



Australian Government
National Health and Medical Research Council

N|H|M|R|C

Policy on the Disclosure of Interests Requirements for Prospective and Appointed NHMRC Committee Members

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Approval

Name and Title	Date
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This policy replaces *Guideline Development And Conflicts Of Interest: Identifying and Managing Conflicts of Interest of Prospective Members and Members of NHMRC Committees and Working Groups Developing Guidelines (2012)* and *Identifying and Managing Conflicts of Interest of Prospective Members and Members of NHMRC Council, Principal Committees and Working Committees (2013)*

1. Introduction

The National Health and Medical Research Council (NHMRC) is established by the *National Health and Medical Research Council Act 1992* (NHMRC Act) to raise the standard of individual and public health throughout Australia, to foster the development of consistent health standards between the various states and territories, foster medical research and training and public health research and training throughout Australia, and to foster consideration of ethical issues relating to health.

Members of NHMRC Committees provide high quality, expert and independent advice that enables NHMRC to fulfil its functions under the NHMRC Act. Members are appointed for their expertise and experience across a diverse range of professions and fields. Appointments are also made with consideration given to balancing the benefit of having persons with expertise against the risks of their interests biasing a process.

These guidelines are designed to assist and inform members in the exercise of their responsibilities in order to ensure all disclosures of interests are addressed in a rigorous and transparent way throughout the period of their participation in NHMRC Committees.

1.1 Legal Obligations

Appointees to Council and committees of NHMRC are required to disclose their interests consistent with section 42A of the NHMRC Act and instructions¹ issued under sections 16A and 16B of the *Public Governance, Performance and Accountability Rule 2014* (made under subsection 29(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)).

In particular, under:

- subsection 42A(3) of the NHMRC Act, members of Council and committees must “give to the CEO a written statement of any interest the member has that may relate to the activity of the Council or Committee” before starting to hold office, “Interest” is defined in section 4 of the NHMRC Act as meaning “any direct or indirect, pecuniary or non-pecuniary interest.”²
- section 29 of the PGPA Act, “an official... who has a material personal interest that relates to the affairs of the entity must disclose details of the interest”. This obligation (unlike the obligation in subsection 42A(3) of the NHMRC Act) is ongoing and not limited to a particular point in time.

The terms “material personal interest” (in the PGPA Act) and “interest” (in the NHMRC Act) are similar and for the purposes of this document the terms are interchangeable, and whilst the term “Interest/s” has been used for ease of reading, this policy includes guidance on each.

¹ NHMRC Peer Review Panels Instructions are issued as the NHMRC Peer Review Guidelines

² See Appendix B: Disclosure of interests on appointment.

1.2 Scope of this policy

This policy applies to members of the Council of NHMRC (Council), Principal Committees, including the Embryo Research Licensing Committee³(ERLC) of NHMRC, and working committees, including s39 Committees such as Peer Review Panels. All members appointed to these committees are officials of NHMRC under the PGPA Act⁴ and as listed in paragraph 5B(3)(c) of the NHMRC Act.

This policy is, to the extent necessary, also a determination by the Chief Executive Officer on procedures to be followed by members, made under paragraph 40(b) of the NHMRC Act.

1.3 Principles

This policy is underpinned by three principles, to be adopted by members and Chairs of committees, and the staff of the Office of NHMRC:

- a) **Disclosure** – interests will be fully declared and actively reviewed;
- b) **Decision** – decision making processes will be transparent and unbiased; and
- c) **Diligence** – conflicts of interest will be managed in a manner that is diligent, timely and transparent.

³ established under the *Research Involving Human Embryos Act 2002*.

⁴ To avoid ambiguity, the Australian Public Service staff of NHMRC are officials of NHMRC under the PGPA Act, and have identical obligations under that Act.

