



POLICY P1.1.3

CONFLICTS OF INTEREST

ITEM	DESCRIPTION
Version Number	2.0
SOPs	<ul style="list-style-type: none">> SOP P1.1.3-1 Identifying a Conflict of Interest> SOP P1.1.3-2 Disclosing a Conflict of Interest> SOP P1.1.3-3 Managing a Conflict of Interest
Owner	Executive Director, Membership and Strategic Services
Contact	Director, Professional Standards
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1 Purpose

1.1 The purpose of this Policy is to:

- a. Ensure that all staff members of the NSW Rural Fire Service (NSW RFS) understand their obligations and responsibilities with regard to the proper and effective identification, disclosure and management of conflicts of interests; and
- b. Provide a practical framework of principles and strategies so that conflicts of interest are properly identified and managed in a clear, transparent, accountable and timely way; and
- c. Protect the integrity and reputation of the NSW RFS and its staff members; and
- d. Promote and preserve the obligation of all staff members to act in the public interest.

1.2 This policy applies to:

- a. All staff members of the NSW RFS, including temporary staff members;
- b. Any employee of another government sector agency on secondment to the NSW RFS;
- c. All consultants, contractors and agency employees engaged to perform work for, or on behalf of the NSW RFS; and
- d. Members of committees established by or under the *Rural Fires Act 1997*.

2 Definitions

2.1 For the purpose of this policy the following definitions apply:

- a. **Conflict of Interest:** refers to situations where a conflict arises between the performance of a staff member's NSW RFS responsibilities and duties (i.e. public duty) and their own personal, professional or business interests, or that of individuals or groups with whom they are closely associated.

- b. **Next in Charge:** the supervisor or manager directly in charge of a staff member.
- c. **Private Interests:** anything personal in a staff member's private life that impacts on them. It is only relevant to this policy where there is a connection with the staff member's NSW RFS responsibilities and duties.
- d. **Public Interest:** the interest or common good of the community as a whole. It is not the sum of individual interests or the interest of a particular group, but the collective interest of the entire community. Staff members have a duty to always place the public interest above their own private interests when carrying out their NSW RFS duties and responsibilities.
- e. **Reasonable Person Test:** the 'reasonable person' is a common law concept. The test holds that each person owes a duty to behave or make decisions as a reasonable person would under the same or similar circumstances.

In the context of conflicts of interest, the test or standard is generally applied to their identification and disclosure and again to their management.
- f. **Staff members:** for the purpose of this policy, a staff member includes all people listed in clause 1.2 of this policy.

3 Policy

- 3.1 Staff members must identify and make arrangements to discuss any conflicts of interest that might arise or that are known, with their Next in Charge as soon as reasonably possible so that these can be assessed and appropriately managed. Conflicts of interests that go unrecognised or are poorly managed can undermine public trust and confidence.
- 3.2 Where a member believes their private interests may conflict with their duties, they must complete a Conflict of Interest Declaration form in accordance with SOP P1.1.3 Disclosing a Conflict of Interest.
- 3.3 Staff members must consider their private interests on a regular basis as these can change over time.
- 3.4 A conflict between a staff member's private interests and their public duties is not in itself wrong or unethical and staff members will not be penalised for disclosing a conflict of interest. The requirement of this policy is to identify, declare and manage conflict of interests.
- 3.5 A failure by a staff member to act on a conflict of interest appropriately is a breach of the NSW RFS Code of Conduct and Ethics.
- 3.6 If a staff member is unsure if a conflict of interest exists they should complete a Conflict of Interest Declaration form and discuss the matter with their Next in Charge, or seek advice from the Professional Standards Unit.

Types of Conflicts of Interests

- 3.7 Conflicts of interest can actually exist, be perceived to exist or have the potential to exist.
 - a. **An actual conflict of interest** – is one where there is an existing and direct conflict between the duties and responsibilities of the staff member and the staff member's private interests;
 - b. **A perceived conflict of interest** - is one where a third party might form the view that the private interests of the staff member could improperly influence the performance of their duties, whether or not this is in fact the case; and
 - c. **A potential conflict of interest** – is one where a staff member has private interests that could conflict with their official duties, now or in the future.
- 3.8 A conflict of interest can involve gaining a personal advantage as well as avoiding or minimising personal disadvantage. That is, a conflict of interest may allow a staff member to avoid a loss, expense, or something else that has a negative impact on their personal or private interests.

