



Australian Government

Department of Health

phn

An Australian Government Initiative

Primary Health Networks Conflicts and Related Party Policy

Contents

1. Introduction	3
Guaranteeing good governance.....	3
Purpose.....	3
2. Conflicts	4
What is a Conflict?	4
Identifying Conflicts	5
Who must disclose a Conflict?	5
Managing Conflicts at an organisational level	5
Requirement to notify the Department of a Conflict	6
Consequences of failing to appropriately identify or manage a Conflict.....	6
Assessment of Conflicts.....	6
3. Related Party transactions	7
What is a Related Party transaction?.....	7
Identifying a Related Party	7
What is meant by “controls or has significant influence”?	7
Illustrative examples – Related Party transactions.....	8
Managing Related Party transactions at an organisational level.....	9
Requirement to seek the Department’s consent for Related Party transactions	9
Consequences of failing to notify or seek consent for a Related Party transaction.....	9
Assessment of Related Party transactions.....	9
4. Further resources.....	9
5. Appendices	10
Appendix A: Conflict Notification Template	10
Appendix B: Related Party Transaction Application Template	11

1. Introduction

Guaranteeing good governance

As recipients of Commonwealth grant funding, it is vital that Primary Health Networks (PHNs) conduct themselves in an accountable and transparent manner that is aligned with community expectations. Identifying and managing Conflicts of Interest and transactions with related people or organisations are some of the key ways PHNs can demonstrate good governance.

Conflicts of Interest and Related Party transactions are a practical reality of running an organisation and may arise at any point of decision-making for a PHN. When undertaking the commissioning of health care services, PHNs must be vigilant in their efforts to identify and manage Conflicts.

Many PHN Personnel (including Board members) may be associated with other local organisations and individuals, such as health service providers. While these connections are essential for understanding the needs of the community and embedding the PHNs in the local health landscape, they may give rise to actual, potential or perceived Conflicts of Interest or Related Party relationships. These situations are not necessarily wrong or unethical, but must be appropriately identified and managed to give the community and the Commonwealth confidence in the PHN's use of public funds.

Purpose

This policy has been developed for use by PHNs and the Department of Health (the Department) staff to assist with managing Conflicts and Related Party transactions across the PHN Program. The intent of this document is to:

- offer guidance to PHNs on their contractual obligations under the Standard Funding Agreement (the SFA) around Conflicts and Related Party transactions;
- offer strategies to PHNs to identify and manage Conflicts and Related Party transactions;
- provide easy to use templates for PHNs to provide the Department with:
 - Conflict notifications and the PHN's proposed management/mitigation strategies; and
 - Applications for consent of Related Party transactions.

This policy highlights the PHNs' contractual obligations under the SFA and offers guidance for complying with those obligations. This policy should be read in conjunction with the SFA; including the Terms and Conditions for Standard Funding Agreement (SFA Terms and Conditions), the SFA Schedule and its Supplementary Conditions, policy schedules and other published program material such as the [PHN Program Guidelines](#) and [commissioning guidance](#).

This policy should not be taken by PHNs as legal advice on how to comply with the SFA or other legislative or regulatory obligations relating to Conflicts of Interest or Related Party transactions. PHNs should obtain their own professional and independent advice on their contractual, legislative and regulatory obligations.

2. Conflicts

What is a Conflict?

The SFA Terms and Conditions define a conflict in clause 11.4 [Definitions] as:

any matter, circumstance, interest or activity involving or affecting Your Organisation, or Your Organisation's Personnel, which may, or may appear to, impair Your Organisation's ability to perform an Activity diligently, fairly and independently.

For the purpose of this policy, the terms "Conflict" or "Conflict of Interest" will be taken to have the same meaning as the above definition in the SFA Terms and Conditions.

A Conflict may be **actual, potential or perceived** and may be pecuniary (financial) or non-pecuniary.

KEY TERMS AND ILLUSTRATIVE EXAMPLES

1. ACTUAL CONFLICT

A direct and existing Conflict between the personal interests of an individual and the performance of their duties and responsibilities to the PHN.

Example: You are a PHN Board member and a partner at a prominent law firm in the area. Your PHN is considering whether to commission the legal services of your firm or a rival law firm to review service provider contracts.

2. POTENTIAL CONFLICT

A personal interest that could interfere with the performance of the PHN's duties and responsibilities in the future.

Example: You are a PHN Board member, and also a Board member of a prominent counselling service in the area, which may apply for a grant in an upcoming PHN commissioning cycle.

3. PERCEIVED CONFLICT

A personal interest (direct, indirect or involving a third party) that appears to improperly influence the performance of the PHN's duties, whether or not this is in fact the case.

