



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

November 2019





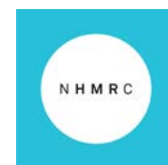
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## Revision History

Date	Changes
30/10 /19	<b>Clarification of legislative requirements, more information provided on material interests and conflict of interest. Removal of specific information on Peer Review Panel processes</b>

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

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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, to 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 also take into consideration balancing the benefit of having persons with expertise against the risks of their interests biasing a process.

The General Guidelines (2.1) 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 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.”<sup>1</sup>
- 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.

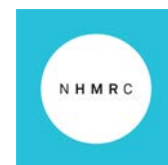
For the purposes of this document, the terms “material personal interest” and “interest” are regarded as interchangeable, and whilst the term “Interest/s” has been used for ease of reading, this policy includes guidance on each.

### 1.2. Scope of this policy

This policy applies to members of the Council of NHMRC (Council), Principal Committees, including the

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<sup>1</sup> See Appendix B: Disclosure of interests on appointment.



Embryo Research Licensing Committee<sup>2</sup> (ERLC) of NHMRC, and Section 39 Working Committees, such as Peer Review Panels and Working Committees that assist the work program of the Chief Executive Officer of NHMRC. All members appointed to these Committees are officials of NHMRC under the PGPA Act<sup>3</sup> as listed in paragraph 5B(3)(c) of the NHMRC Act.

In accordance with paragraph 40(b) of the NHMRC Act, this policy provides the overarching principles and procedures<sup>4</sup> to be followed by members for identifying and determining if the disclosed interests present a real or perceived conflict and what actions are required to be taken as a consequence.

## 1.3. Principles

This policy is underpinned by three principles, to be adopted by members and Chairs of Committees:

- 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.

## 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 in the [General Guidelines](#) 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**:

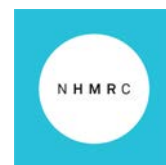
1. financial interests, such as receipt by the member or their ‘immediate family members’ (partner and/or dependent children) of payments, gratuities, consultancies, honoraria, employment, grants, support for travel or accommodation, payment for meals and beverages or entertainment or educational event attendance (including registration fees) or gifts from an entity having a commercial interest in the issues being considered by the Committee.

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<sup>2</sup> Established under the *Research Involving Human Embryos Act 2002*.

<sup>3</sup> Australian Public Service staff of NHMRC are officials of NHMRC for the purposes of the PGPA Act.

<sup>4</sup> 2018-2021 Members’ Handbook for Council, Principal Committees and Working Committees



2. any other relevant direct or pecuniary interest (for instance, having provided expert testimony for a fee on behalf of an entity with a commercial or other interest in the issues being considered by the Committee).
3. working and personal relationships, including board membership, employment at the same organisation, shares 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.
4. affiliations 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.
5. institutional interests (that is, interests arising from an affiliation or association of an individual with 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.
6. having recently (within the last three years) 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.
7. 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.
8. 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.

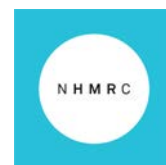
## **2.2. Additional consideration for members of the Embryo Research Licensing Committee**

In addition to the above, members of ERLC have further obligations under the requirements of paragraph 16(3)(c) of the *Research Involving Human Embryos Act 2002*: see Appendix B.

## **2.3. Additional considerations for Peer Review Panel members**

NHMRC Peer Review Panel members should also consider their:

- Involvement with the application under review
- Relevant collaborations
- Working relationships



- Professional relationships and interests
- Social relationships or interests
- Teaching or supervisory relationships
- Relationships with other members of the panel.

The Scheme Specific Peer Review Guidelines relevant to the grant opportunity will provide more detailed advice.

### 3. What is a ‘material personal interest’?

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To be a ‘material personal interest’<sup>5</sup>, the interest must be of a type that can give rise to a real or perceived conflict of interest (CoI). A CoI exists when there is a divergence between professional responsibilities (i.e. as a member) and personal interests. 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<sup>6</sup>.

Deciding whether an interest is ‘material’ is a matter ultimately for the judgement of the individual and, subsequently, the members of the Committee.

Members are appointed to Committees and Council based on their expertise and experience to ensure there is 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 a NHMRC Committee. NHMRC acknowledges that a member of a NHMRC Committee may 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.

