be their examiner as an objective onlooker might reasonably believe they have a vested interest in seeing them pass. The supervisor might also subconsciously skew the examination either:

- in favour of the areas they know the Candidate is strong in, creating bias, or
- into areas they know the Candidate is weaker in to 'test them out', creating bias by making the exam too unbalanced and difficult.

Legal relationships

Where one person has been involved in some form of legal proceedings against another, either directly or (at times) as a witness.

What isn't a conflict?

It is not always readily clear whether a conflict occurs. The mere fact that someone voices an expression of the apprehension of a conflict of interest does not in itself establish that it is reasonably held. This is a matter which must be determined objectively by others. The issue is not whether a decision maker has some link with the subject matter of their decision but whether the result of their decision would realistically affect the person's interest.

While it may be clear that dealing with a person's immediate family (spouse, children, siblings, parents) would give rise to either an actual or an apparent conflict, there is less clarity the greater the remoteness of the relationship e.g. will dealing with a second-cousin give rise to an apparent conflict? A third-cousin?

A person may have in the past received gifts from someone of inconsequential value, or so long ago as to be too remote to give rise to a conflict now.

In a relatively small profession, it is common for 'everyone to know everyone'. Knowing someone as a casual professional acquaintance – such as meeting them periodically at conferences, having worked together in the past, does not in itself give rise to a conflict.

The fact that the same person has previously assessed an Activity Log Submission or a Credentials document does not create a conflict of interest with their acting as an examiner. The same person can be involved in multiple aspects of the assessment process, even if they have previously failed the Candidate.

As the numbers of Members, and Fellows especially, are small across Australia, there will always be some element of ‘business rivalry’, but to take a too strict approach would render it impossible in some cases for one person to act as a supervisor or examiner of another.

A person’s evidence in legal proceedings may be highly detrimental to another, giving rise to grounds for a conflict, or two practitioners may be used to provide expert evidence on opposing sides without creating enmity between them.

Automatic disqualifications

A person with an actual financial conflict of interest must, as soon as practical, disclose their conflict, (if applicable) disqualify themselves from voting at any meeting authorising any relevant financial transaction, and not undertake any activity resulting in a financial benefit involving the conflict of interest.

Members or Fellows who are acting as examiners can not sit for examination in the same year.

A person can not examine:

- their employee
- an immediate family member, or
- any person they report to.

A person should not supervise:

- an immediate family member, or
- any person they report to.

A College official who is normally responsible for deciding whether another person has a conflict of interest can not do so for:

- their employee
- an immediate family member, or
- any person they report to.

Process for resolving conflicts

For all other conflicts a person can not be the judge of their own conflict claim. Any person who believes they have a conflict of interest must **both report it** (see below for details) **and abstain from taking any further action that may create the conflict** until the matter is resolved.

In general, where a full and complete disclosure of a conflict (whether actual or apparent) is made, a party affected and College can agree that the person be allowed to continue despite the conflict.

The conflict can only be waived where all relevant facts which might affect the decision to grant a waiver are disclosed. A partial disclosure might:

- constitute grounds for an affected person to appeal against the waiver, or
- constitute grounds for the College to rescind the waiver and take other disciplinary or legal action.

If a person has previously made a full disclosure and has been granted a waiver, and then subsequently becomes aware of new information regarding their conflict, they must immediately report this as set out below.

All Councillors and Board of Examiners

Any actual or potential conflicts of interest should be disclosed as soon as practical to the Council or Board. If a person believes they can nevertheless act impartially they may make a submission to the Council / Board, but after doing so must:

- not take part in or listen to the deliberations of other members; and
- not vote on whether they should be disqualified.

The Council / Board must record in its minutes that:

- a declaration of a conflict was made, and
- if a vote was undertaken to resolve an apparent conflict, the result of that vote,

but the Council / Board must keep confidential the details of the discussions held by the remaining Council or Board members.

In the event of a deadlock the result is deemed to be that the person is disqualified because of a conflict of interest.

