

CONFLICT OF INTEREST POLICY – WORKING DOCUMENT

Prepared by Steve Walkerden, General Manager - for discussion at the Board Committee meetings July/August 2014.

This policy has been drafted following a recent Stopline Investigation which recommended that greater clarity was needed in this area of policy.

Purpose

UPA recognises that a wide variety of actual, perceived or potential conflicts of interest may arise during the course of governing, working or volunteering with UPA. The purpose of this policy is to set down clearly UPA's expectations regarding disclosure of such conflicts and to establish suitable procedures. For good governance individual and organisational interests must be kept separate. This policy is also intended to facilitate and encourage open discussion and reporting of any conflicts of interest.

Scope

This policy applies to everyone associated with UPA, especially those who have decision making influence or responsibility. It includes all employees, volunteers and contractors.

Policy Statement

All employees, volunteers, Directors and Committee Members of UPA must strive to avoid any conflict of interest between the interests of the UPA on the one hand, and personal, professional, and business interests on the other. This includes avoiding both perceived and actual conflicts or potential conflicts.

This policy protects the integrity of the UPA's decision-making process and enables stakeholders to have confidence in the organisation's actions and decision making. It also protects the integrity and reputation of employees, volunteers, Directors and Committee Members.

Actions and decisions taken at all levels in UPA need to be informed, objective and fair. A conflict of interest may affect the way a person acts, decisions they make, or the way they vote. Any conflicts of interests must be identified and action taken to ensure that personal or individual interests do not affect the UPA's services, activities or decisions.

Declaration and management of conflicts of interests are specifically required for all Managers, and for Board and District Executive members as part of their legal responsibilities. All conflicts of interest must be recorded in the minutes of a District Executive or Board meeting and in a register.

Transitional provisions exist during the introduction of this policy. The formal declaration of actual, perceived or potential conflicts of interest is required within six months of approval of this policy. Twelve months will be allowed where there is an employee relationship conflict of interest and steps need to be agreed and approved to manage it.

Declarations will be reviewed as part of internal audit.

Any allegation of a breach of this policy must be reported to the Board. If after investigation the alleged breach is found, sanctions may include reversal of a decision, disciplinary action including termination of employment, suspension of membership or other action deemed appropriate and proportional to the breach by the Board.

Supporting Legislation and Regulations:

All involved in governing and managing UPA have a common law obligation to act in the best interests of UPA, not to make a private gain out of confidential knowledge and to fulfil their fiduciary responsibilities with diligence. Sections 191 to 195 of the Corporations Act deal with conflict of interest matters. It requires Directors to promptly declare any conflicts of interests and take proper steps to manage them. Clause 37 of UPA's constitution sets down basic rules for declaration, management and approval of conflicts of interest and must be read in conjunction with this policy. Proper management of conflicts of interest is a key element of UPA maintaining Charitable and Public Benevolent Institution status with the Australian Taxation Office. This policy must also be read in conjunction with UPA's Governance Guidelines and Code of Conduct.

Practical tools to implement this policy:

- 1. Instructions on how to respond when a conflict of interest is identified. A range of examples are covered.**
- 2. Conflict of interest declaration form – records the conflict and its resolution in detail.**
- 3. Annual declaration of actual, perceived and potential conflicts of interest.**
- 4. A Conflict of Interest Register in each District, Branch and the Board will be accessible to all decision makers. The register will be maintained in paper and electronic form by District/Regional Managers and General Manager.**
- 5. In summary, Report – Resolve – Register.**

1. Instructions on how to respond when a conflict of interest is identified. A range of examples are covered.

Examples of Conflicts of Interests and Instructions on how to respond:

The first step in responding to any actual, perceived or potential conflict of interest is to report it verbally or in writing (including email) to the next most senior person or group who has responsibility for the relevant area of UPA's work.

The next step is to complete the UPA Declaration of an actual, perceived or potential conflict of interest form and submit it to the District or Regional or General Manager, District of UPA President for tabling and review at the next available District Executive or Board meeting. A register of all declarations and actions taken to manage them will be kept and be available for any stakeholder to review.

