

**Healthy North Coast Ltd**  
**ABN 154 252 132**  
**106 – 108 Tamar Street**  
**BALLINA NSW 2478**  
**(Company)**

**To: The Company**

I consent to act as a director of the Company, and give this consent prior to being appointed as a director of the Company.

I am not disqualified by the constitution of the company (if any) or the *Corporations Act 2001* from acting as a director of the Company.

The following particulars are supplied as required by the *Corporations Act 2001*:

Full legal name: \_\_\_\_\_

Former names (if any): \_\_\_\_\_

Date of birth: \_\_\_\_\_

Place of birth  
[town/city, state and country]: \_\_\_\_\_

Usual residential address (including postcode): \_\_\_\_\_

Please identify the profession or professions in which you practice, along with any other profession that you expect to be practising in within the next three years:

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

# Board Conflicts of Interest and Related Parties

Procedure owner: Chief Executive Officer  
Procedure contact: Company Secretary  
Approved by: HNC Board  
Approval date: 01/12/2020

# Board Conflicts of Interest and Related Parties Procedure

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## 1. Purpose

The Conflicts of Interest and Related Parties Procedure (the Procedure) sets out the process to guide Board members to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest and related parties transactions, in order to protect the integrity of Healthy North Coast (HNC) and manage risk.

The Procedure is governed by the Conflicts of Interest and Related Parties Policy.

## 2. Scope

The Procedure applies to all HNC Board Directors.

## 3. Overview

It is the policy of HNC, as well as the responsibility of HNC Representatives that ethical, legal, financial or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with the obligations to HNC. However, if an actual, potential or perceived conflict of interest arises, it does not need to present a problem to HNC as long as it is openly and effectively managed.

HNC will manage conflicts of interest by requiring Board members to:

- avoid conflicts of interest where possible
- identify and disclose any conflicts of interest
- carefully manage any conflicts of interest
- follow the Policy and related procedure
- respond to any breaches

This procedure and the Conflicts of Interest and Related Parties Policy should be accepted by each Director subsequently appointed to the Board as part of his or her consent to join the Board.

## 4. Roles and Responsibilities

### Company Secretary

- Must keep a Register of Standing Notices
- Ensure that disclosure of conflicts of interest is a standing item on the agenda at all scheduled Board meetings
- Identify meeting agenda items relating to matters where a Director has declared a conflict. The Secretary must ascertain whether the conflict is material and notify the Board Chair
- Is responsible for ensuring that the requirements of the Procedure are adhered to

## Company Directors

- Promptly notify the Secretary of any conflicts of interest or related party transactions
- All Directors are required to renew their Standing Notice at least annually or as required to keep an up-to-date record
- All Directors must abide by this procedure

## CEO

- Is obliged to notify the Department of Health if a Conflict of Interest arises, or an associated related party transaction

## 5. Process

Process for Disclosing a Conflict of Interest:

- Director identifies standing/ongoing conflicts of interest. This is for both material conflicts and any other interest that the Director believes is appropriate to disclose in order to avoid an actual conflict of interest or the perception of a conflict of interest (see Section 6)
- Director fills in a Standing Notice Form which is submitted to the Company Secretary which is then:
  - (i) tabled at the next Board meeting
  - (ii) recorded in the minutes
  - (iii) recorded in a consolidated register of all interests
- Conflicts will be managed in the manner stipulated in Section 10

If any new conflicts arise, or there is a change in a Directors Standing Notice Form, the Director must:

- Identify change in conflict of interest/s
- Amend Standing Notice Form and submit to the Company Secretary

Where a Director is uncertain as to whether an interest should be disclosed in accordance with the Policy/Procedure:

- The Director may consult the Company Secretary
- Company Secretary consults with the Board Chair
- Chair determines appropriate next steps. Conflicts will be managed in the manner stipulated in Section 10

## 6. Disclosure of Material Personal Interests

A Director should disclose to the Board:

- any material personal interest they may have in a matter that relates to the affairs of HNC

- any other interest that the director believes is appropriate to disclose in order to avoid an actual conflict of interest or the perception of a conflict of interest.

The disclosure should be made in writing as soon as practicable after the director becomes aware of their interest or the need to make a disclosure. Verbal disclosure of a material personal interest would be acceptable in the event that the director becomes aware of the interest at a meeting of directors, but should be followed up with written notice where the interest is material, relates to the affairs of HNC, and has not previously been disclosed in writing.