2. What is an 'interest'?

While the PGPA Act does not define a 'material personal interest', the NHMRC Act defines an 'interest' to be "any direct or indirect, pecuniary or non-pecuniary interest" (section 4). The matters listed at 2.1 below could be considered to be 'interests' that have the potential to affect the integrity of an NHMRC decision. This list is intended as a guide to members, as there may be matters other than those listed which should be considered.

2.1 General Guidelines

An 'interest' can include **but is not limited to**:

- a) financial interests such as receipt by the member or their 'immediate family members' (partner and/or dependent children) of payments, gratuities, consultancies, honoraria, employment, grants, support for travel or accommodation, payment for meals and beverages or entertainment or educational event attendance (including registration fees) or gifts from an entity having a commercial interest in the issues being considered by the committee.
- b) any other relevant direct or pecuniary interest (for instance, having provided expert testimony on behalf of an entity with a commercial or other interest in the issues being considered by the committee).
- c) relationships, including board membership, employment, stock and/or ownership or consultancies between the prospective member or 'immediate family members' (partner and dependent children) and corporations whose products or services are related to the issues being considered by the committee or that have a commercial or other interest in the issues being considered by the committee.
- d) affiliations to or associations with any organisations or activities which could reasonably be perceived to be an influence due to a competing interest either for or against the issues being considered by the committee.
- e) institutional interests (that is, interests arising from an affiliation or association of an individual to an institution) – for example, when parties with an interest in the issues being considered by the committee have made gifts to the member's institution to endow chairs or fund the construction of research facilities or donate equipment to support a project in which the member is involved; or when research conducted within an institution could affect the value of equity that the institution holds in a company or the value of a patent that the institution licenses to a company.
- f) having recently been involved in the development of related guidelines, standards, educational materials or fact sheets, writing of publications, delivering speeches, or engagement in public debate on the topic related to the guidelines to be developed.
- g) receipt of research funding by the prospective member or immediate family members from any entity that has a commercial interest in the issues being considered by the committee.
- h) any other influences which might reasonably be considered likely to affect the expert judgement of the individual, or lead to the perception by others that the judgement of the individual is compromised.

2.2 Additional consideration for members of the Embryo Research Licensing Committee

In addition to the above, members of ERLC must also disclose any direct or indirect pecuniary interest in a body that undertakes uses of excess ART embryos or human eggs, or creation or use of other embryos, consistent with the requirements of paragraph 16(3)(c) of the *Research Involving Human Embryos Act 2002*.

2.3 Additional guidance for Peer Review Panel members

NHMRC peer review panel members should also consider their:⁵

- involvement with the application under review;
- collaborations;
- working relationships;
- professional relationships;
- social relationships;
- teaching or supervisory relationships.

⁵ See: A guide to NHMRC peer review: 4. *Conduct during Peer Review* <http://www.nhmrc.gov.au/book/guide-nhmrc-peer-review/4-conduct-during-peer-review> ; and/or the relevant scheme-specific peer review guidelines.

3. What is a 'material personal interest'?

To be a 'material personal interest'⁶, the interest must be of a type that can give rise to a real or perceived conflict of interest. The nature and substance of the interest must have the capacity to affect or be perceived to affect, the ability of the person to honestly discharge their duties to NHMRC.⁷

Deciding whether an interest is 'material' is a matter ultimately for the judgement of the individual and, subsequently, the members of the committee. Each member should consider their interests in the context of the affairs of NHMRC and whether the interest could, or could be perceived to be, one that affects their capacity to bring an independent mind to bear on the matters being considered. If in doubt, members should disclose the interest.

However, if, when considering the facts of a particular case, you consider that a declaration may be an 'interest' but not a 'material personal interest', please consult the Secretariat for advice.

⁶ Department of Finance issued a definition for 'material': To be 'material' a personal interest must be of a type that can give rise to a real or perceived conflict of interest. Personal interests do not give rise to a conflict of interest unless there is a real or sensible possibility of conflict and not simply a remote or theoretical possibility of conflict. In addition to be 'material', the nature and substance of the interest must have the capacity to impact on the ability of the person to honestly discharge their duties to the NHMRC.