The examples below represent guidance on how to respond. Conflicts of interest inherently are complex. If the guidance below is not followed in similar situations then a full explanation must be recorded on the declaration form, noted in the minutes and in the register.

Definition of an "interest":

An "interest" is any situation where the personal interests of an individual or group of individuals with a duty to UPA directly, potentially or could be perceived to conflict with the best interests of the UPA, its members, residents or clients, or where the decisions or actions of those individuals may be influenced by their personal interests rather than those of the UPA.

This will include situations in which:

- Close personal friends or family members are involved, such as decisions about employment, discipline or dismissal, service allocation or awarding of contracts
- An individual or their close friends or family members may make a financial gain or gain some other form of advantage
- An individual is involved with another organisation that is in a competitive relationship with UPA and therefore may have access to our plans or financial information
- An individual is bound by prior agreements or allegiances to other individuals or organisations that require them to act in the interests of that person or organisation or to take a particular position on an issue.

Example 1: A District Executive member is contracted to work for UPA. Clause 37 of UPA's Constitution specifically deals with this situation. In full it reads;

37.0 Conflict of Interest

37.1 In this clause;

- (a) An "excluded interest" shall mean an interest in any publicly listed corporation in which the member holds less than 1% in value of the capital.
- (b) "Member" shall include staff members.

37.2 All members shall immediately disclose if they or any business, corporation, society or association in which they have an interest (other than an excluded interest) are directly or indirectly interested in any tender lodged with the UPA or any contract which the UPA proposes to make.

37.3 Where goods or services are provided by a member, office bearer or employee of the UPA or any business, corporation, society or association in which such member, office bearer or employee may have an interest (other than an excluded interest), a proper tendering process shall be established which shall include the requirement to obtain at least three (3) competitive quotations. If the value of the goods or service is less than \$5,000 within any twelve month period the provisions of this clause shall not apply.

37.4 A member shall not be in attendance at any part of a meeting of the UPA which discusses any proposed contract, contract or tender in which the member has an interest or in which any business, corporation, society or association in which they have an interest (other than an excluded interest) has any interest. Any member of the UPA shall not vote on any resolution of the UPA which involves any proposed contract, contract or tender in which the member has an interest or in which any business, corporation, society or association of which they have an interest (other than an excluded interest) has any interest.

37.5 In the event that a member having an interest (other than an excluded interest) does not vote on any resolution referred to in clause 37.4 hereof such vote shall be declared null and void.

37.6 In the event that *Director* or a business, corporation, society or association in which they have an interest (other than an excluded interest) enters into a contract with the UPA then the details of such contract, conditions of such contract and remuneration payable pursuant to such contract shall be ratified by a *General Meeting* of the UPA.

37.7 In the event that *District Executive* and/or *Regional Executive* or a business, corporation, society or association in which they have an interest (other than an excluded interest) enters into a contract with the UPA then the details of such contract, conditions of such contract and remuneration payable, pursuant to such contract shall be ratified by a *District General Meeting* of the UPA.

37.8 Details of all contracts entered into by the UPA in which a member of the UPA has an interest or in which any business, corporation, society or association in which they have an interest (other than an excluded interest) has an interest shall be recorded in the minutes of the UPA.

37.9 The appointment, conditions of service, remuneration of, and the supply of goods and services by a *Director* are to be ratified at the *UPA Annual General Meeting* and must be disclosed in the annual accounts and minutes of the *Annual General Meeting of the UPA*.

37.10 The appointment, conditions of service, remuneration of, and the supply of goods and services by a *District Executive* are to be ratified at the *District General Meeting* and must be disclosed in the annual accounts and minutes of the *District General Meeting*.

Example 2: An employee/volunteer/contractor has an interest in (or is in close relationship with someone who does) an organisation that is in a competitive relationship with UPA.

Action: At the earliest opportunity the conflict is to be reported to the District or Regional Manager, or District/UPA President. Complete the declaration form. Management of this conflict will depend upon the level of responsibility and influence that person has both in the competitor organisation and in UPA. At the very least, undertakings relating to confidentiality must be honoured. Other actions may include exclusion from access to information or other steps to protect all involved.

