

## Y Whittlesea

# Conflict of Interest Policy

### 1. Purpose:

The purpose of this Policy is to:

- assist Directors, staff and volunteers to identify actual, perceived and potential conflicts of interest.
- explain the process for disclosing conflicts or potential conflicts.
- provide guidance to those responsible for dealing with conflicts; and
- assist in the management of conflicts to protect the integrity of the decision-making processes and reputation of the Y, its Directors, staff and volunteers.

This policy is not meant to supplement good judgment and Directors, staff and senior management should act in accordance with its spirit as well as its wording

### 2. Scope:

This policy applies to all operations and services of Y Whittlesea including staff, volunteers, Board, contractors and visitors.

### 3. Definitions:

- **'The Y' or 'Y' or 'Y Whittlesea'**: refer to YMCA Whittlesea Inc and YMCA Whittlesea Community Services

### 4. Policy:

Good governance requires effective processes to be established to navigate situations where Directors, staff or volunteers either are or may appear to be caught between the interests of the Y, themselves or another party.

Conflicts of interest should be seen as ethical problems that can have legal ramifications as opposed to being seen through a strictly legal lens only.

With the special status that the Y holds as a registered Deductible Gift Recipient, the Y's stakeholders and the community at large view the Y in an ethical context that goes beyond the bare minimum legal requirements and the Y should seek to be an exemplar of best practice.

A conflict of interest is any situation in which Directors, staff or volunteers' personal interests or loyalties, either could or could be seen to, prevent them from making a decision only in the best interests of the Y. Conflicts of interest can be actual, perceived or potential:

1. Real (actual): where there is genuine conflict between the interests of the Y and the individual or others.
2. Apparent (perceived): where it looks like there might be a conflict, even if there isn't one.
3. Potential: where an actual or perceived conflict might develop in the future, even though one doesn't currently exist.

Directors have a particular duty in a fiduciary sense. Section 181 (1) of the Corporations Act 2001 requires directors to exercise their powers and discharge their duties:

1. In good faith in the best interests of the corporation; and
2. For a proper purpose.
3. In determining personal interest, it is subject to an objective test, which is: how would a disinterested observer see the interest as likely to affect decision making?

For the Y, the guiding principle to be applied by Directors, staff and volunteers to both conflicts of interest and gifts and hospitality is "if in doubt, report".

## 4.1 Declaring Conflicts of interest

For Directors there are five occasions when conflicts of interest should be declared:

1. pre-selection: any prospective Director should be asked to complete a Declaration of Interests form prior to confirmation of appointment.
2. on arrival: every new Director should review and update the Declaration of Interests form at the time of appointment.
3. annually: the Directors should review, update as necessary and confirm their Declaration of Interests each year.
4. As and when: new interests should be declared by Directors as they arise.
5. At any meeting where a conflict may arise: Conflicts of interest will be a standard agenda item at the beginning of each Board meeting and the Directors present should declare any new interests and any matters that could give rise to a conflict in respect of any of the agenda items for that meeting. If in doubt a potential conflict should be declared, and clarification sought. All such declarations must be minuted.

Directors may seek the advice of the Chair of the Board to clarify any responsibility to declare and where the Chair has a conflict, that advice may be sought from the Chair of the Finance and Audit Committee.

For staff and volunteers, it is the responsibility of each individual to declare any matters to their immediate supervisors which they feel may present actual or potential conflicts, or the perception of such conflicts. Staff and volunteers may seek advice from their line manager and/or a member of the Executive Team noting that the general approach is that if in doubt it is always better to make a declaration.

### 4.1.1 What must be declared?

This policy requires that the nature and scope of any conflict must be declared. The declaration must include sufficient information to enable appropriate decisions to be taken as to the seriousness of the conflict and its management. This is likely to include: the type of conflict, a description of all parties involved and their relationship, and the potential financial or non-financial interests or benefits, or other duties or obligations.

## 4.2 Managing Conflicts of Interest – Directors

Once a conflict has been declared to the Board it must be removed or managed so that any potential effect on decision-making is eliminated. Until the conflict has been resolved in either of these ways, the relevant Director should take no part in the matter(s) relating to that interest.

The Board must deliberate on the conflict in the best interests of the Y and pursuant to the specific requirements set out in the Y's Constitution which deal with how conflicts of interest must be handled. The Board may resolve to delegate elements of the conflict-of-interest management, normally to the Chair.

Having evaluated the level of conflict and obtained any further details, the Board may decide that the interest:

1. is not significant and does not create a real danger of bias or conflict (Category A); or
2. creates a significant but not substantial danger of bias or conflict of duty, or might reasonably cause others to think it could influence a decision (Category B); or
3. creates a substantial danger of bias or conflict of duty (Category C); or
4. creates a severe or substantial and recurring danger of bias or conflict of duty (Category D).

Once a decision is reached on the severity of the conflict the Board must resolve how it is to be managed. Generally, the following will be appropriate:

Category A: the Director must declare the interest and may contribute information to the meeting and remain in the meeting but not vote or be counted in the quorum.

Category B: it shall be at the discretion of the Chair or other Directors (who do not themselves have an interest in the matter) whether the Director may contribute information to the meeting, but the Director must not participate in the discussion, or vote on the matter and will not be counted in the quorum for that issue.

Category C: the Director must leave the meeting, not participate in the discussion or vote on the matter. Steps will need to be taken to ensure sensitive information is not available to the Director.

Category D: other steps will need to be taken to manage the conflict. An example of such a step could include:

- The Director agreeing to obtain consent from the other party creating the conflict, for example, his client or employer, that the Director be relieved of their obligation to disclose relevant information to that other party where the information was obtained from or relates to the Y.
- Withholding all other papers that relate to the conflict from that Director.
- The Y ceases to undertake the activity giving rise to the conflict.
- The Director resigns.