⁷ J Cassidy, *Corporations law: text and essentials*, p.28. Cited in *Resource Management Guide No.203 General Duties of Officials* June 2014, Department of Finance.

4. When to disclose an interest?

The obligation for members to disclose interests starts during the appointment process and continues throughout the period of committee membership. The processes and timing for disclosure may differ between committees. However, the overarching principle is that a member must disclose an interest as soon as practicable after becoming aware of the interest or that there has been a change in the nature or extent of the interest.

Further information about the disclosure of interests on appointment is at Appendix B.

A failure to disclose an interest may result in the termination of the member's appointment under section 44B of the NHMRC Act (section 44B also covers failure to comply with section 29 of the PGPA Act). Accordingly, members should consult the Secretariat if they are uncertain about whether to disclose an interest. Peer Review Panel members should consult the NHMRC Guide to Peer Review and the Scheme-Specific Peer Review Guidelines for further information.

5. How to disclose an interest

A disclosure can be made electronically, by email to the relevant secretariat or through the NHMRC Committee Centre at any time. Disclosures can also be made verbally at a meeting⁸.

Disclosures will be made public to the other members of the Committee. Where an appointee is a member of an NHMRC Peer Review Panel, the disclosure must be consistent with Scheme's instructions⁹

According to Rule 16A, the disclosure **must** include details of:

- the nature and extent of the interest, and
- how the interest relates to the 'affairs of' NHMRC.

'Affairs of' NHMRC is taken to mean those matters under consideration that relate to the member's disclosure.

⁸ A meeting includes a video or telephone conference that is constituted for the purposes of providing advice or making a decision.

⁹ Scheme instructions usually include but are not limited to the *NHMRC Guide to Peer Review and the Scheme-Specific Peer Review Guidelines*.

6. Consequences of having an interest

For any disclosed interest, the NHMRC and PGPA Acts require that the member is not present when matters that relate to the interest are considered, and does not take part in any decision of the committee in relation to those matters unless the members of the committee determine otherwise (as set out below in 6.1).

A failure to disclose an interest may result in the termination of the member's appointment.

6.1 Determinations about interests

Members of the committee can determine whether the member who has disclosed an interest can participate in discussions, scoring and/or voting. The Chair will ask the committee to make a determination, following a disclosure of an interest. The member is not present whilst the determination is made.

In determining whether a member can participate, the committee should consider:

- whether the absence of the member would substantially impede the committee's consideration of the matter (i.e. the loss of significant expertise or experience from the committee);
- any legislative requirements that the member be present;
- the effect of the member's presence on public confidence in the committee's decision making processes (i.e. the perception of a conflict of interest);
- whether the member can be appropriately involved in certain discussions or decisions (e.g. an individual may contribute their expertise to a discussion or be able to answer questions from other members) but not vote on a final outcome or the crafting of a final recommendation);
- the decision making context and whether the composition of the committee dilutes or mitigates any potential conflict of interest; and/or
- if the member can take action to divest themselves of financial interests or resign from membership of entities whose interests could be affected by the committee's consideration.

Where the Committee meeting includes members attending via video conference and a DOI is made and needs to be considered, the Chair must be satisfied that the member no longer has access to the committee meeting whilst the matter is being determined, and following determination to exclude the member.

7. Record of interests

All disclosures and determinations about interests must be recorded in the minutes (recorded outcomes) of the member's committee meeting. Members are required to ensure interests are accurately recorded in the meeting minutes. The CEO will receive an annual report on the determinations made by committees about all disclosed interests.

A summary of the disclosed interests for members of the Council of NHMRC, Principal and working committees¹⁰ will be placed on the NHMRC website. Members' consent to the summary will be sought before publication, consistent with NHMRC's obligations under the *Privacy Act 1988*.

