

TITLE	Conflict of Interest and Commitment
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FILE NUMBER	2003 01368
PURPOSE	To set out principles and means for handling conflicts of interest or conflicts of commitment.
RELEVANT TO	All staff including official visitors All students Delegations Administrator
RESPONSIBLE OFFICER	Deputy Vice-Chancellor
INTRODUCED	November 2002
MODIFIED ON	This is a new policy
RELATED POLICIES	Intellectual Property: Ownership, Protection and Commercialisation (2002/03950) ANU Intellectual Property Manual (1305a/2002) Privacy: Statement on the Collection, Use and Control of Personal Information (834/1994) Policy on Applying for and Accepting Research Grants, Contracts and Consultancies (680/2000) Company Directorships, Secretaryships and Partnerships (2002 03950) Fraud Control Plan Code of Conduct (1023a/2002) ANU Enterprise Agreement 2000-2002 Academic Status (Full, Clinical, Adjunct) (2001 03236)
KEY WORDS	decision-making, close personal relationships ANUTECH, commercialisation, company, conflict of interest, conflict of commitment, directorship, financial interest, innovation, invention, IP, licence, licensing, partnership, patents, secretaryship, technology
RELEVANT LEGISLATION (IF ANY)	Commonwealth Authorities and Companies Act 1997

PRINCIPLES

STANDARDS OF CONDUCT

The University has a responsibility to ensure that its official activities and those of its staff and students conform to acceptable standards of integrity and good administrative conduct. It is the policy of the University that its officers and staff, and others acting on its behalf avoid ethical, legal, financial, or other conflicts of interest, and ensure that their activities and interests do not conflict with their obligations to the University or its welfare.

The Code of Conduct refers to the general standards of conduct expected of University staff. The increasing complexity of conflicts, including those of personal relationships and financial gain from outside commercial activities, make clear principles and procedures essential. The provisions of the Commonwealth Authorities and Companies Act bind University employees and officers to behave in good faith, avoid conflicts of interest and commitment and act with propriety when making decisions about University matters.

Members of staff also have a common law obligation of confidentiality and loyalty of service to the University, and must ensure that sensitive and confidential matters relating to the work or administration of the University are not improperly disclosed, either internally or externally.

CONFLICT OF INTEREST AND COMMITMENT

Definitions

Conflict of Interest occurs when the private interests of a staff member may influence or compromise the conduct of that staff member in the conduct of their activities at the University, including when making decisions, determining research directions or unduly influencing relationships between that person and their colleagues and students. Apparent or perceived conflicts may undermine trust and be as damaging as an actual conflict.

Conflict of Commitment occurs when the private interests or non-University activities may harm or interfere with the productivity and involvement of University staff. This refers to an individual's distribution of effort between employment obligations to the University and to outside professional activities. In this policy "conflict" or "conflict of interest" also includes a conflict of commitment.

Close personal relationship means a relationship with persons who are relatives, other financially dependent persons, a de facto partner (defined as a person who has committed to a long term personal relationship with another person of the same or opposite gender) or any person with whom there is currently, or has been, an intimate relationship. It is not intended that relationships which exist due to ordinary collegiate academic collaboration fall into this category.

Staff member means a person who is employed by the University, or who is given Academic Status or who has official visiting status

Supervisor means the person identified as such according to clause 36.4 of the ANU Enterprise Agreement 2000-2003 or, if the staff member is not covered by the Agreement, the person to whom the staff member is principally responsible while at the University.

Financial Interest means any right, claim, title or legal share in something having a monetary or equivalent value. Examples of Financial Interest include, but are not limited to, shares, share options, and the right to receive remuneration, such as salary, consulting fees, allowances, discounts and the like. Excluded from this definition is an investment by a superannuation, mutual, pension or other institutional investment fund in which a staff member has an interest but over which the staff member does not exercise control.