3.9 Conflicts of interests can be further divided into two types – financial (pecuniary) and non- financial (non-pecuniary):

- a. **Financial / pecuniary interests** involve a financial gain or loss for a staff member due to their personal relationships or activities, whilst undertaking their NSW RFS responsibilities and duties. Money does not necessarily need to change hands for an interest to be financial.

A financial / pecuniary interest must be material - that is to say of a magnitude or value that a reasonable person would consider should be taken into account. For example, a modest shareholding in a large public company that is doing business with the NSW RFS is unlikely to be material.

- b. **Non-financial / non-pecuniary interests** do not have a financial component. It involves a staff member's decision making and judgement being influenced by personal relationships or activities, whilst undertaking their NSW RFS official responsibilities and duties. For example, a staff member being involved in a recruitment process where an applicant is known to them.

Meeting your public interest obligations

3.10 Determining the public interest in any particular situation can be difficult; however, at a practical, day-to-day level, staff members can best fulfil their public duty by:

- a. Carrying out their duties in a fair and unbiased way and in accordance with relevant legislation, NSW RFS service standards and policy;
- b. Complying with Service Standard 1.1.7 NSW RFS Code of Conduct and Ethics;
- c. Avoiding situations where their private interests;
 - i. conflict, or
 - ii. potentially conflict, or
 - iii. might reasonably be seen to conflict,with the impartial discharge of their duties;
- d. Making decisions that are not affected by self-interest, personal values, private opinions or the likelihood of personal gain or loss;
- e. Identifying and disclosing any actual, perceived or potential conflict of interest they may have; and cooperating with their Next in Charge to ensure any conflict is effectively managed where it cannot be avoided.

Management Roles and Responsibilities

3.11 Executive Directors, Directors and Managers must:

- a. Be aware of the risks of conflicts of interests inherent in the duties of staff members for whom they are responsible;
- b. Ensure that the staff members for whom they are responsible are made aware of this policy and the associated standard operating procedures;
- c. Consult with staff members who disclose a conflict of interest and assist the staff member to identify and implement an appropriate strategy to manage the conflict of interest;
- d. Ensure that any conflict of interest made by a staff member is recorded in the Conflicts of Interest Register; and
- e. Maintain the confidentiality of any disclosed interest. However, they may disclose matters relating to a disclosed interest to others;
 - i. in order to seek guidance from their superior officer or line manager as to whether a conflict of interest exists,
 - ii. where that disclosure is necessary or appropriate to properly manage the conflict of interest,
 - iii. to comply with any legal obligation to disclose those matters, or
 - iv. to record the disclosure in the Conflicts of Interest Register.

Review Process

3.12 A staff member who does not agree with the decision of their Next in Charge in managing the conflict of interest may request the relevant Director or Executive Director to review the matter.

Recordkeeping

3.13 Each Directorate must maintain a Conflicts of Interest register for staff members.

3.14 Conflicts of interest relating to procurement and recruitment matters must be included on registers.

3.15 Conflicts of interest declarations that have been assessed and determined not to be a conflict of interest must be recorded on the Directorate register.

3.16 The completed conflict of interest declaration form must be registered in accordance with NSW RFS Policy P5.1.6 Records Management.

Reporting

3.17 The Director Professional Standards will be responsible for:

- a. Reviewing each Directorate's conflict of interest register on an annual basis; and
- b. Preparing external reporting documentation for the NSW RFS Commissioner as required.

4 Related documents

- > *Government Sector Employment Act 2013*
- > *Government Sector Employment (General) Rules 2014*
- > *Independent Commission Against Corruption Act 1988*
- > *Public Finance and Audit Act 1983*
- > *Rural Fires Act 1997*
- > *Behaving Ethically: A guide for NSW government sector employees*
- > *Service Standard 1.1.7 Code of Conduct and Ethics*
- > *Policy P1.1.4 Gifts and Benefits*
- > *Policy P4.1.3 Procurement*
- > *NSW RFS Statement of Business Ethics*

5 Amendments

AMENDMENT DATE	VERSION NO	DESCRIPTION
16 November 2011	1.0	Initial release
9 April 2018	2.0	<ul style="list-style-type: none">> Repeals and remakes P1.1.3 v1.0> Comprehensive review> Addition of SOP P1.1.3-1, -2 and -3

SOP P1.1.3-1

Identifying a Conflict of Interest

1 Purpose

- 1.1 The key to identifying conflicts of interests is for staff members to think and act ethically and consider their private interests from the view of an outside reasonable person.