There are three circumstances where NHMRC will not make interests public:

1. for NHMRC peer review panels, consistent with the confidentiality of NHMRC's peer review process
2. where the member applies to the CEO, and the CEO agrees, for the disclosed information to be treated as confidential, and
3. information relating to a third party.

In these circumstances, the details of disclosed interests will be treated as confidential to the extent possible, having regard to NHMRC's obligations under Commonwealth law, including the *Freedom of Information Act 1982*.

Disclosed interests and the register of disclosed interests are managed by NHMRC in accordance the *Privacy Act 1988*. The NHMRC Privacy Policy is available from the NHMRC website.

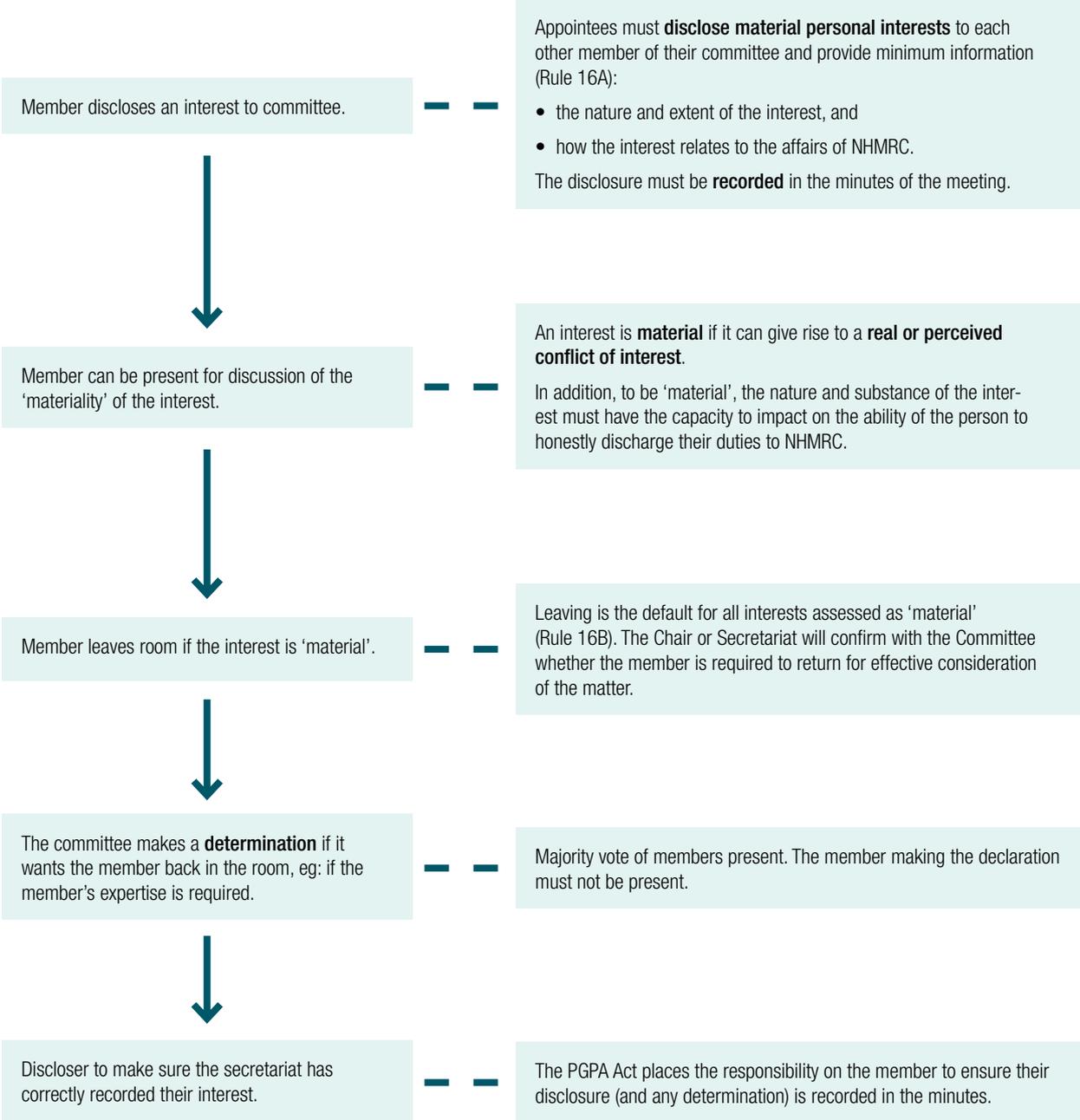
¹⁰ Due to the nature of peer review panels member's disclosures will not be published.

