

# CONFLICTS OF INTEREST & CONFIDENTIALITY POLICY

Issue No: 1.0

Dated Issued: July 2014

Review Date: July 2016

Document Status: FINAL

Prepared by: Rebecca Kenny

Document Reference: DOC/2014/075571

## **1 INTRODUCTION**

In performing its role as the Australian Government's arts funding and advisory body the Australia Council for the Arts is committed to maintaining the highest standards of conduct. Whilst the conduct of the Board, staff, peers and contracted parties is governed by their contracts for service with the Australia Council, as well as the Code of Conduct, they must also behave in a way that upholds the integrity and good reputation of the Australia Council.

The Conflicts of Interest and Confidentiality Policy provides clear guidelines for identifying and managing any perceived or actual conflicts of interest, as well as matters requiring confidentiality, which may arise during the performance of an Australia Council Staff member's tenure.

## 2 DEFINITIONS

**Actual conflict of interest** means where there is a reasonable likelihood of a financial benefit, either direct or indirect, or a personal benefit to an Australia Council staff member. A benefit will not constitute a conflict of interest if its connection with the matter under consideration is remote or speculative.

**Australia Council Staff** includes all Australia Council employees, consultants, contractors, peers, committee and panel members and other parties engaged by the Australia Council for the provision of services and/or to conduct business on its behalf and Australia Council Board Members (in their capacity as a Board Member).

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

A **minor beneficiary** is one who will receive not more than 20 per cent of the funds requested for grants under \$50,000.

**Participating peer** means peers from the Pool of Peers who are contracted from time to time to assess grant funding applications.

**Perceived conflict of interest means** where a member of the public who is familiar with the purpose and work of the Australia Council, and the constraints under which it operates, might reasonably assume that there was a conflict, even if there was not, e.g. an application from or involving a family member, or from an organisation related in some way, to a member or staff of the board concerned.

**Personal information** 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
- (k) Whether the information or opinion is recorded in a material form or not.

### **3 PURPOSE**

- 3.1** The overarching objective of this policy is to ensure the Australia Council's decision-making processes follow procedural fairness for all applicants, that confidentiality is kept and legal compliance is maintained.
- 3.2** The purpose of this policy is to inform Australia Council Staff, as defined below, of their responsibilities and obligations, and define the expected behaviour required of them, in relation to conflicts of interest and maintaining confidentiality.
- 3.3** The policy aims to provide guidance to Australia Council Staff in identifying, assessing and managing any perceived 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 the Australia Council.
- 3.4** In creating a consistent, ethical and diligent process for managing conflicts of interest and confidentiality, the integrity and high standards of the Australia Council will be upheld.

## **4 SCOPE**

### **4.1 Coverage**

This policy applies to all Australia Council Staff which, for the purpose of this policy, and as noted in the Definitions, includes:

- All Australia Council employees;
- Consultants, contractors, peers, committee and panel members and other parties engaged by the Australia Council for the provision of services and/or to conduct business on its behalf; and
- Australia Council Board Members (in their capacity as a Board Member).

### **4.2 Relevant legislation**

- *Australia Council Act 2013* (AC Act);
- *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
- *Public Interest Disclosure Act 2013* (PID Act);
- *Privacy Act 1988* (Privacy Act); and
- *Freedom of Information Act 1982* (FOI Act).

### **4.3 Compliance**

**4.3.1 This policy needs to be understood and complied with by all Australia Council Staff, as defined above.**

## **5 PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY ACT 2013**

The principles of disclosing conflicts of interest and maintaining confidentiality are embodied in the PGPA Act.

Sections 25 - 29 of the PGPA Act impose certain duties upon Commonwealth “officials”. For the purposes of the Act an “official” of a Commonwealth entity includes Board members, officers, employees and members of the entity as well as consultants or independent contractors.

Under the PGPA Act Commonwealth officials must:

- 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;
- act in good faith and for proper purpose;
- 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;
- 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;
- 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.

## **6 GUIDELINES FOR CONFLICTS OF INTEREST**

An Australia Council Staff member who believes they have a potential perceived or actual conflict of interest, must disclose this to the program staff or relevant Director managing that particular assessment or one of the Executive Directors Arts Funding or Corporate Resources or the Manager Legal and Governance, as soon as they become aware of it. The guidelines for Australia Council Staff considering whether there is a conflict are outlined below.

