

# Conflicts of Interest and Confidentiality Policy

## Purpose

The overarching objective of this policy is to ensure Creative Australia's decision-making processes follow procedural fairness for all its stakeholders, that confidentiality is kept when required and appropriate, and legal compliance is maintained.

The purpose is to inform Creative Australia Officials and Contractors, as defined below, of their responsibilities and obligations, and clarify the expected behaviour required of them, in relation to conflicts of interest and maintaining confidentiality.

The policy also aims to provide guidance to Creative Australia Officials and Contractors in identifying, assessing and managing any perceived, potential or actual conflicts of interest and confidentiality so they can act in a fair, transparent and proper manner as well as protect the interests of Creative Australia.

## Policy statement

Creating a consistent, ethical, transparent and diligent process for managing conflicts of interest and confidentiality is critical to maintaining the integrity, good reputation and high standards of Creative Australia.

## Scope

### Application of the policy

This policy applies to all Creative Australia Officials, Part-time Officer Holders and Contractors which, for the purpose of this policy, includes:

- Australia Council Board members of Creative Australia (acting in their capacity as a Board Member);
- Any Part-time Officer Holder appointed by the Minister for the Arts under the *Creative Australia Act 2023*;
- Any Part-time Officer Holder appointed by the Board under the *Creative Australia Act 2023*;
- All Creative Australia employees;
- Consultants, contractors, peers, panel members and other parties when engaged by Creative Australia for the provision of goods or services and/or to conduct business on its behalf;

### Compliance

This policy needs to be understood and complied with by all Creative Australia Officials and Contractors, as defined below.

## Public Governance, Performance and Accountability Act 2013

The principles of disclosing conflicts of interest and maintaining confidentiality are further embodied in the *Public Governance, Performance and Accountability Act 2013* ('PGPA Act').

Sections 25 - 29 of the PGPA Act impose certain duties upon Commonwealth "Officials". For the purposes of the PGPA Act an "Official" of a Commonwealth entity includes Board members, Part-time Officer Holders appointed by the Minister or the Board, employees and members of the entity.

Under the PGPA Act Commonwealth Officials must:

- a) exercise their powers, perform their functions and discharge their duties with the degree of care and diligence that a reasonable person would exercise in the same position;
- b) act in good faith and for proper purpose;
- c) not improperly use their position to gain an advantage for themselves or any other person or cause detriment to the entity, the Commonwealth or any other person;
- d) not improperly use information obtained through their duties as a Commonwealth Official to gain an advantage for themselves or any other person or cause detriment to the entity, the Commonwealth or any other person; and
- e) disclose any matter in which they have a material interest that relates to the affairs of the entity.

Employment-related sanctions or criminal sanctions (for example, under the *Criminal Code Act 1995*) may result from a breach of the above duties.

For the purposes of this policy the above five obligations also apply to Contractors when engaged by Creative Australia for the provision of goods or services and/or to conduct business on its behalf.

## Guidelines for Conflicts of Interest

Broadly speaking a conflict of interest refers to a conflict between a public duty and a personal interest.

A Creative Australia Official or Contractor who believes they have a perceived, potential or actual conflict of interest must declare this to an appropriate Creative Australia Official as soon as they become aware of it. Depending on the situation the declaration can be made to a direct Manager, a member of the Arts Investment team, an Executive Director, the CEO or General Counsel, who will in turn determine the next course of action.

The guidelines for Creative Australia Officials tasked with considering a conflict of interest declaration and determining next steps include, but are not limited to:

- Determine whether the conflict relates to either a financial (pecuniary) interest or personal bias (or both).

- Determine whether the conflict is (most likely to be) 'actual', 'perceived' or 'potential' with reference to the Definitions below.
- Consider the individual's participation in any relevant decision making and/or or level of influence in relation to the declared interest. Consider whether this is a collective process where the individual is one of many participating in determining the result.
- During any meeting or process where decisions are being made, or influence may be exerted over the outcomes, and where; a Creative Australia Official or Contractor has declared a conflict of interest which suggests they have an inherent bias and/or cannot participate in the meeting objectively; and where a reasonable person would likely be right to challenge their participation, that individual should not participate in the meeting or process at all.
- During any meeting or process where decisions are being made, or influence may be exerted over the outcomes, and where a Creative Australia Official or Contractor has declared a conflict of interest, and the interest is considered to be a slight risk and where a reasonable person might challenge their participation, the individual may be required to leave the meeting and not participate in the discussion and assessment of the relevant interest and/or be involved in the ultimate decision making for that interest.
- During any meeting or process where decisions are being made, or influence may be exerted over the outcomes, and where a Creative Australia Official or Contractor has declared a conflict of interest that is considered to be remote, there is no suggestion of an inherent bias or that the individual cannot remain impartial during deliberations and where there is a low risk that a reasonable person might challenge their participation, the individual may continue to be involved in the meeting or process.
- In meetings where minutes are taken, the determined course of action in response to a declared conflict of interest and reasons must clearly be captured in the minutes.
- For meetings where there are no formal minutes taken, it is recommended a conflict of interest memo is kept, noting the conflict(s) of interest and action taken.
- Where a conflict of interest issue, which was not previously declared, arises during a meeting the relevant Director or meeting facilitator must pause the meeting whilst this is dealt with. The individual with the conflict may be asked to leave the meeting, depending on the nature of the interest.