8. Supporting documents for further reading

For further reading

- NHMRC Privacy Policy
- Instructions for NHMRC Peer Review Panels: NHMRC Peer Review Guidelines
(<http://www.nhmrc.gov.au/book/guide-nhmrc-peer-review-2015/guide-nhmrc-peer-review-2015>)

Appendix A: A quick guide to disclosing interests



Appendix B: Disclosure of interests on appointment

The members of the Council of NHMRC and Principal Committees are identified and appointed by the Minister with responsibility for NHMRC, based on advice from NHMRC and the Department of Health. The NHMRC Act prescribes the membership of Council (see section 20 of the NHMRC Act) and the Australian Health Ethics Committee (AHEC) (see section 36). Members of the Embryo Research Licensing Committee are appointed by the Minister having regard to the requirements and processes established under the *Research Involving Human Embryos Act 2002*. For other Principal Committees, potential members are identified having regard to the functions of the committee, as established by the NHMRC Act and as gazetted by the Minister.

Working committees established by the CEO will perform a number of functions. They may provide assessments of applications for grants, under NHMRC's peer review processes, provide input and advice on health issues, provide advice to AHEC on specific ethical issues or may provide NHMRC with insight and advice on strategic issues.

Irrespective of the precise role of their committee, all members are appointed for their expertise and experience across a diverse range of professions and fields.

In some cases, the pool of experts in a field can be so small that all the experts have some link with a matter being considered by an NHMRC committee. NHMRC therefore acknowledges that a member of an NHMRC committee will have interests in the matters being considered. At times, that member's interest may constitute a conflict of interest (or a perceived conflict of interest) that needs to be managed appropriately.

Council, Principal and Working Committees

Prospective members of committees will be asked to disclose interests to NHMRC before appointment decisions are made. People being considered for appointment will be approached by NHMRC and asked to complete a disclosure form (as well as consent to the nomination). Nominees will be given access to the NHMRC's Committee Centre where they can fill in an electronic form or be provided with an appropriate paper form for completion. Should members be subsequently appointed, that information will be added to NHMRC's Register of Interests.

For the appointment of members of Council and Principal Committees, other Australian Government processes may require additional disclosures, such as a Personal Interests Disclosure. Members of Council who are State and Territory officials will also need to complete disclosure of interest processes required by their employment.

Embryo Research Licensing Committee

In addition to disclosing interests as required above for Council, Principal and Working Committees, under paragraph 16(3)(c) of the *Research Involving Human Embryos Act 2002*, before appointing a member to the ERLC, the Minister must be satisfied on receipt of a written declaration by the member proposed to be appointed, that the member proposed does not have a direct or indirect pecuniary interest in a body that undertakes the use of excess ART [Assisted Reproductive Technology] embryos, or human eggs, or creation or uses of other embryos, being an interest of a kind that could conflict with the proper performance of the member's functions.

Peer Review Panels

Members of NHMRC peer review committees will be asked to disclose their interests *after* appointment, but *before* assessing applications, through the NHMRC Research Grants Management System (RGMS). Members of peer review Panels will be asked to make a separate disclosure of interests for each application that they will review.