



**Danila Dilba**<sup>®</sup>  
Health Service

# **Conflict of Interest and Related Parties Policy DOI002**

<b>Approved</b>	August / 2023
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Category	GOVERNANCE	Policy number: DOI002		
<b>Related forms, policies and procedures</b>	<ul style="list-style-type: none"> <li>• DOI002-1 Declaration of Interests Form</li> <li>• Related Parties Transactions Declaration</li> <li>• Declaration of Interests Registers</li> <li>• Related Party Transactions Register</li> <li>• HR015 Code of Conduct</li> <li>• GOV006 Directors Code of Conduct</li> <li>• HR020 Grievance Policy</li> <li>• HR019 Misconduct Policy</li> <li>• PRIV001 Privacy Policy</li> <li>• FIN005 Purchasing Policy</li> <li>• GOV008 Danila Dilba Health Service Company Constitution</li> </ul>			
<b>Relevant legislation and regulations</b>	<ul style="list-style-type: none"> <li>• <i>Corporations Act 2001</i> (Cth)</li> <li>• <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)</li> <li>• <i>Corporations Regulations 2001</i> (Cth),</li> <li>• <i>Australian Charities and Not -for -profits Commission Regulations 2022</i> (Cth)</li> </ul>			
<b>References and resources</b>	<ul style="list-style-type: none"> <li>• Accounting Standard AASB 124 Related Party Disclosures</li> <li>• Accounting Standard AASB 1060 General Purpose Financial Statements Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities (paragraphs 189-203 and Appendix A).</li> <li>• ACNC Governance Standard 5</li> <li>• ACNC template policies and advice regarding Conflict of Interest and Related Party Transactions</li> <li>• ASIC Regulatory Guide 76</li> </ul>			
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2.0	CEO	Change of reference from Company Secretary to Executive Officer.		March 2015
3.0	EO	Review.		March 2017
4.0	EO	Substantively new policy with numerous amendments including new Related Party Transactions section, policy in new policy format, new procedures and forms.	Board	18.08.23
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## Preamble

We are an Aboriginal community-controlled health organisation and we hold ourselves accountable for representing Biluru people. Our cultural protocols and practices continue to guide how we deliver our services in the best way possible.

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## 1 Purpose and Overview

The Board, board subcommittee members and staff are required to act professionally in all aspects of their duties to Danila Dilba Health Service (DDHS). As such they should recognise, and avoid, any situations that may affect their integrity and objectivity during the course of their employment. This Conflict of Interest and Related Party Transactions Policy is a key part of meeting DDHS' governance and accountability requirements.

This policy has been developed to:

- help the board members of DDHS to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of DDHS and manage any risks which may arise;
- define the responsibilities of the DDHS board (Board) and employees identifying and declaring conflicts of interests and related party transactions; and
- assist the Board and DDHS management in effectively managing any conflicts of interests and related party transactions identified.

## 2 Scope

This policy applies to the Board, board subcommittee members and staff.

## 3 Conflicts of Interest Policy

DDHS will manage conflicts of interest by requiring all Directors, subcommittee members and staff to:

- identify and disclose any conflicts of interest;
- avoid any potential conflicts of interest where possible;
- carefully manage any declared conflicts of interest in accordance with this policy; and
- appropriately respond to any breaches of this policy.

The Board, board subcommittee members and staff should be, and appear to be, free from any interest (personal, financial or otherwise) that might be regarded as being in conflict, or incompatible with, the interests of DDHS. It is just as important to deal with the perception of conflicting interests to ensure that no misconceptions occur in the workplace or the community.

No Director, board subcommittee member or staff may directly or indirectly attempt to, or actually influence benefits provided to, or likely to be provided to, a person or organisation with which they hold a conflict of interest.

### 3.1 What are Conflicts of Interest?

A conflict of interest occurs when an individual's personal interests conflict with their responsibility to act in the best interests of DDHS.

Personal 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. It also includes a conflict between two obligations, for example, a Director's duty or obligations to DDHS, and another duty that the Director has (for example, to their employer or another charity or corporation). A conflict of interest may be actual, potential or perceived and may be financial or non-financial.

There are a number of areas where such a conflict of interest may arise. For example, these include but are not restricted to:

- staff recruitment - both 'formal' and 'informal' processes, where the person in charge of recruitment has a personal relationship with one or more of the potential candidates
- supervision of staff or students, where there is a personal or familial relationship between the supervisor and staff or student
- secondary employment – for example where a Director at DDHS or key management also owns another business, or is employed by a different organisation
- receipt of gifts, benefits and hospitality, where these may be seen to influence a person's decision making
- seeking any personal advantage from information gained during the course of your employment or providing confidential information to another person
- seeking an advantage for a third party from information gained during the course of your employment or providing confidential information to a third party

These situations present the risk that a person will make decisions based on, or affected by, these interests rather than based on the best interests of DDHS. Therefore, these situations must be managed accordingly.