2 Procedures

- 2.1 The extent and diversity of staff members' interests coupled with the range of NSW RFS duties and responsibilities makes it impossible to list all possible conflict situations that may arise. To help identify if you have an actual, perceived or potential conflict of interest you should consider the following points:
- a. Would I or anyone associated with me benefit from or be detrimentally affected by my proposed decision or action?
 - b. Could there be benefits for me in the future that could cast doubt on my objectivity?
 - c. Do I have a current or previous personal, professional or financial relationship or association of any significance with an interested party?
 - d. Would my reputation or that of a relative, friend or associate stand to be enhanced or damaged because of the proposed decision or action?
 - e. Do I or a relative, friend or associate of theirs stand to gain or lose financially in some covert or unexpected way?
 - f. Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?
 - g. Have I contributed in a private capacity in any way to the matter my agency is dealing with?
 - h. Have I made any promises or commitments in relation to the matter?
 - i. Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?
 - j. Am I a member of an association, club or professional organisation or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose by my proposed decision or action?
 - k. Could this situation have an influence on any future employment opportunities outside my current official duties?
 - l. Could there be any other benefits or factors that could cast doubts on my objectivity?
 - m. Do I still have any doubts about my proposed decision or action?
- 2.2 If you have answered yes to any of these questions, a conflict of interest may exist.