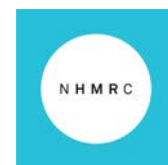
Each member should consider their interests in the context of the affairs of NHMRC and whether the interest could be, or could be perceived to be, one that affects their capacity to bring an independent mind to bear on the matters being considered. If in doubt, members should disclose the interest.

However, if, when considering the facts of a particular case, a member considers that a declaration may be an ‘interest’ but not a ‘material personal interest’, they should consult the relevant Secretariat for advice.

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<sup>5</sup> 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 NHMRC.

<sup>6</sup> 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?

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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, 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. This is in accordance with section 16A of the PGPA Rule.

A failure to disclose an interest (without a reasonable excuse) will result in the termination of 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 relevant Secretariat if they are uncertain about whether to disclose an interest. Peer Review Panel members should consult the relevant Scheme Specific Peer Review Guidelines for further information.

Further information about the disclosure of interests on appointment is at [Appendix B](#).

## 5. How to disclose an interest

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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 meeting<sup>7</sup> and recorded as described in section 7 of this document.

Disclosures will be made available to the other members of the Committee. Where an appointee is a member of a NHMRC Peer Review Panel, the disclosure must be consistent with the relevant Scheme Specific Peer Review Guidelines.

In accordance with PGPA 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.

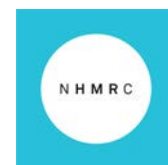
## 6. Consequences of having an interest

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For disclosed interests, the NHMRC and PGPA Acts require that the member is not present when matters

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<sup>7</sup> A meeting includes a video or telephone conference that is constituted for the purposes of providing advice or making a decision.



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 without a reasonable excuse will result in the termination of the member's appointment.

## 6.1. Determinations about interests

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

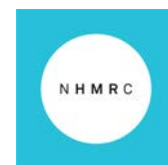
In determining whether a member may participate, the Committee should consider:

- whether the absence of the member would significantly impede the Committee's consideration of the matter (i.e. the loss of significant expertise or experience from the Committee);
- 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
- whether 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 disclosure of interest 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 any determination to exclude the member.

- For Peer Review Panel members, NHMRC will review the disclosure of interests made in NHMRC's Research Grants Management System and where appropriate confirm if the members is able to participate in the review of that application. However, where a decision is made to exclude the member, the Chair may consider making an arrangement for the member to provide relevant scientific advice on an application.





## 7. Record of interests

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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, and Principal and Working Committees<sup>8</sup> will be placed on the NHMRC website. Members' agreement 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. However, NHMRC has various obligations under Commonwealth law in dealing with the information it holds, 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.

## 8. Supporting documents for further reading

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- [NHMRC Privacy Policy](#)
- [The Australian Code for the Responsible Conduct of Research 2018](#) (the Code) requires researchers participating in peer review, do so in a way that is 'fair, rigorous and timely and maintains the confidentiality of the content'.
- The [Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research, 2018](#) (the Investigation Guide) forms a critical part of Australia's framework for research integrity, established by the Australian Code for the Responsible Conduct of Research, 2018.
- [Peer review: A guide supporting the Australian Code for the Responsible Conduct of Research](#). This guide aims to assist those involved in research to understand and apply best practice in conducting and participating in peer review.