Where a director is uncertain as to whether an interest should be disclosed in accordance with this policy, the director may consult the Company Secretary.

## 7. Directors' Disclosure Requirement

The Board requires its directors:

- to complete a Board Member Standing Notice Form on appointment to the Board
- to disclose as soon as practicable any change to an interest notifiable under a director's standing notice
- to update the Standing Notice Form with the details of the change in interest in the manner prescribed by the Act and submit this form to the Company Secretary for:
  - (i) tabling at the next Board meeting
  - (ii) recording in the minutes
  - (iii) recording in a consolidated register of all interests

For practical purposes, and ease of review, the Board's Company Secretary maintains a consolidated register (Board Standing Notices Register) that contains the relevant information extracted from the Standing Notice forms provided by the directors. This register of Directors' interests is included in the Board papers at scheduled Board meetings when/if there is a change in Director's Standing Notice.

In addition to the obligation to provide Standing Notices and updates of these notices, directors are required to review the Standing Notices Register each time it is circulated to ensure the company has an up-to-date record of all notifiable interests.

## 8. 192 Standing Notices

Section 192 of the Corporations Act provides that a director of a company who has an interest in a matter may give the other directors a "Standing Notice" of the interest in the matter.

The notice may be given at any time:

- whether or not the matter relates to the affairs of the company at the time the notice is given; and
- may be given before the interest becomes a material personal interest

Standing Notices should:

- provide details of the nature and extent of the interest in a matter; and
- indicate whether the matter relates to the affairs of the company at the time the notice is given, and if yes, how it relates to the affairs of the company.

Standing Notices:

- take effect immediately they are given;
- cease to have effect when a new director is appointed, but commence to have effect again when the notices are provided to the new director; and
- cease to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

A Standing Notice may be given:

- at a directors' meeting (orally or in writing); or
- to the other directors individually in writing, following which the Notice must be tabled at the next directors' meeting.

Directors must ensure that the nature and extent of the interest disclosed in the Standing Notice is recorded in the minutes of the meeting at which the Standing Notice is given or tabled.

## 9. Meeting Agendas and Conflicts of Interest Management

- Board meeting agendas are determined with reference to the Standing notices.
- The Company Secretary identifies meeting agenda items relating to matters in which a director has declared an interest, and whether or not the interest is considered "material" and notifies the Chair of the Board (Board Chair).
- The Board Chair, in consultation with the Company Secretary, is responsible for determining when it would be appropriate to withhold from a director papers and minutes relating to a matter where that director has a conflict of interest.
- Individual directors who have identified an item on a Board or committee agenda where they have a material personal interest (whether disclosed previously or not) are responsible for ensuring that the matter is not dealt with by the Board or committee in their presence.

## 10. Directors' Standing Notices Requirement

A director who has:

- a material personal interest in a matter that relates to the affairs of the HNC;
- a material personal interest in a matter that relates to the affairs of the Company; or

- any other interest that may give rise to an actual conflict of interest or a material perception of conflict of interest; **may not:**
  - (i) be present or take part in discussions at a meeting while a matter is being considered;
  - (ii) vote on the matter; or
  - (iii) exercise any influence over other members of the Board or committee, unless a majority of the directors who do not have such an interest in the matter have approved a resolution that:
    - identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Company, and
    - states that those directors are satisfied that the interest should not disqualify the director from voting or being present.
- The minutes of the meeting should record the decision taken by the directors who do not have an interest in the matter.
- The Board reserves the right to determine in advance those matters that directors with a conflict of interest, or perceived conflict of interest, may as a matter of course, be permitted to be present for. Such determinations require the passing of a unanimous resolution of all directors who do not have a conflict of interest in relation to that matter.
- These determinations remain in effect only until:
  - (i) a new director is appointed to the Board or committee;
  - (ii) there is a material change in the nature and extent of that director's interests; or
  - (iii) a director requests that the advance determination no longer applies.

## 11. Requirements to notify the Department of Health (DoH) of a Conflict

Clause 9.4.2 of the Standard Funding Agreement (SFA) Terms and Conditions sets out the obligation for PHNs to immediately notify the Department if a conflict arises or appears likely to arise.