- 6.1** Conflicts of interest may be actual or perceived and may relate to either a financial (pecuniary) interest or personal bias; that is, where a member has a personal interest other than a financial interest in a matter.
- 6.2** An actual conflict of interest exists when there is a reasonable likelihood of a financial benefit, either direct or indirect, or a personal benefit to an Australia Council Staff member 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 remote or speculative.
- 6.3** A perceived conflict of interest exists where a member of the public who has a familiarity with the purpose and work of the Australia Council and the constraints under which it operates might reasonably assume that there was a conflict, even if there was not, e.g. an application from or involving a family member or from an organisation related in some way to, the member.
- 6.4** As a general rule, a “minor beneficiary” is one who will receive not more than 20 per cent of the funds requested for grants under \$50,000. This guideline is in place to avoid any public perceptions of what may appear to be a conflict of interest. It is also to protect Australia Council Staff by ensuring that their professional credibility and ethical conduct cannot be brought into question.
- 6.5** For those cases where an Australia Council Staff member is a minor beneficiary through an application by a third party, or where there is a perceived conflict of interest, action will be taken on a case-by-case basis depending on the context and nature of the conflict.
- 6.6** No applications for grant funding are eligible for assessment where a member of the peer assessment panel making the grant decision is also the applicant, or is the sole or major beneficiary through a third party.

- 6.7** Where there is an actual conflict of interest, and sometimes a perceived conflict of interest, the Australia Council Staff member will be required to leave the meeting and not participate in the discussion and assessment of the relevant application.
- 6.8** Where conflict of interest issues become apparent during the course of a meeting, the relevant Director or meeting convener will determine any further action to take including whether it is appropriate for the Australia Council Staff member to assess that particular application.

A breach of the PGPA Act will arise where an Australia Council Staff member has a conflict of interest in any matter under consideration and fails to declare that interest.



## 7 CONFIDENTIALITY

Australia Council Staff members may not make public any document or information which is obtained through their appointment unless it is already publicly available. This includes all matters discussed at grant funding assessment meetings.

### 7.1 Confidential information

All Australia Council Staff are bound not to disclose or use any information obtained during employment or work for the Australia Council, particularly where that information may damage the interests of Council. There are exceptions, including where disclosing information is in the public interest or in accordance with the PID Act.

### 7.2 Privacy

The Commonwealth *Privacy Act* 1988 makes provisions for collecting, storing using and disclosing personal information, which has implications for the way in which the Australia Council handles personal information in its possession or control.

The Australian Privacy Principles (APPs) commenced on 12 March 2014 under the *Privacy Act*. Australia Council's Privacy Policy is available on Council's website: [Privacy Policy 2014](#)

### 7.3 Office of the Australian Information Commissioner

Freedom of Information (FOI), privacy and information policy issues are currently overseen by an independent statutory body, the Office of the Australian Information Commissioner (OAIC). The FOI Act gives members of the public a legally enforceable right of access to government documents. The object of the Act is to promote Australia's representative democracy by increasing public participation in government processes and increasing scrutiny, discussion, comment and review of government actions.

Under the FOI Act agencies such as the Australia Council are encouraged to proactively publish as much information as practicable on their website. The Information Publication Scheme (IPS) expands the range of information an agency is required to publish, and invites agencies to publish additional information that will be of public interest.

The FOI application and review processes are designed to be inexpensive and informal, so that it is easier for a person to make an FOI application or to question or challenge an FOI decision not to release the information sought.

There is now a presumption in favour of access to documents unless it can be proven that access would “*on balance, be **contrary to the public interest***” (see section 11A, FOI Act). This includes where the relevant information is genuinely sensitive and real harm would be caused by their disclosure. An example would be the disclosure of an individual’s personal information.

Documents or parts of documents can also be withheld if they are exempt under a specific provision in the FOI Act. Exemptions include Cabinet documents, defence, national security and international relations documents, matters to do with law enforcement and protection of public safety or those subject to legal privilege or involve trade secrets or confidential communications.

All FOI requests are referred to the Manager, Legal and Governance to respond.

If staff members have queries about the status of Australia Council information or documents, they may be referred in the first instance to the Manager, Legal and Governance.

## **8 INTERACTING POLICIES AND DOCUMENTATION**

- Gifts and Benefits Policy;
- Code of Conduct Policy; and
- Fraud Control Policy.

## **9 FURTHER INFORMATION**

Where an Australia Council Staff member, as defined above, requires clarification about any aspect of this policy or assistance with any perceived or actual conflict of interest or confidentiality, they should consult with their manager or supervisor in the first instance or the Legal and Governance Manager, the Executive Director Corporate Resources or the CEO.

## CHANGE HISTORY

<b>Date</b>	<b>Change Description</b>	<b>Reason for Change</b>	<b>Author</b>	<b>Issue No:</b>
July 2014	Initial document creation		Rebecca Kenny	1.0