Example: You are a PHN Board member, and a computer consulting company run by your sister has legitimately won a competitive tendering process to provide IT support to the PHN.

4. PECUNIARY INTERESTS

Interests that involve actual or potential financial gain or loss, or other material benefits.

5. NON-PECUNIARY INTERESTS

Interests that do not have a financial component. They may arise from personal or family relationships or involvement in sporting, social or cultural activities.

6. DIRECT INTEREST

A matter or decision in which an individual has a personal and immediate interest.

7. INDIRECT INTEREST

A matter or decision where an individual does not personally have an interest, but their spouse, immediate family member or a person with whom they are closely associated does.

Identifying Conflicts

A situation that appears to have a Conflict of Interest may be enough to undermine public confidence, even if there is no actual Conflict or if the Conflict has already been resolved. It is equally important to disclose and manage perceived or potential Conflicts as actual Conflicts.

It is also important to remember that Conflicts do not always involve a pecuniary interest, but may include favours or non-pecuniary benefits. Conflicts may also be related to an individual's direct interest, or indirect interests such as when an individual's spouse, family member or close associate stands to gain a benefit.

A good way to consider whether there is a Conflict when making a decision is to ask this question:

Would a reasonable person, properly informed about the nature of my personal interests, think that I might be acting for my personal interests rather than in the best interests of the PHN?

If in doubt, it is best to declare the interest to the Department using the template at Appendix A.

Who must disclose a Conflict?

Given that a Conflict is defined in the SFA Terms and Conditions as any issue that prevents a PHN or its Personnel from diligently, fairly and independently carrying out Activities under the SFA, it is the responsibility of all PHN Personnel, including company officeholders and Board members, to identify and disclose any Conflicts of Interest that arise in the course of their work. In relation to a PHN, Personnel are defined in clause 11.4 [Definitions] of the SFA as:

- (i) each Subcontractor;
- (ii) any Sub-subcontractor;
- (iii) any officer, employee, partner, volunteer or agent of Your Organisation, a Subcontractor or a Sub-subcontractor; and
- (iv) if Your Organisation is an individual, that individual.

Managing Conflicts at an organisational level

As part of encouraging a culture of disclosing and handling Conflicts, it is vital that PHNs manage Conflicts at an organisation-wide level.

PHNs should implement policies and procedures to identify and manage Conflicts for the PHN as a whole, including maintaining a Conflicts of Interest Register. The PHN's Board and/or management should also encourage the PHN to adopt a culture of disclosure, which emphasises that Conflicts are not necessarily wrong, but need to be disclosed and appropriately managed.

The Australian Charities and Not-for-profits Commission (ACNC) has published a Conflicts of Interest guide which PHNs may wish to consider. The [Managing Conflicts of Interest: Guide for Charity Board Members](#) can be found on the ACNC's website.

Requirement to notify the Department of a Conflict

Clause 9.4.2 of the SFA Terms and Conditions sets out the obligation for PHNs to immediately notify the Department if a Conflict arises or appears likely to arise:

- 9.4.2 *If, during the Term of this Agreement, a Conflict arises, or appears likely to arise, in respect of Your Organisation or any of Your Organisation's Personnel, Your Organisation must:*
- a. *immediately notify the Department of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps Your Organisation proposes that Your Organisation or Your Organisation's Personnel will take to resolve or otherwise deal with the Conflict; and*
 - b. *take such steps as have been proposed by Your Organisation, or at the discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.*

The template at **Appendix A** can be used by PHNs to disclose a Conflict to the Department. The completed form should be submitted to the relevant Health Grants and Network (HGN) Division Program Officer. Any template used must disclose all the information relating to the Conflict and set out the steps the PHN proposes to take to either resolve or manage the Conflict.

Consequences of failing to appropriately identify or manage a Conflict

The Department takes the identification and management of Conflicts very seriously. Conflicts have the potential to seriously undermine the integrity of the Department's grants programs.

Under clause 9.4.3 of the SFA Terms and Conditions, if a PHN fails to notify the Department of a Conflict, or is unable or unwilling to resolve or manage the Conflict, the Department may terminate the relevant Activity or the Schedule.

Assessment of Conflicts

HGN Division Program Officers are responsible for receiving and assessing the PHN Conflict notifications and determining the required action. Following an initial assessment, Program Officers may request further information, if required, from the PHN to ensure the Conflict is being appropriately resolved or managed.

3. Related Party transactions

What is a Related Party transaction?