Example 3: An employee/volunteer/contractor with decision making responsibility has a personal or financial interest in a related party who seeks to enter into a supplier relationship or contract with UPA.

Action: At the earliest opportunity the conflict is to be reported to the District or Regional Manager, or District/UPA President. Complete the declaration form. Management of this conflict will depend upon the level of responsibility and influence that person has both in the competitor organisation and in UPA. Exclusion from the decision making process is the starting point. This will involve leaving the meeting(s) whilst the matter is discussed and the decision made. Other steps including ensuring confidentiality, making public the conflict and steps taken may also be appropriate. If the conflict is deemed serious it may mean the potential supplier/contractor is excluded from tendering.

Example 4: An employee/volunteer/contractor is a decision maker and has a close personal relationship with (or with a member of the immediate family of) a person who seeks accommodation or services from UPA.

Action: The potential conflict of interest is to be declared by either party at the earliest opportunity. Complete the declaration form. Any variation to the standard pricing practice or arrangements is to be referred to the District/Regional Manager or District President for written approval. If no variation to standard practice occurs, then the potential conflict will be noted in the register. Any priority given over another potential client must be authorised by the District or Regional Manager or District President.

Example 5: An employee/volunteer/contractor is a decision maker and seeks to employ (or has employed) a close relative or a person with whom there is or has been a close relationship either a direct or indirect line management situation.

Action: For any potential permanent or regular casual employees this policy excludes any such appointment. It must not proceed.

For existing employees in that relationship, clear strategies are to be set down to deal practically with all reasonable foreseeable aspects of the situation. The strategies must be approved by the District Executive or at Board level for employees at District Manager level and above, or Corporate staff. A formal declaration is to be made and the strategies approved recorded. All relevant people are to be informed of the relationship and strategies.

Steps to be taken might include: arrangements for immediate referral of any contentious matters to an external HR consultant or more senior employee; providing access to external HR support for employees who may otherwise feel compromised in resolving grievances; ensuring Stopline independent whistleblower services are regularly promoted; others as needed.

Excluded from this guidance are UPA employee children (over 16 years) who are employed casually and infrequently for short periods of up to six weeks in junior roles.

Example 6: An employee/volunteer/contractor is a decision maker and chooses to privately engage a regular UPA tradesman or service provider for personal work.

Action: Where the work is for a one off job and the cost is less than \$1,000 no declaration is required. Where the value of the job exceeds \$1,000 or a regular service is being provided at the earliest opportunity the potential conflict is to be reported to the District or Regional Manager, or District/UPA President. Complete the declaration form.

Steps to be taken to review the arrangement may include; sighting of evidence that the job is priced on fair competitive terms, that is, the UPA contractor has not excessively under quoted; hourly rates or other measure are in line with market rates. If concerns are raised as a result of the review, further action may include placing the work of that contractor or service provider out to tender within six months of the declaration being made, excluding the employee/volunteer/contractor taking part in approving further work for UPA by that tradesman or service provider. Other steps may be considered.

Example 7: An employee treats one client or resident more favourably than others because of a personal relationship that exists outside of the workplace.

Action: The relationship needs to be promptly reported to that employee's supervisor. In this situation a judgement needs to be made by the supervisor about materiality of the interest and whether the favoured treatment is given to the detriment of other residents or clients. If it is not material or detrimental to others and falls within that which a reasonable person would judge appropriate no action is required. If it is material then a declaration must be completed and appropriate steps taken to manage the conflict. This might include referral of any actions to a higher authority within UPA for consideration and if thought fit approval, or correction if needed. If the behaviour or treatment is detrimental to others then it must cease immediately. An investigation is to be conducted and appropriate actions, include possible disciplinary action taken.

Example 8: An employee/volunteer/contractor is a decision maker with control of the sale of a UPA motor vehicle and wants to sell it at a trade in price to a relative or person with whom they have a close relationship.