If, during the Term of the Agreement, a Conflict arises, or appears likely to arise, HNC must:

- immediately notify the Department of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps HNC proposes it will take to resolve or otherwise deal with the Conflict; and
- take such steps as have been proposed by it, or at the discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

A Department Template can be used by HNC to disclose a Conflict to the DoH. The completed form should be submitted to the relevant Health Grants and Network (HGN) Division Program Officer. Any template used must disclose all the information relating to the



Conflict and set out the steps HNC proposes to take to either resolve or manage the Conflict.

### 11.1 Consequences of Failing to Appropriately Identify or Manage a Conflict

The Department of Health takes the identification and management of Conflicts very seriously. Conflicts have the potential to seriously undermine the integrity of the Department’s grants programs.

Under clause 9.4.3 of the SFA Terms and Conditions, if HNC fails to notify the Department of a Conflict or is unable or unwilling to resolve or manage the Conflict, the Department may terminate the relevant Activity or the Schedule.

### 11.2 Assessment of Conflicts

HGN Division Program Officers are responsible for receiving and assessing Conflict notifications and determining the required action. Following an initial assessment, Program Officers may request further information, if required, from HNC to ensure the Conflict is being appropriately resolved or managed.

## 12. Definitions

Term	Definition
Conflict of Duty	Conflict of Interest is often interpreted as applying only to financial gain for a director, however, sometimes personal relationships which do not involve financial gain, may influence a director’s ability to act in the best interest of the organisation. This can be termed as “ <i>conflict of duty</i> ”, where, for example a director owes an obligation to someone else, which falls under the conflict-of-interest banner.
Conflict of Interest	<p>A conflict of interest occurs when a person’s personal interests conflict with their responsibility to act in the best interests of HNC. Private interests include direct interests, as well as those of family, friends, or other organisations a person may be involved with or have an interest in. A conflict of interest may be actual, potential or perceived and may be financial or non-financial.</p> <p>A conflict of interest occurs when a person is in a position to be influenced, or appears to be influenced, by their private interests – or other interests – when doing their job. <i>James Dunn, (2017) Company Director Magazine, 1 August p. 27</i></p>

<p>Related Party</p>	<p>A Related Party for the purposes of HNC is:</p> <ul style="list-style-type: none"> <li>• A person that is connected to HNC, such as a HNC representative or a close member of their family that has control, joint control, or employment</li> <li>• An organisation that is connected to HNC and has control or significant influence over HNC</li> <li>• An organisation that HNC has control or significant influence over</li> <li>• A member or a close member of their family of the key manager personnel of HNC</li> <li>• An associate (an entity over which HNC has significant influence), or joint venture (a joint arrangement whereby by HNC with another entity or other entities have joint control of the arrangements and have rights to the net assets of the arrangements)</li> </ul> <p>This definition has been adapted from the Australian Charities and Not-for profit Commission.</p>
<p>Related Party Transaction</p>	<p>A Related Party transaction is transfer of resources, services, or obligations between HNC and a related party regardless of whether a price is charged.</p> <p>Related parties' transactions can include:</p> <ul style="list-style-type: none"> <li>• Purchases, sales, donations</li> <li>• Receipt of goods, services, or property</li> <li>• Leases</li> <li>• Transfers of property including intellectual property</li> <li>• Loans</li> <li>• Guarantees</li> <li>• Provision of employees on a paid or complementary basis</li> </ul>

Refer to Appendix B and C for examples and detailed definitions related to Conflict of Interest and Related Parties.

### 13. Supporting Documentation

Related Information	
Policy	Conflicts of Interest and Related Parties Policy
Procedures	N/A
Forms & Templates	Board Member Standing Notice Form Disclosure of Conflict of Interest to the DoH Form Board Standing Notices Register
Supporting Documents / Resources	Code of Conduct Policy ACNC, Governance Standards Guidance 2013 ACNC, Managing Conflicts of Interest – A guide for charity Board members

### 14. Appendices

- A. Board Member Standing Notice Form
- B. Conflict and Related Party Definitions
- C. Obligations to *Corporations Act 2001* (Cth)

Appendix A

Board Member Standing Notice

I, \_\_\_\_\_ (insert full name)

hereby declare the following conflict(s) of interest:

Description of Conflict	Real YES/NO	Potential YES/NO	Perceived YES/NO

Please detail the arrangements proposed to resolve/manage/ the conflict (attach separately if needed).