A Related Party transaction is when a PHN pays part of the Grant funds it receives under the SFA or transfers an Asset (as defined in the SFA Terms and Conditions) to another party that is related to it. Related Party transactions involve a Conflict of Interest because the Related Party is in a position to influence whether a benefit is provided to it and the terms of that benefit.

Related Party transactions are not permitted under the SFA without the Department's prior written consent, as outlined in Clause 9.5.2 of the SFA Terms and Conditions.

Identifying a Related Party

The SFA Terms and Conditions provide a comprehensive definition of a Related Party in clause 9.5.1:

9.5.1. For the purpose of this clause 9.5 [Related Parties], a 'Related Party' is:

- a. an entity that controls or has significant influence over Your Organisation at any time;
- b. an entity that Your Organisation controls or has significant influence over at any time, including Your Organisation's subsidiary;
- c. a person who is a member of Your Organisation's Board or governing body;
- d. a member of the Board of an entity referred to in clause 9.5.1.a or 9.5.1.b;
- e. a member of Your Organisation's Personnel, other than in their capacity as an employee; or
- f. a spouse or immediate family member of:
 - (i) a member of Your Organisation's Personnel; or
 - (ii) a person specified in clause 9.5.1.c or 9.5.1.d,who is not themselves an employee of Your Organisation.

For the purpose of this policy, the term "Related Party" will be taken to have the same meaning as the above definition in the SFA Terms and Conditions.

What is meant by "controls or has significant influence"?

The terms "control" and "significant influence" are not defined in the SFA Terms and Conditions, however, consideration should be given to the extent to which one party practically influences, or has the power to practically influence, the financial and operational decisions of the other party.

Determining whether one party has control or significant influence over another party should be judged on a case-by-case basis and cannot be simplified to certain relationships. Examples of control or significant influence over an organisation may include, but are not limited to:

- the power to veto business decisions of an organisation;
- the power to appoint or remove an organisation's CEO or other key management personnel; or
- having representation on the Board of an organisation (e.g. reserved positions on the Board).

Illustrative examples – Related Party transactions

The following examples illustrate how various transactions may be considered to give rise to a Related Party transaction under the SFA.

1. A PHN is a company member of a not-for-profit health service provider

Following a competitive tendering process, a PHN wishes to commission the services of XYZ Ltd, a small, local not-for-profit youth support service. The PHN, along with three other organisations, are members of XYZ Ltd. Under the constitution of XYZ Ltd, members can vote at general meetings and elect the directors of XYZ Ltd.

XYZ Ltd is a Related Party to the PHN. Under clause 9.5.1.b of the SFA Terms and Conditions, XYZ Ltd is an entity that the PHN has significant influence over.

2. A PHN director owns a service provider

After undertaking a competitive tendering process, a PHN wishes to commission the services of XYZ Pty Ltd, a home visit doctor's service. A PHN director owns 100% of the shareholding in XYZ Pty Ltd.

XYZ Pty Ltd is a Related Party. By engaging XYZ Pty Ltd, the PHN would be effectively supplying funding to a PHN director under clause 9.5.1.c of the SFA Terms and Conditions.

3. A PHN intends to commission a provider whose CEO is a PHN director

A PHN wishes to commission the services of XYZ Inc, a family counselling service provider. The CEO of XYZ Inc also acts as a director on the PHN Board, along with seven other directors.

XYZ Inc is not a Related Party to the PHN. XYZ Inc does not control or significantly influence the operation of the PHN. Likewise, the PHN does not control XYZ Inc. A single director or CEO (who is appointed by a Board) cannot control or significantly influence an organisation. As such, simply having key personnel in common does not in itself, give rise to control or significant influence between the PHN and XYZ Inc. Instead, the PHN director has a Conflict, which should be managed with the Board, and as per clause 9.4 of the SFA Terms and Conditions.

4. A PHN intends to commission the services of an expert who sits on the Board of its subsidiary company

A PHN is seeking to engage an expert consultant to undertake some research and evaluation services. The particular expert it is wishing to engage is also a Board member of X'Y'Z Pty Ltd – a subsidiary company to the PHN.

Under clause 9.5.1.d of the SFA Terms and Conditions, the expert is a Related Party as it is a member of the board of an entity that the PHN controls or has a significant influence over.

5. A PHN is seeking to engage the daughter of a PHN Subcontractor

A PHN is seeking to obtain some financial analysis as part of an Activity. Jane Smith is a sole trader and Subcontractor to the PHN in the field of medical research. The PHN proposes to have Mary Smith who is an economist and the daughter of Jane Smith, conduct the financial analysis.