In each case the Board may consider that other steps are necessary.

Where a conflict is so acute or extensive that following these procedures will not allow the Director to demonstrate that they have acted in the best interests of the Y, they may need to seek the authority of the Board to continue to serve. The decision making should be recorded in the minutes of Board meetings and noted in the register. The minutes should record:

1. the nature of the conflict;
2. which Directors were affected;
3. whether any conflicts of interest were declared in advance;
4. an outline of the discussion;
5. whether anyone withdrew from the discussion; and
6. how the Board took the decision in the best interests of the Y

Where any minutes or other documents relating to the item presenting a conflict or potential conflict are being provided to the Director facing the conflict, special care must be taken to ensure that the minutes or other documents are appropriately redacted before being provided. A balance needs to be made to ensure that the person still receives sufficient information about the activities of PIA generally without disclosing information which it would be inappropriate for the person to receive

### **3.3 Managing Conflicts of Interest – Staff and volunteers**

As stated in the Code of Conduct, the Y respects each staff members and volunteer's right to privacy in the conduct of their personal affairs, yet they should be free of outside interests and activities which might impair the exercise of their independent judgment in carrying out their duties as a staff member or volunteer in the best interests of the Y.

The following are among the arrangements barred by this policy:

1. a staff member or volunteer may not be, directly or indirectly through a family member or other person acting on his/her behalf, an employee or serve as proprietor, partner, officer, or Director of any supplier if the staff member or volunteer has any role in the selection of suppliers.
2. a staff member or volunteer may not own capital stock or have other investment in any enterprise which is a supplier to PIA, if such investment would be significant enough to interfere or conflict with the staff member's or volunteer's obligation and responsibilities to the Y.
3. a staff member or volunteer may not be a consultant, employee, or representative of another firm if such service would: interfere with the employee's obligation to the Y because of the demands of time or interest; utilise the Y's proprietary information gained primarily through employment; or identify the Y with an activity or cause with which it does not want to be identified.

Where a staff member or volunteer or their family has an outside interest in or activities with any supplier of goods or services to Plan, such interest or activities with such supplier must be disclosed by the staff member or volunteer in writing to their immediate supervisor, who will be responsible for informing the company secretary, who in turn will refer to the Executive Team for appropriate management decisions to be made.

Once a conflict has been declared to the company secretary it must be managed forthwith through the Executive Team so that any potential effect on decision-making is eliminated in a timely fashion. Until the conflict has been resolved, the relevant staff member or volunteer should take no part in the matter(s) relating to that interest.

The Executive Team must deliberate on the conflict in the best interests of PIA. The decision making should be recorded in the minutes of Executive Team meetings and noted in the register.

### 4.3 Managing Conflict of Interest in NDIS Support Coordination

The Y and its employees will ensure that when providing supports to service users under the NDIS, any conflict of interest is declared and risks to service users are mitigated.

All employees will act in the best interests of all service users, ensuring that service users are informed, empowered and able to maximise choice and control. Staff members will not (by act or omission) constrain, influence or direct decision-making by a person with a disability and/or their family to limit that person's access to information, opportunities, and choice and control.

Service users will be presented with a range of choices about providers of supports. The Y will not seek to influence the customer to select itself.

For Support Coordination, ensuring that any perceived or actual conflict of interest is managed and achieved by:

- Implementing processes that guides Support Coordinators in their role and practice.
- The Conflict-of-Interest Policy is made available to customers and is communicated to them in a manner that the customer or their representative is most likely to understand
- Documentation in case notes of the choice of providers offered (at least 3 where possible) to a participant and/or their nominee for each support category where a provider is to be engaged
- Case notes include rationale for the participant/nominee's choice of provider for each support category where a provider is engaged
- Where a participant and or their nominee has chosen another Y service for service provision, a request for capacity or quote is documented by the Support Coordinator
- Support Coordination case notes are recorded in the Y's Customer Relationship Management system (CRM) at program level and are not viewable by another Y service. Specific information required by another service area can be requested through the Support Coordinator, as for any other (external) service provider
- Reports provided to the NDIA on how the participant and/or their nominee has been provided with a choice of providers and required to provide evidence and justification where another Y service has been engaged.
- Provision of information to the participant and/or their nominee at the initial meeting of the process for requesting a change in service provider, including Support Coordination

### 5. Related policies:

- Code of Conduct
- Terms of Business for Registered Providers- NDIS
- Service Delivery Policy

### 6. Related procedures and supporting documents:

- Conflict of Interest procedure
- Inclusion Service User Handbook

### 7. Legislative and Industry Requirements:

- [Link](#) to Legislative Compliance Register

### 8. Consequences of breaching this policy:

All elements of this policy must be adhered to, and any breach will be dealt with in accordance with the [YMCA Whittlesea Disciplinary and Termination Policy](#).

### 9. Variations:

Y Whittlesea reserves the right to vary, replace or terminate this policy from time to time.

### 10. Policy owner:

The Company Secretary is responsible for keeping this policy current - including making amendments as required, and regular reviews as scheduled.

### 11. Document Control:

Review of this policy will be undertaken every two years, or prior as required by law, in consultation with appropriate Y Staff.

Policy available on Y-MAC>Communication>Manuals and Files>Policies and Procedures

This document is due for review on 30/08/2024.

<b>Version:</b>	<b>Description of Amendment</b>	<b>Amended by</b>	<b>Approver and date</b>	<b>Release Date</b>
2.0	Policy reviewed, merging of Managing Conflict of Interest Policy	Michele Rowse	Board 29/8/2022	12/9/2022
1.0	Document endorsed		Board, 30/8/2013	