Action: UPA has a policy of where possible selling its motor vehicles privately, at a time when fair market value has dropped below 75% of the full purchase price including GST. This allows UPA to take advantage of a Charity tax concession that permits the sale to proceed without the need to remit 1/11th of the sale price to the Tax Office for GST. Generally vehicles are sold within the network of people around UPA. In the case of the sale of a vehicle to a relative or someone in a close relationship, there is a perceived conflict of interest. Steps to be taken are for the person seeking to sell the vehicle must complete the declaration form and obtain approval from their supervisor prior to the sale being made.

Example 9: An employee/volunteer/contractor is a decision maker and plans to use a UPA asset(s) for personal benefit. Assets that may fall into this situation include data projectors, vehicles, community centres, intellectual property, tools, etc.

Action: A conflict of interest does not arise if the asset is provided to the employee as a part of their employment agreement. Where the personal use falls outside those arrangements, the personal use must be approved by a supervisor. Matters to be considered in making this approval include UPA's insurance cover, any costs associated and the amount of reimbursement, and confirming that it will be used for personal use only. UPA will not permit private use of assets where the person borrowing them makes a private financial gain from the action. If such a situation occurs, it must be reported to the District Executive or Board. The matter will be investigated and appropriate action taken.

Example 10: An employee/volunteer/contractor is a decision maker and is suspected of receiving kickbacks from contractors.

Action: This is a criminal offence and the matter must be referred to the Police. If proven it would represent gross misconduct and employment or membership would be terminated. Any contract arrangements found to be involved would also be terminated.

Example 11: A member who is a decision maker has privileged access to UPA clients, residents, staff and members to offer them goods or services for sale such as legal, financial, healthcare or other.

Action: UPA will not permit exclusive access to any individual or organisation to residents, clients, staff or members to market goods or services. If a member wishes to market their services, then competitors must also be afforded the same privilege. Any member offering services to people directly associated with UPA must do so on a fair and equitable basis and in accordance with the relevant sector's regulations, codes and or standards. If a member has been suspected to have taken unfair advantage of any person directly associated with UPA, the matter is to be investigated and appropriate action taken if the suspicion is sustained.

2. Conflict of interest declaration form.

See attached.

3. Annual declaration of actual, perceived or potential conflicts of interest.

Previous conflicts of interest that have already been declared ongoing, recorded and managed may be confirmed and held on the register as active. These will be reviewed annually by the District Executive and or Board.

New conflicts of interest shall be declared using the UPA declaration form.

4. Conflict of interest register for each District, Branch and the Board accessible to all decision makers. The register will be maintained in paper and electronic form.

Each District and Board will maintain a register. The register will be in the form of a ring binder, set up in alphabetical order by surname with a file separator for each person. A table of contents with summary information will be maintained to ensure integrity of the register. The register will remain under the direct control of the District or Regional or General Manger and be subject to audit by UPA's internal auditor. An electronic copy will also be maintained locally and centrally.

UPA Conflict of Interest – Declaration Form

Confidential to UPA Managers, District Executives and Board

For use by Employees and Members. Please tick (✓): Short Term Ongoing

Surname: _____ Given name/s: _____
Position: _____ District/Region/Board: _____
Referred to Manager/President: _____

Please describe the decision, expected roles/duties you are required to perform and/or decision that is to be made and how the actual perceived/potential conflict arises.

The conflict of interest has been identified as: (Please circle one or more Y/N)

Pecuniary interest	Y/N	Actual	Y/N
Non-pecuniary interest	Y/N	Perceived	Y/N
(Pecuniary – Monetary/Property)	Y/N	Potential	Y/N

Signature: _____ Date: _____

Action by Manger / President:

Describe the action proposed to mitigate the actual or perceived or potential conflict which has been disclosed and the reasons for the decisions:

The above action has been discussed with the employee/member and is appropriate to resolve the actual or perceived or potential conflict of interest disclosed above.

Signature of Manager/President: _____ Date: _____

Employee/Member Endorsement: _____ Date: _____

This document must be kept in the District Register and a copy sent to Corporate Office