The daughter is a Related Party as she is an immediate family member of a PHN Subcontractor who forms part of the PHN's "Personnel" as per clause 9.5.1.f.i of the SFA Terms and Conditions.

Managing Related Party transactions at an organisational level

PHNs should have a sound policy in place to assist PHN Personnel to identify a Related Party. It may include:

- maintaining a Related Party transaction register in accordance with Item B.3, 1.1.q of the Schedule;
- descriptions or examples of the people and companies which the PHN will treat as a Related Party; and
- procedures for directors and staff to seek advice if they are uncertain if a transaction involves a Related Party.

Requirement to seek the Department's consent for Related Party transactions

Under clause 9.5.2 of the SFA Terms and Conditions, PHNs are required to obtain **written** departmental consent **before** paying any Grant funds or transferring any Asset (as defined in the SFA Terms and Conditions) to a Related Party.

A template for requesting Departmental approval of a proposed Related Party transaction is at **Appendix B**. The application should include all the information required under clause 9.5.3 of the SFA Terms and Conditions.

The completed request should be submitted to the Department through the relevant HGN Division Program Officer, with any supporting information and additional external advice (e.g. legal or clinical advice).

Consequences of failing to notify or seek consent for a Related Party transaction

Related Party transactions have the potential to seriously undermine the integrity of the Department's grants programs, and the Department takes the notification and consent process for Related Party transactions very seriously.

If PHNs are in any doubt as to whether a transaction is captured by clause 9.5.2 of the SFA Terms and Conditions they should seek guidance from the Department. If a PHN fails to obtain the Department's written consent prior to paying Grant funds or transferring an Asset to a Related Party it will be in breach of the SFA.

Assessment of Related Party transactions

The Department will deal with Related Party applications in a timely manner. Following receipt of a Related Party application, the Department will consider the request and will provide written notice to the PHN, that the Department either:

- requires further information from the PHN;
- consents to the Related Party transaction without any terms or conditions;
- consents to the Related Party transaction, imposing terms or conditions, which the PHN must comply if it proceeds with the Related Party transaction; or
- refuses consent to the Related Party transaction and the reasons why.

4. Further resources

[ACNC, Governance Standards Guidance 2013](#)

[ACNC, Managing Conflicts of Interest – A guide for charity Board members](#)

5. Appendices

Appendix A: Conflict Notification Template

Conflict Notification Standard Funding Agreement Terms and Conditions Clause 9.4.2	
PHN Name: Choose an item.	
Location:	
Contact Details:	
Detail of the Conflict:	
Conflict type and description:	
Names and contact details of all parties involved in the conflict:	
Dates relevant to the conflict: (include whether the conflict is new or historical)	
Further information: (if any)	
Proposed strategy for resolving or managing the Conflict:	
Attachments: (list all attachments provided support of the proposed approach)	
Signature:	
Personnel Name:	
Position:	
Date:	

Appendix B: Related Party Transaction Application Template

Related Party Transaction Application	
Standard Funding Agreement Terms and Conditions Clause 9.5.3	
PHN Name: Choose an item.	
Location:	
Contact Details:	
Details of Related Party	
Name:	
ABN (if applicable):	
Address:	
Related Party Relationship Type	Mark as applicable
9.5.1.a	An entity that controls or has significant influence over the PHN <input type="checkbox"/>
9.5.1.b	An entity that the PHN controls or has significant influence over at any time, including the PHN's subsidiary <input type="checkbox"/>
9.5.1.c	A person who is a member of the PHN's Board or governing body <input type="checkbox"/>
9.5.1.d	A person who is a member of the Board of an entity referred to in clause 9.5.1.a or 9.5.1.b <input type="checkbox"/>
9.5.1.e	A member of the PHN's Personnel, other than in their capacity as a PHN employee <input type="checkbox"/>
9.5.1.f	A spouse or immediate family member of: (i) the PHN's Personnel; or (ii) a person specified in 9.5.1.c or 9.5.1.d, who is not themselves a PHN employee. <input type="checkbox"/>
Related Party Description	PHN to complete <i>Please attach supporting documents, if required</i>
Description of Related Party relationship:	
Description of steps taken to resolve or manage conflict:	
The relevant Activity: <i>(include Schedule and Activity Work Plan reference)</i>	
The proposed amount of Grant funds to be transferred to the Related Party and how the amount was determined (or the Asset proposed to be transferred):	
A complete description of the part of the Activity that Your Organisation expects the Related Party to perform:	
The reason(s) why it is necessary to pay the Grant funds (or transfer the Asset) to the Related Party:	
Dates relevant to the Related Party Transaction:	
Signature:	
PHN Personnel Name:	
Position:	
Date:	