Significant Financial Interest means:

A staff member or those with a *close personal relationship* with that staff member

- (i) holding a remunerated management or scientific advisory position in an External Entity;
- (ii) the option to obtain equity or the close proximity of equity in a potential new External Entity; or
- (iii) a long-term exclusive or otherwise significant consulting arrangement with an External Entity in a contractual relationship with the University (for example, where a staff member receives an annual income in excess of \$10,000 from such an entity).

An equity position will not be considered a *Significant Financial Interest* unless:

- (i) the equity represents a significant share in the External Entity (in general, a holding of over 5% of the company's shares would be presumed to be significant; holdings of less than 5% will require case-by-case consideration); or
- (ii) the proposed license or the originator's future research is likely to have a significant impact on the value of the company.

External Entity means any corporation, partnership, sole proprietorship, firm, franchise, association, organisation, company, business, or any other legal entity organised for profit, that is not the University or an entity controlled by the University, or a governmental entity.

Potential Areas of Conflict

There are many possible conflicts of interest or commitment. Conflicts can arise from commercial interests, ethical, political or religious views or personal relationships.

The potential for a conflict does not necessarily imply wrongdoing on anyone's part. The University requires the principles underpinning this policy to be applied to resolve conflicts whenever they arise.

The most common are those arising from commercial interests and close personal relationships and this policy provides some additional guidance on managing such conflicts.

When a close personal relationship exists between staff it is the University's policy that:

- (i) One party should not be the direct supervisor of the other.
- (ii) One party should not be involved in decision-making or procedures leading to the appointment, promotion or any other determination relating to employment conditions, benefits or entitlements for the other party.
- (iii) One party should not have access to the personal files of the other.
- (iv) The relationship between the parties should not affect the interests of other parties. Because the effects on other people at work or in the classroom are frequently not apparent to the persons involved in a close personal relationship, anyone with such an involvement should be attentive to the feelings of colleagues and to the potential conflicts of interest that may be involved.

Where there is a close personal relationships involving students it is University policy that a staff member should not be involved in the supervision, progress, assessment, examination or grading of students with whom they have a close personal relationship. The supervisor to whom notification of such a close personal relationship is made (by either the staff member or the student) should immediately take steps to avoid perceived, actual or potential conflicts of interest in respect of the staff-student relationship.

Where a staff member is involved in a course that includes a student with whom they have a close personal relationship, and the staff member or student's involvement in the course is unavoidable, steps to redress the conflict that has arisen might include:

- (i) Where a staff member could be involved in setting any assessment to be undertaken by a class that includes the student an independent third party should set the assessment and mark the papers.
- (ii) Where a staff member is involved in the ranking of a group of students which includes the student, alternative examiners should be appointed to ensure any ranking is transparently made on merit.
- (iii) In the case of graduate students, staff should not be involved in the supervision, assessment or examination of a student who is in a close personal relationship, or in material decisions relating to that student's course.

Financial conflicts of interest may arise:

- (i) where a staff member, who has budgetary responsibilities for an organisational unit, also has a personal interest (or a person with whom the

member has a *close personal relationship* has a personal interest) in an activity that is to be funded out of that unit,

- (ii) from a University researcher's financial involvement in an external company that funds part of the research being undertaken by the researcher at the University, such that the researcher's activities at the University could lead to professional, personal or economic gain, thereby providing incentive to bias the design, conduct or reporting of research;
- (iii) with respect to University financial decisions in which the staff member is involved, including but not limited to investments, loans, purchases or sales of goods, services, equity (shares) and financial accounting decisions;
- (iv) with respect to matters with both financial and non-financial implications, such as decisions about the use of University equipment and facilities and the negotiation of research and license agreements.

PRIVACY

The University recognises that the disclosure by an individual of a potential conflict could involve the disclosure of personal information. The University adheres to information privacy principles and will treat information provided in accordance with these principles (Privacy Policy 834/1994). Any individual who is concerned about the potential ramifications of disclosing particular information may raise their concerns directly with the Deputy Vice-Chancellor, particularly if they feel it is inappropriate to disclose such information to their supervisor. The Deputy Vice-Chancellor will determine how and to whom any information is subsequently disclosed bearing in mind the requirements of this policy and the privacy of the individual concerned.