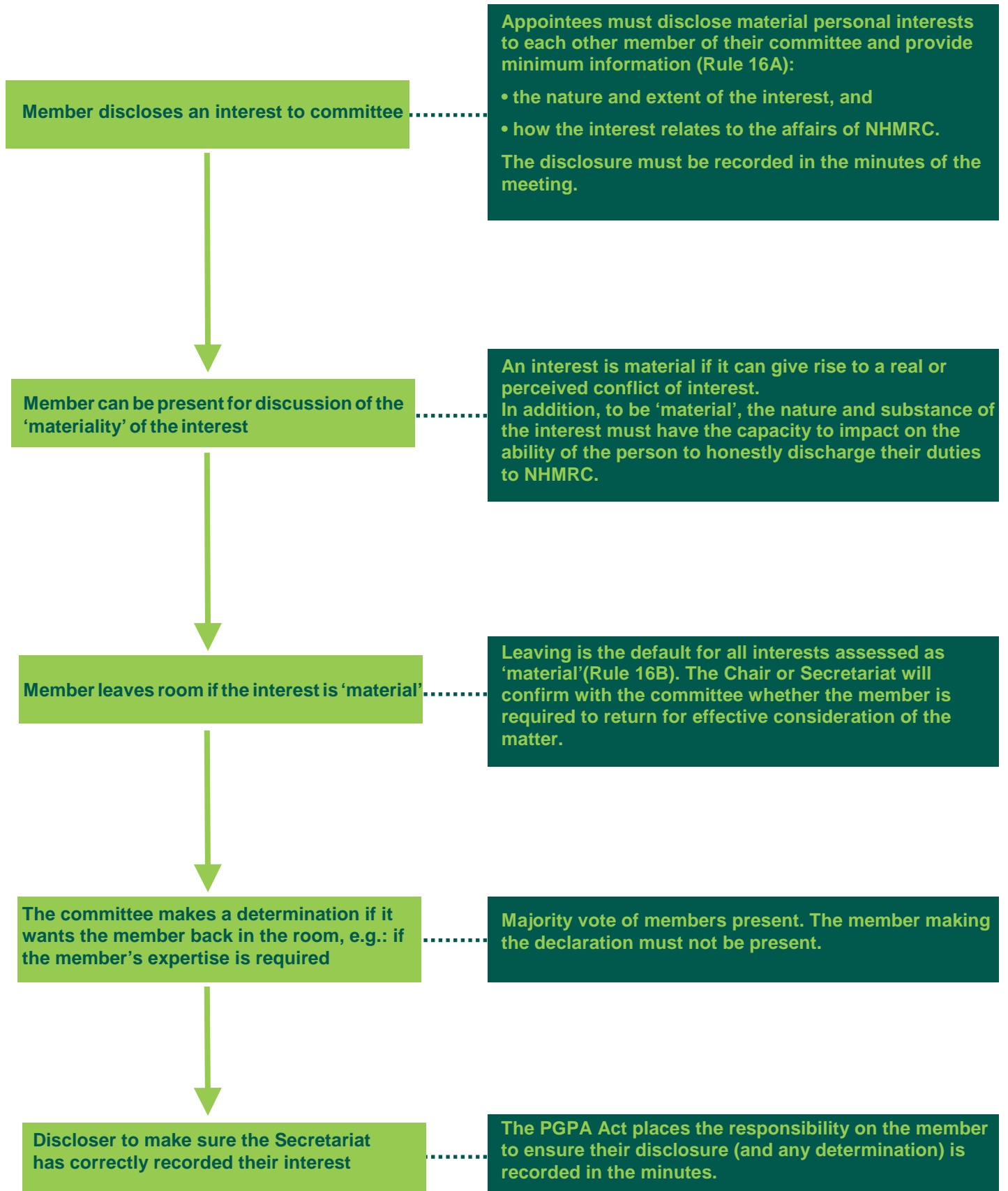
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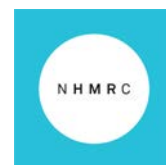
<sup>8</sup> Due to the nature of peer review panels, members' disclosures will not be published.



- 2018-2021 Members' Handbook for Members of Council, Principal Committees and Working Committees.

## Appendix A: A quick guide to disclosing interests





## Appendix B: Disclosure of interests on appointment

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### Council, Principal Committees and Working Committees (apart from Peer Review Panels)

Prospective members of Committees will be requested to disclose interests to NHMRC before appointment decisions are made. People being considered for appointment will be approached by NHMRC 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 subsequently be appointed, that information will be added to NHMRC's Register of Interests.

### Embryo Research Licensing Committee

In addition to disclosing interests as required above for Council, Principal Committees 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 this member does not have a direct or indirect pecuniary interest in a body that undertakes uses 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.

NHMRC manages the process for ensuring this requirement is met.

### Peer Review Panels

Members of NHMRC Peer Review Panels will be requested to disclose their interests *after* appointment, but *before* assessing applications, through the NHMRC Research Grants Management System. Members of Peer Review Panels will be required to make a separate disclosure of interests for each application that they will review.