A breach of this policy will occur when a Creative Australia Official or Contractor has a conflict of interest in any matter under consideration and fails to declare that interest.

## Example scenarios

Scenario	Response
<p>A Board member is named as one of the artists involved in a funding application.</p> <p>These funding applications are assessed by external advisors who make recommendations to management, who approve the funding decisions based on the recommendations.</p>	<p>In this scenario, as the Board member will receive a financial gain if the application is successful, this would be considered an ‘actual’ conflict of interest.</p> <p>The Board member would need to declare this interest.</p> <p>As the Board member has no role in the determination of successful applicants, and there should be little opportunity for the Board member to influence the decision making, apart from registering the declared conflict of interest, no further action is required.</p>
<p>A Board member is named as one of the artists involved in a funding application.</p> <p>These funding applications are for companies to receive four consecutive years of funding and the total investment over four years is \$750K.</p> <p>Following a comprehensive assessment process over several months, management make recommendations to the Board for approval, including the Board member’s application.</p>	<p>In this scenario, as the Board member will receive a financial gain if the application is successful, this would be considered an ‘actual’ conflict of interest.</p> <p>The Board member would need to declare this interest and the Board member’s involvement in the decision making for the investment will need to be carefully managed.</p> <p>As the Board member is part of the authority responsible for determining whether their application receives a significant investment over four years, they will need to recuse themselves from approving this particular application. If their application is cause for discussion by the Board, the Board member will need to leave the meeting for that duration.</p> <p>In considering the Board member’s potential level of influence over the decision making in this scenario it needs to be remembered that before coming to the Board for approval, the applications had already been subjected to a rigorous assessment process. There would be little opportunity for the Board member to influence the decision making outside of this process. Further, the Board member is but one of a cohort responsible for the overall decision making in this scenario.</p>

<p>A Board member is named as one of the artists involved in a funding application. The investment request is \$15K.</p> <p>These funding applications are assessed by staff internally, with the relevant Executive Director making the final funding decisions.</p> <p>The Executive Director has known the Board member for a long time, has worked with them in previous roles and considers them a friend.</p> <p>The Executive Director decides they cannot be impartial in assessing and determining the application.</p>	<p>In this scenario it is the Executive Director’s conflict of interest. They will need to declare this and remove themselves from the assessment process.</p> <p>There are several other options to ensure the assessment process remains fair and objective, and that all applications are assessed consistently.</p> <p>The internal assessment team already convened could proceed without the Executive Director’s involvement and make their final funding recommendations to the whole Executive to collectively approve.</p> <p>An external advisor could participate in the assessment process and be responsible for making the final recommendations to the whole Executive for approval.</p> <p>Another Executive Director who does not have the same long standing relationship with the Board member, and does feel they can remain impartial, may be asked to step in to make the final decisions.</p>
<p>A funding application includes a letter of support from a Board member. The letter suggests the applicant has worked with the Board member on previous projects.</p>	<p>In this scenario, if the Board is not responsible for assessing or approving the funding application and the Board member would have little to no opportunity to influence the decision making, no action is required.</p> <p>If the application was of a higher funding level and did require Board approval, the Board member would need to declare this interest. If the Board member is unaware their letter has been included in this application, it should be brought to their attention.</p> <p>Whether a conflict of interest exists, and any action to be taken, will depend on all the facts regarding the Board member’s relationship with the applicant. The Board member may be required to recuse themselves from approving this particular application and if the application is cause for discussion by the Board, the Board member may need to leave the meeting for that duration.</p>
<p>A Director is asked to be on the interview panel for applications to the role of Manager, Critical Thinking.</p>	<p>In this scenario there is no apparent financial interest or personal bias. Any perceived conflict would be considered remote due to the nature of the interest</p>

<p>Upon receiving the applications to review, the Director realises they briefly met one of the applicants two year ago at a mutual friend's gathering. They have not seen them since.</p>	<p>and amount of time that has passed. The Director is one of four interviewers and will not be responsible for making the final appointment decision. They are confident they can be impartial during the interview process.</p> <p>In this case the Director does not need to declare a conflict of interest and it is acceptable for the Director to remain on the interview panel.</p>
<p>A manager who is responsible for the final decision in awarding a contract, awards the contract to a company who employs their partner as an Executive Assistant to the CEO. The procurement process leading to the decision followed the Procurement Guidelines, in so much as the budget only required two quotes to be obtained and allowed the manager discretion in their choice of contractor. They did not tell anyone and did not declare a conflict of interest.</p>	<p>In this scenario the manager could be perceived as ensuring the company their partner is employed by retains work, which is in their best interests. Further, there may be a perception that their partner had the opportunity to share additional information with the CEO who submitted the quote, that the other potential contractor did not have, which may have improved their application and quoted price.</p> <p>The manager should not have requested a quote from this company due to the conflict of interest. Failing that, they should not have made the final decision on awarding the contract and they should have declared the conflict of interest.</p>

## Confidentiality versus Privacy

Confidentiality and privacy are two separate concepts that protect different types of information. 'Privacy' is used in relation to individuals personal information that is protected under law which, for Creative Australia, is the Commonwealth *Privacy Act 1988* ('the Privacy Act').