I hereby agree to:

- update this disclosure throughout the period of my Board appointment on an ongoing needs basis
- comply with any conditions or restrictions imposed by Healthy North Coast Ltd to manage, mitigate or eliminate any actual, potential or perceived conflict of interest and/or commitment.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix B

### Conflict and Related Party Definitions

#### 1. Actual Conflict

A direct and existing Conflict between the personal interests of an individual and the performance of their duties and responsibilities to the PHN.

Example: You are a PHN Board member and a partner at a prominent law firm in the area. Your PHN is considering whether to commission the legal services of your firm or a rival law firm to review service provider contracts.

#### 2. Potential Conflict

A personal interest that could interfere with the performance of the PHN's duties and responsibilities in the future.

Example: You are a PHN Board member, and also a Board member of a prominent counselling service in the area, which may apply for a grant in an upcoming PHN commissioning cycle.

#### 3. Perceived Conflict

A personal interest (direct, indirect or involving a third party) that appears to improperly influence the performance of the PHN's duties, whether or not this is in fact the case.

Example: You are a PHN Board member, and a computer consulting company run by your sister has legitimately won a competitive tendering process to provide IT support to the PHN.

#### 4. Pecuniary Interests

Interests that involve actual or potential financial gain or loss, or other material benefits.

#### 5. Non-Pecuniary Interests

Interests that do not have a financial component. They may arise from personal or family relationships or involvement in sporting, social or cultural activities.

#### 6. Direct Interest

A matter or decision in which an individual has a personal and immediate interest.

#### 7. Indirect Interest

A matter or decision where an individual does not personally have an interest, but their spouse, immediate family member or a person with whom they are closely associated does.

## Identifying a Related Party

The SFA Terms and Conditions provide a comprehensive definition of a Related Party in clause 9.5.1:

For the purpose of this clause 9.5 [Related Parties], a 'Related Party' is:

- a. an entity that controls or has significant influence over Your Organisation at any time
- b. an entity that HNC controls or has significant influence over at any time, including HNC's subsidiary
- c. a person who is a member of HNC's Board or governing body
- d. a member of the Board of an entity referred to in clause 9.5.1.a or 9.5.1.b
- e. a member of HNC's Personnel, other than in their capacity as an employee, or
- f. a spouse or immediate family member of:
  - (i) a member of HNC's Personnel, or
  - (ii) a person specified in clause 9.5.1.c or 9.5.1.d, who is not themselves an employee of HNC.

For the purpose of this policy, the term "Related Party" will be taken to have the same meaning as the above definition in the SFA Terms and Conditions.

## What is meant by "controls or has significant influence"?

The terms "control" and "significant influence" are not defined in the SFA Terms and Conditions, however, consideration should be given to the extent to which one party practically influences, or has the power to practically influence, the financial and operational decisions of the other party.

Determining whether one party has control or significant influence over another party should be judged on a case-by-case basis and cannot be simplified to certain relationships.

Examples of control or significant influence over an organisation may include, but are not limited to:

- the power to veto business decisions of an organisation;
- the power to appoint or remove an organisation's CEO or other key management personnel; or
- having representation on the Board of an organisation (e.g. reserved positions on the Board).

## "Material Personal Interest"

2.1 Material personal interest is not defined in the Corporations Act. The materiality of an interest will depend on the circumstances of each case and for practical purposes, relies in part, on the judgement of the relevant director.

- 2.2 Case law suggests that the word "material" *means a capacity to influence the vote of a particular director upon the decisions to be made, bearing in mind that the conflict of interest must be of a real or substantial kind.*
- 2.3 The interest need not necessarily be of a financial or pecuniary nature. For example, a director's charitable, political and educational associations may be relevant if they are "material" and if, for instance, the company was considering making a donation to that association. The interest may be held by the director as trustee or beneficiary of a trust.
- 2.4 Importantly, a director's material personal interests may have implications in terms of the director's capacity to be present and to vote on matters before the Board.

## Related Party Transactions – SFA Examples

### **A PHN is a company member of a not-for-profit health service provider**

Following a competitive tendering process, a PHN wishes to commission the services of XYZ Ltd, a small, local not-for-profit youth support service. The PHN, along with three other organisations, are members of XYZ Ltd. Under the constitution of XYZ Ltd, members can vote at general meetings and elect the directors of XYZ Ltd.