ACKNOWLEDGEMENT

Development of this policy has drawn, in part, on:

- *Conflicts of Interest Policy*, University of Glasgow, December 2001
- *Report on Individual and Institutional Financial Conflict of Interest*, Report and Recommendations of the Task Force on Research Accountability, Association of American Universities, October, 2001
- *Conflict of Interest Policy*, The University of Colorado, 1992.

PROCEDURES

BASIS FOR HANDLING CONFLICTS

Three actions that underpin implementation of this policy are:

- *disclose always*;
- *manage* the conflict where appropriate; and
- *prohibit* any activity when necessary to protect the public interest or the interests of the University.

DISCLOSURE

When is Disclosure Required?

Disclosure by a staff member must be made when there is potential for conflict, or the perception that a conflict may exist. Disclosure must be full and prompt, and made to the staff member's supervisor using the form attached. In the case of close personal relationships, either party to the relationship can make a disclosure. The primary obligation is to notify, in advance, any potential conflict. Written approval should be obtained *before* any commitment is made that might involve a conflict.

Conflicts Relating to Financial Interests where Students are Involved

The impact of a supervisor's conflict on students is of special concern. The University is particularly concerned about the content and quality of the training experience for students whose research is sponsored by an External Entity and whose supervisor(s) have a personal interest in that business. The training experiences of students and postdoctoral fellows are expected to incorporate the values of objectivity in research and the importance of public trust. Students should not be required to participate in research that utilises an External Entity's confidential information or otherwise constrains their right to publish or communicate freely. Any exceptions, consistent with the provisions of this policy, shall be approved in advance by the Deputy Vice-Chancellor (Research).

Before embarking on a research project, a student must be provided by the supervisor with a clear description of:

- Any External Entity support of the research to be undertaken;
- Any personal Significant Financial Interest the supervisor has in a sponsoring External Entity; and
- Any restrictions that might be imposed on the communication of research results.

Written approval from the Deputy Vice-Chancellor (Research) must be obtained

before a student can be assigned to conduct research which is sponsored by an External Entity in which the supervisor has a Significant Financial Interest.

Commercial Conflicts

Potential conflicts in which the University has a particular interest and must be disclosed are:

- *Fiduciary relationships*

Being a director, partner, or trustee is an example of the creation of a fiduciary relationship. If that relationship is owed to an External Entity there is real potential for a person's obligations to that External Entity to conflict with any obligation they may owe to the University, particularly where that person is a staff member. Staff should not be in a position to direct University resources that can influence an External Entity's development if they are directors or shareholders in it. Potential conflicts between a person's role with that External Entity and their University role are likely to be such that the person may be unable to hold both a University position and a position with the External Entity.

Some appointments of this type require approval of Finance Committee, as well as disclosure to the supervisor under this policy: see *Company Directorships, Secretaryship and Partnerships* (2002/03950).

- *Negotiating interests*

It is a potential conflict for staff to negotiate personally the terms under which any intellectual property, or other property of the University, is to be sold, licensed or transferred to an External Entity, in which the staff member has a Financial Interest. The required course of action is for a representative of the External Entity who is not a staff member of the University, or a person with whom the staff member has a close personal relationship, to be appointed to negotiate with the University, allowing negotiations to be conducted at arms length from any staff member with a Financial Interest.

- *Shareholdings*

In some cases holding shares in a company may create a conflict including, for example, a staff member holding shares in a company controlled by one of the students or staff over whom they have responsibility. Similarly holding shares in a company that is sponsoring research at the University, where that research is managed or controlled by that staff member represents a potential conflict.

- *Non-executive roles in External Entities*

Holding positions such as Chief Scientific Officer in companies sponsoring research at the University and conducting research at the University while simultaneously a staff member may create a conflict. Time commitments in fulfilling non-executive roles may create a conflict of commitment such that a staff member's University employment may have to revert to part time to allow both commitments to be fulfilled.