3 Related forms

- > None

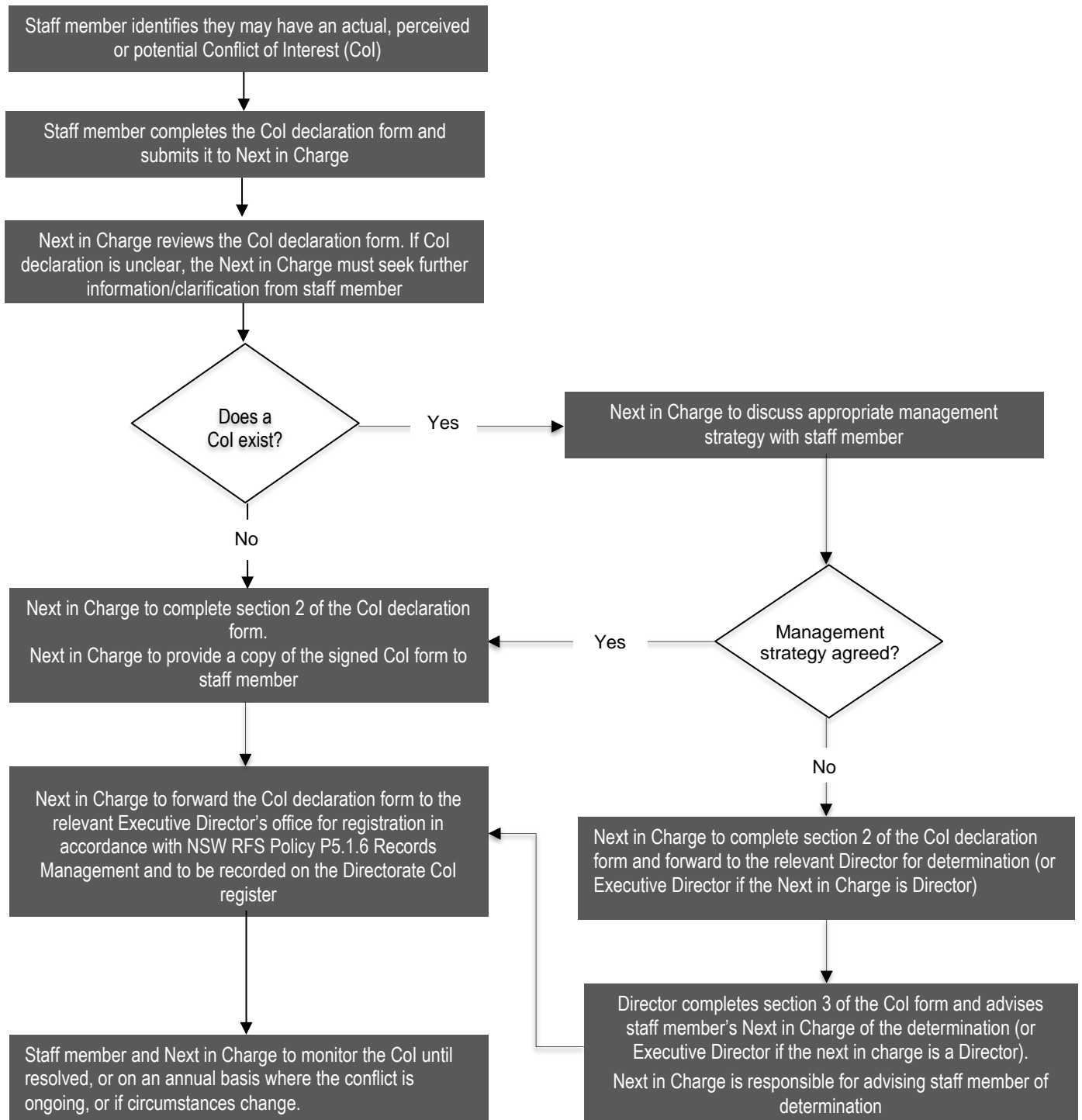
SOP P1.1.3-2

Disclosing a Conflict of Interest

1 Purpose

1.1 This standard operating procedure sets out the conflict of interest declaration process for staff members.

2 Procedures



3 Related forms

- Conflict of Interest Declaration Form

SOP P1.1.3-3

Managing a Conflict of Interest

1 Purpose

- 1.1 This standard operating procedure sets out the procedures for the Next in Charge to follow when a staff member has disclosed a conflict of interest; whether the conflict be perceived, potential or actual.

2 Procedures

- 2.1 On receiving a completed Conflict of Interest Form, the Next in Charge must review the details and seek clarification from the member concerned if they are unclear about any of the facts or circumstances, or where relevant, the actions taken or proposed to avoid the conflict.
- 2.2 Taking all information into consideration, the Next in Charge should make a determination as to whether:
 - a. They concur that a conflict of interest situation exists; i.e. the private interests of the staff member concerned will affect their duties, role or functions now, or sometime in the future;
 - b. The actions taken to date or proposed to be taken by the staff member are, or will be sufficient to avoid the conflict or, whether one of the other strategies detailed in section 2.1 of this SOP will need to be applied; and
 - c. No Conflict of Interests exists – this must still be recorded on the Conflict of Interest register.
- 2.3 The Next in Charge must consult with the staff member concerned regarding the selection of an appropriate management strategy.
- 2.4 The management strategy selected must take into account a number of factors, including:
 - a. The nature of the conflict of interest;
 - b. The operating environment;
 - c. Any legal requirements, including the application of other NSW RFS service standards and policies; and
 - d. The practicality of its implementation.
- 2.5 Where a conflict of interest has been identified there are a number of ways it can be managed. The course taken will depend upon the seriousness and significance of the conflict. The options include:
 - a. **Restricting** the staff member's access or influence, either by restricting their access to relevant information or restricting their involvement or participation in the process, where a conflict of interest exists. Staff members who are members of committees must absent themselves from, or not take any part in any debate or vote on the issue on which they have a conflict;
 - b. **Recruiting** other people to assist in minimising the conflict i.e. a panel/committee/team (either by appointing additional independent staff member or engaging external service providers to oversee the process) in order to minimise the actual or perceived influence or involvement of the person with the actual or reasonably perceived conflict;
 - c. **Removing** the staff member from the duties, or the responsibility to make decisions / take action in relation to the conflict situation and reallocating those duties or responsibilities on a temporary or permanent basis to another member;
 - d. Inviting the staff member to **relinquish** the private interests that gives rise to the conflict;
 - e. Directing the staff member to **cease** supporting a third party whose actions are conflicting or may conflict with NSW RFS interests (where the persons likely to be concerned about a potential, actual or reasonably perceived conflict are identifiable, seeking their views as to whether they object to the member having any, or any further, involvement in the matter); or

- f. Where a conflict involving a staff member cannot be avoided, and it has been determined that the conflict may cause significant risk or harm, either to the integrity or reputation of the NSW RFS or to the staff member concerned - the staff member concerned may choose to **resign** from the position which gives rise to the conflict.
- 2.6 Once the Next in Charge and the staff member have agreed on an appropriate management strategy, the Next in Charge must complete Section 2 of the Conflict of Interest Disclosure Form.
- 2.7 Once complete, the Next in Charge must provide the Conflict of Interest Disclosure Form to the relevant Executive Director, Director or Regional Manager for registration.
- 2.8 On receipt of the form, the relevant Executive Director or Regional Manager must:
 - a. Record the details of the conflict, and the management strategy to be applied, in the Conflict of Interest Register; and
 - b. Provide a copy of the completed form to the staff member concerned.
- 2.9 The Next in Charge is responsible for monitoring the circumstances of the conflict until its resolution (or on an annual basis where the conflict is ongoing) to ensure the actions taken continue to manage and minimise the impacts of the conflict.
- 2.10 Any conflict which cannot be managed by one of the above mentioned strategies must be escalated to the relevant Executive Director for consideration and action.

3 Related forms

- > None