'Confidentiality' refers to information contained in valid contracts and agreements. Confidentiality can apply to both individuals and companies or organisations, whereas the privacy laws only apply to individuals and not to companies or organisations.

### Confidentiality

Creative Australia Officials and Contractors may not make public any document or information which is obtained through their appointment, and which a reasonable person undertaking the same role as the Official or Contractor would understand to be confidential, unless it is already publicly available.

Creative Australia Officials and Contractors are bound not to disclose or use confidential information obtained during employment or work for Creative Australia, particularly where that information may damage the interests of the organisation. There are exceptions, including where disclosing information is required by law.

## Privacy

The Privacy Act is the legal framework for an individual's fundamental right to privacy and protection of their personal information. The Privacy Act prescribes how collecting, storing, using and disclosing personal information must be done. This determines and informs the way in which Creative Australia must handle personal information in its possession or control.

## Further information

Where a Creative Australia Official or Contractor, as defined below, requires clarification about any aspect of this policy or assistance with any perceived or actual conflict of interest or confidentiality, they are encouraged to contact their manager or contract manager in the first instance, or General Counsel, the Executive Director Corporate Resources or the CEO.

## Definitions

**Actual conflict of interest** means there is a reasonable likelihood of a financial benefit, either direct or indirect, or a personal benefit to a Creative Australia Official or Contractor or someone closely associated with them, such as a family member. A benefit will not constitute a conflict of interest if its connection with the matter is sufficiently remote or speculative.

**Creative Australia Official(s)** has the same meaning as per Section 13 of the *Public Governance, Performance and Accountability Act 2013* and includes Board members, Part-time Office Holders and all Creative Australia employees and members.

The **CEO** is the Chief Executive Officer of Creative Australia.

**Confidential information** means a document or information a Creative Australia Official or Contractor obtains during the term of their appointment or engagement with Creative Australia which a reasonable person undertaking the same duties as the Official or Contractor would understand to be confidential unless it is already publicly available.

**Contractor(s)** means all consultants, contractors, peers or panel members, industry advisors and other parties engaged by Creative Australia for the provision of goods or services and/or to conduct business on its behalf.

**Industry Advisor** is an external party contracted by Creative Australia to review applications submitted for assessment and to provide advice and/or recommendations in response.

**Part-time Office Holders** refers to those office holders who are appointed to Australian Government boards, councils and committees and who generally work on a part-time basis.

**Perceived conflict of interest** means where a member of the public who is familiar with the purpose and functions of Creative Australia and the constraints under which it operates, might reasonably assume that there is a conflict, even if there is not, e.g. where Creative Australia receives a grant application from or involving a family member, or from an organisation related in some way, to a Creative Australia Official but that Official is not involved in, and has no level of influence over, the assessment or decision-making process.

**Personal information** has the same meaning as per the *Privacy Act 1988* and is information or an opinion about an individual that enables that individual to be identified including:

- (a) Whether the information or opinion is true or not; and  
 (b) Whether the information or opinion is recorded in a material form or not.

**Potential conflict of interest** refers to where there is a possibility that a Creative Australia Official may be influenced, or appear to be influenced, in the future.

## Interacting policies

- Code of Conduct
- Fraud Control Policy
- Gifts, Benefits and Tickets Policy
- Privacy Policy

## Relevant legislation

- *Creative Australia Act 2023* ('the Act');
- *Freedom of Information Act 1982* ('FOI Act');
- *National Anti-Corruption Commission Act 2022* ('NACC Act');
- *Public Governance, Performance and Accountability Act 2013* ('PGPA Act');
- *Public Interest Disclosure Act 2013* ('PID Act');
- *Privacy Act 1988* ('Privacy Act').

## Change history

Date	Change description	Reason for change	Author	Issue no:
July 2014	Initial document creation	N/A	Rebecca Kenny	1.0
July 2016	Review	Scheduled two-year review and update	Rebecca Kenny	2.0
August 2018	Review and minor formatting update	Scheduled two-year review and update	Rebecca Kenny, General Counsel	3.0



July 2020	Review and update	Scheduled two-year review and update	Rebecca Kenny, General Counsel	4.0
September 2022	Minor amendments/updates	Scheduled two-year review	Rebecca Kenny, General Counsel	5.0
August 2023	Updated to reflect Australia Council's transition to Creative Australia	Commencement of the <i>Creative Australia Act 2023</i>	Rebecca Kenny, General Counsel	6.0