Other Conflicts Requiring Disclosure:

- Remunerated or honorary positions and other connections with educational institutions which may give rise to a conflict of interest, including relevant external government or public committees, such as Research Councils, charities, Government Departments, professional bodies and training organisations.
- Prolonged absence - a staff member having a commitment outside the University that involves frequent or prolonged absence from the University on non-University business. The allowable exceptions are teaching or research activities performed in the course of normal OSP or other approved leave that are routinely subject to disclosure and approval processes.
- Gifts or offers of gifts of significant value, other than official gifts, and ex gratia payments.
- Ownership or part-ownership or other interest in property in the vicinity of the University.
- Representational or other non-financial interests relevant to the University (e.g. election as an MLA or MP for an electorate including all or part of the University).
- Engagements limiting the scope of activity at the University, such as a staff member, as part of an arrangement with a non-University affiliated entity, agreeing to any limitations on the staff member's performance of research or teaching duties for the University (eg. through agreements containing exclusive provider, non-competition or right of first refusal clauses).

Annual Reporting

Disclosure of all consultancies, other financial interests that have the potential to create a conflict, relationships or other matters that may be perceived to raise a conflict must be formally reported at the same time as the Planning and Performance Review process is undertaken. This does not detract from a staff member's obligation to report promptly, during the course of the year, any potential or actual conflict that may arise. The form annexed to this policy should be used to report potential conflicts.

Failure to Notify and Actual or Potential Conflict

Not providing notification of a potential conflict could be regarded as misconduct (Misconduct provisions of the 2000-2002 ANU Enterprise Certified Agreement, Clauses 54 and 57).

There may be occasions when a conflict becomes known after the fact of a decision or determination. In these cases, as soon as the conflict becomes evident it must be reported to the supervisor. The University may decide to investigate the circumstances of the decision or determination, including whether a different decision or determination ought be made. The University may also determine that an investigation should be undertaken to determine whether misconduct has occurred.

MANAGING CONFLICTS

Management Plan

Following a disclosure the supervisor and all relevant staff members and students, as appropriate, must devise an appropriate plan to manage or avoid the potential conflict. The supervisor and University member making the disclosure can use the process set out in the Appendix to assist in evaluating the extent of the conflict with a view to preparing a comprehensive management plan. Any party to the conflict or a relevant supervisor can consult the Conflict Advisory Officer to obtain guidance or assistance in resolving any issues.

Once a management plan is devised it must be signed by all parties and placed on appropriate University files to ensure that any decision-maker who might later deal with matters concerning the issue of the disclosure is properly informed prior to making any decision.

Examples of Conflicts

Handling situations involving conflicts of interest or commitment can often be straightforward but can also be difficult because of the complexity of some situations. To assist supervisors faced with making decisions on conflicts a set of examples is provided in the *ANU Intellectual Property Manual*. That list will be updated from time to time as experience is gained with applying this policy.

Conflict Advisory Officer

The Deputy Vice-Chancellor acts as a Conflict Advisory Officer (CAO) for the purposes of this Policy. The role of the CAO is to provide advice as well as assisting to resolve conflicts unable to be resolved between the parties.

Requests for consideration of a potential or actual conflict should be forwarded to the Deputy Vice-Chancellor. Requests are to be written, set out clearly the potential or actual conflict, the parties concerned, and the reason(s) for requesting advice. The Deputy Vice-Chancellor may attempt to resolve the conflict or refer it to the Conflict Review Committee.

Conflict Review Committee

In doubtful or sufficiently complex cases the Deputy Vice-Chancellor may take advice from the Conflict Review Committee. The Committee, including the Chair, will be drawn by the Deputy Vice-Chancellor from the following list, depending on the nature of the conflict to be considered. The Committee will have a minimum of three members.

If the Deputy Vice-Chancellor refers a conflict to the Committee, the Committee should meet and report within thirty (30) days of a written request being received, or such further time as agreed by the Deputy Vice-Chancellor.