XYZ Ltd is a Related Party to the PHN. Under clause 9.5.1.b of the SFA Terms and Conditions, XYZ Ltd is an entity that the PHN has significant influence over.

### **A PHN director owns a service provider**

After undertaking a competitive tendering process, a PHN wishes to commission the services of XYZ Pty Ltd, a home visit doctor's service. A PHN director owns 100% of the shareholding in XYZ Pty Ltd. XYZ Pty Ltd is a Related Party. By engaging XYZ Pty Ltd, the PHN would be effectively supplying funding to a PHN director under clause 9.5.1.c of the SFA Terms and Conditions.

### **A PHN intends to commission a provider whose CEO is a PHN director**

A PHN wishes to commission the services of XYZ Inc, a family counselling service provider.

The CEO of XYZ Inc also acts as a director on the PHN Board, along with seven other directors. XYZ Inc is not a Related Party to the PHN. XYZ Inc does not control or significantly influence the operation of the PHN. Likewise, the PHN does not control XYZ Inc. A single director or CEO (who is appointed by a Board) cannot control or significantly influence an organisation. As such, simply having key personnel in common does not in itself, give rise to control or significant influence between the PHN and XYZ Inc. Instead, the PHN director has a Conflict, which should be managed with the Board, and as per clause 9.4 of the SFA Terms and Conditions.

**A PHN intends to commission the services of an expert who sits on the Board of its subsidiary company**

A PHN is seeking to engage an expert consultant to undertake some research and evaluation services. The particular expert it is wishing to engage is also a Board member of X'Y'Z Pty Ltd – a subsidiary company to the PHN.

Under clause 9.5.1.d of the SFA Terms and Conditions, the expert is a Related Party as it is a member of the board of an entity that the PHN controls or has a significant influence over.

**A PHN is seeking to engage the daughter of a PHN Subcontractor**

A PHN is seeking to obtain some financial analysis as part of an Activity. Jane Smith is a sole trader and Subcontractor to the PHN in the field of medical research. The PHN proposes to have Mary Smith who is an economist and the daughter of Jane Smith, conduct the financial analysis.

The daughter is a Related Party as she is an immediate family member of a PHN Subcontractor who forms part of the PHN's "Personnel" as per clause 9.5.1.f.i of the SFA.



## Appendix C

### Obligations to Corporations Act 2001

- 1.1 Section 181 of the Corporations Act (the Act) obliges a director to exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose.
- 1.2 Section 182 of the Act provides that a director of a corporation must not improperly use his or her position to gain personal advantage or advantage for someone else or to cause detriment to the corporation.
- 1.3 Section 183 of the Act provides that a person who obtains information because he or she is, or has been, a director of a corporation must not improperly use that information to gain personal advantage or advantage for someone else or to cause detriment to the corporation.
- 1.4 Section 191 of the Act provides that a director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of that interest unless a section 191(2) exception applies. Compliance with section 192 of the Act is one those exceptions.
- 1.5 Section 192 of the Act permits a director of a company who has an interest in a matter to give the other directors "standing notice" of the nature and extent of the interest in accordance with the Act.
- 1.6 Sections 191 and 192 have effect in addition to, and not in derogation of any general law about conflicts of interest and any provision in a company's constitution.
- 1.7 Subject to the exception referred to below, section 195 of the Act provides that a director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter.
- 1.8 Section 195(2) of the Act permits the director with a material personal interest in a matter to be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
  - 1.8.1 identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
  - 1.8.2 states that those directors are satisfied that the interest should not disqualify the director from voting or being present.
- 1.9 Section 601FD(1)(c) of the Act requires the officers of the responsible entity of a registered scheme to act in the best interests of the members and, if there is a conflict of interest between the members' interests and the interests of the responsible entity, give priority to the members' interests.
- 1.10 Section 601FD(1)(d) of the Act states that officers of a responsible entity must not make use of information acquired through being an officer of the responsible entity in

order to gain an improper advantage for the officer or another person or cause detriment to the members of the scheme.

1.11 Section 601FD(1)(e) of the Act states that the officers of a responsible entity must not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme.

1.12 ASX Listing Rules

1.13 Under the ASX Listing Rules, the Company must advise ASX without delay of any material contract involving directors' interests, including the names of the parties to the contract, the name of the director (if not a party to the contract) interested in the contract, the particulars of the contract and the director's interests in the contract.