Where a Councillor or Examination Board member wishes to sit an exam, they should inform the Chair of Board of Examiners, the College President and the College Executive Officer. These three officials will consult on whether there is:

- a sufficient conflict to warrant further action, (and if not record the details why), and if so
- prepare an appropriate plan to manage any conflicts; which must be ratified by the Council before being implemented. Once ratified, the Councillor/Board member must sign a written agreement setting out the plan as approved by the Council.

If any further conflicts arise, the conflict must be reported as soon as possible to the Chief Examiner, the College President and the College Executive Officer, who will again follow the procedures set out above.

Examiners

Note: In certain circumstances the Chief Examiner may appoint a member of a CEC to act as an examiner, approve an Activity Log Submission and approve Credentials (see section '3.1 Chapter Examination Committee' *Examiner Handbook*.) Any conflicts the CEC member may have with any Candidate must be notified immediately to the Chief Examiner. These conflicts will be dealt with under section 3.1 *Examiner Handbook*. The provisions below, and the appeal provisions in part 18.6, only apply to conflicts not dealt with under section 3.1 *Examiner Handbook*.

A potential examiner should report any conflicts to the Chief Examiner, the College President and the College Examinations Officer. The Chief Examiner and the President must confer to determine whether there is:

- a sufficient conflict to warrant further action, (and if not record the details why), and if so
- determine whether the potential examiner should not be used or whether a waiver should be sought.

When determining whether a waiver should be sought the Candidate (or any other person affected by any conflict) is to be given all relevant details of the conflict and asked whether they are prepared to waive the conflict. However if the potential examiner indicates that the conflict details contain personal or other confidential information, the Chief Examiner and the President must decide not to use the examiner without seeking a waiver.

The prior consent of the Council is not required to proceed as specified above, however all relevant details of the conflict and action taken are to be provided to the Council at its next scheduled meeting. The Council may amend or cancel any decision taken to date and determine the issues itself.

Members and College Employees

Any Member or College employee with a conflict must report it as soon as practical to the College Executive Officer, who will consult with the College President on whether there is:

- a sufficient conflict to warrant further action, (and if not record the details why), and if so
- how to manage or avoid the conflict including whether a waiver should be sought from the Council.

However if the Member or employee indicates that the conflict details contain personal or other confidential information, the Executive Officer and the President must decide to put in place a plan to avoid the conflict without seeking a waiver. The plan is to be signed by the employee, the College President and the Executive Officer.

The prior consent of the Council is not required for the plan to be signed off, however the plan must be presented to at the next scheduled Council meeting and the Council may amend or cancel the plan and determine the issues itself.

Appeals

Candidates objecting to conflicts

As stated above in the note under 'Examiners', Candidates should note that where a conflict was notified to them under section 3.1 *Examiner Handbook*, the process set out under 3.1 takes precedence and the following appeal process does not apply.

A Candidate otherwise affected by a conflict of interest, including where a Candidate believes there is a conflict involving another Candidate, may appeal to the Council:

- within 21 days of knowing or realising that there is a conflict, , and
- where they have previously consented to a waiver of the conflict, or have previously not lodged an appeal within the 21 day timeframe (above), within 14 days of when new information concerning the conflict becomes known to them.

All other appeals

Any other person adversely affected by a conflict may appeal to the College Executive Officer provided they do so as soon as reasonably practical after becoming aware of the conflict. The Executive Officer will consult with the College President as to what course of action should be taken, and record the results in writing. All relevant details of the appeal and action taken are to be provided to the Council at its next scheduled meeting. The Council may amend or cancel any decision taken to date and determine the issues itself.

Power to act where conflict is suspected

Where the President or Chief Examiner suspects that a person may have a conflict of interest that otherwise should be notified to them, but has not been so notified, the President or Chief Examiner may:

- request that the person provide sufficient information to determine whether a conflict exists, and if so
- proceed to deal with the conflict as set out in this policy or in accordance with section 3.1 of the *Examiner Handbook*.