Potential Chairs

Deputy Vice Chancellor
Deputy Vice Chancellor (Research)
Deputy Vice-Chancellor (Education)
Pro-Vice Chancellor (Academic)
Pro-Chancellor

Potential Members

Any Dean or Director
University Solicitor
Administrative Division Heads
Student representative
Staff representative

FORMS

DISCLOSURE OF POSSIBLE CONFLICT OF INTEREST AND/OR COMMITMENT

Name _____ Date _____

School/Faculty/UniversityCentre _____

Department, or equivalent _____

I am declaring a

REAL POTENTIAL PERCEIVED CONFLICT OF INTEREST and/or COMMITMENT

and/or

CLOSE PERSONAL RELATIONSHIP

Please outline briefly the nature of the conflict/relationship (details may be included in a separate confidential envelope, if appropriate).

Please outline proposed arrangements for managing/resolving the conflict/relationship (attach separately if appropriate)

I agree:

- To update this disclosure during the entire period of the my employment, on an annual basis or until such time as the conflict ceases to exist.
- To cooperate in the development of a conflict of interest "management/resolution plan," if applicable.
- To comply with any conditions or restrictions imposed by the University to manage, reduce, or eliminate actual or potential conflict of interest and/or interest.

SIGNED: _____

APPENDIX

EVALUATING DISCLOSURES¹

Those evaluating disclosures at each level of review need a framework for determining the permissibility of activities and for assessing the degree to which disclosed activities may pose risk to the staff member, the University, and other entities that may be affected. Presented below are sample questions for use in evaluating potential conflicts of interest or commitment. The list is not exhaustive and other questions related to relevant individual circumstances should be asked as appropriate.

When presented with the facts of a given situation, the supervisor or Deputy Vice-Chancellor must first determine if there is legitimate cause for concern related to activities of the staff member. The following questions are suggested for this initial determination.

- (i) Has all relevant information concerning the staff member's activities been provided (i.e., has there been full disclosure)?
- (ii) Do the staff member's relevant financial interests suggest the potential for conflicts or the appearance of conflicts or bias?
- (iii) Do the staff member's reported external time commitments exceed permissible levels?
- (iv) Is there any indication that the staff member in his or her professional role has improperly favoured any outside entity or appears to have incentive to do so?
- (v) Has the staff member inappropriately represented the position of the University to outside entities?
- (vi) Does the staff member appear to be subject to incentives that might lead to conflicts or bias?
- (vii) Is there any indication that obligations to the University are not being met?
- (viii) Is the staff member involved in a situation that might raise questions of bias, inappropriate use of University assets, or other impropriety?
- (ix) Could the staff member's circumstances represent any possible breach of regulatory or other legal requirements, eg. incompatibility between the activity and holding a statutory licence for particular research?
- (x) Do the current engagements of the staff member represent potential conflicts between outside interests (e.g. working on projects simultaneously for competing business entities)?

¹ These procedures have been adopted from those used at the University of Colorado (*see Conflict of Interest Policy*, University of Colorado, 1992.) Their use is gratefully acknowledged.

- (xi) Could the proposed activity withstand public scrutiny?

If it appears that there is genuine cause for concern, the supervisor or Deputy Vice-Chancellor must ascertain whether appropriate controls are in place to deal with possible conflicts and whether those controls are already proposed or in place. The supervisor should ask, as relevant:

- (i) Will the negotiation of relevant research affiliations or other contracts be handled by disinterested representatives of the University and the External Entity?
- (ii) Will the research work plan receive independent peer review prior to its initiation?
- (iii) Are there mechanisms in place to prevent the introduction of bias into research projects (i.e., Is the protocol doubled-blinded? Are research subjects randomly selected?)?
- (iv) Will the project be supervised by someone with no conflicting interests?
- (v) Are there means to verify research results (e.g., independent corroboration in another lab, peer review)?
- (vi) Will data and materials be shared openly with independent researchers? If not, who determines accessibility to such resources?
- (vii) Will the product of a collaborative effort with an External Entity be published in the peer-reviewed scientific literature?
- (viii) Will the sponsor and/or relevant parties receive acknowledgement in public presentations of the research results?