It is important to remember that there is nothing wrong with having a conflict of interest. However, a failure to declare a conflict of interest is a serious matter and has the potential to damage the reputation of the organisation and individuals.

## 3.2 Declaring an Interest

### 3.2.1 Initial Declaration

On or before:

- the appointment of a Director to the Board, the Director must declare all actual, potential and perceived interests (where known) that may result in conflicts or related party transactions in writing on the Declaration of Interest Form;
- the appointment of a board subcommittee member to a committee under article 8.6 of the DDHS Constitution, the Committee Member must declare all actual, potential and perceived interests (where known) that may result in conflicts or related party transactions in writing on the Declaration of Interest Form; or
- the employment of a new staff member, the staff member must declare all actual, potential and perceived interests (where known) that may result in conflicts or related party transactions in writing on the Declaration of Interest Form.

The completed Declaration of Interest Form is to be returned to the Company Secretary for entry into the Register for Directors and board subcommittee members, and the Manager, People and Culture for staff members.

This declaration will include any personal interests that the Directors, board subcommittee members or staff have with other Directors, subcommittee members or staff. A relationship that goes beyond the bounds of a platonic relationship can result in a conflict of interest. This includes

- a relative (which is defined in the Constitution to mean a parent, sibling, spouse (which includes a de facto relationship or marriage) or child of the subject person or any other person deemed by the Board to have such close familial relationship with the subject person).

Staff members who have a personal relationship with another staff member are required to make a declaration where:

- one staff member reports to or is supervised by the other;
- one staff member is responsible for the performance or evaluation of the other;
- one staff member is involved in the decision making or procedures relating to promotion, working conditions, or benefits for the other;
- one staff member has access to the personnel file of one or the other, or both;
- one staff member is responsible for determining or influencing the remuneration or incentives for the other; or
- one staff member is working on the same engagements or projects.

### 3.2.2 Ongoing Updates

Directors are required to update the Board if there are any changes to their interests from their initial declaration. Directors must also follow the requirements of Rule 10 of the DDHS Constitution' regarding the declaration of their interests. If the conflict of interest relates to another Director, then the Director must also notify the Board of the conflict at the next Board meeting.

Where every other Director shares a conflict, the Board should refer to ACNC Governance Standard 5 to ensure that proper disclosure occurs.

All board subcommittee members are required to declare any changes to their interests from their initial declaration that they become aware of during their time as a board subcommittee member.

All staff members are required to declare any changes to their interests from their initial declaration that they become aware of during their employment with DDHS. Additionally, staff will be required to undertake an annual declaration.

Changes to interests includes if the initially declared conflicts cease to be conflicts of interest, or if the Director, board subcommittee member, or staff member becomes aware of any other current or potential conflicts.

If Directors or board subcommittee members are uncertain whether a conflict exists, they should discuss the possible conflict with the Chairperson or Company Secretary. If staff members are uncertain whether a conflict exists, they should discuss the possible conflict with their manager or the Manager, People and Culture.

Sufficient detail must be provided by the Director, board subcommittee member and staff member so that the Board, CEO or relevant manager can put in place any necessary arrangements to manage the declared conflict of interest.

## 3.3 Management of Conflicts of Interest

### 3.3.1 Discussing Conflicts of Interest

Where a potential conflict of interest has been identified the relevant manager of the staff member or the Chairperson, in conjunction with the relevant conflicted Director or board subcommittee member will meet to discuss and determine the appropriate course of action to address the declared conflict.

If a Director has a material personal interest in a matter being considered at a Board meeting, they must not be present while the matter is being considered at the meeting or vote on the matter, unless the non-conflicted Directors have passed a resolution:

- specifying the Director, the nature and extent of the Director's interest in the matter, and its relation to the affairs of DDHS; and

- stating that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

Board subcommittee members who have a material personal interest in a matter being considered at a Subcommittee meeting also should not be present while the matter is being considered at the meeting or vote on the matter, unless the non-conflicted Subcommittee Members determine otherwise. Where quorum for a Committee meeting cannot be met as a result of a subcommittee member's material personal interest, the Board will vote on, or otherwise determine how to proceed with, the relevant matter.

### 3.3.2 Options and Considerations

To resolve any actual, potential or perceived conflict of interest, a range of options are available depending on the circumstance and significance of the conflict. These options include:

- recording the details of the disclosure and taking no further action because the conflict can be eliminated by disclosure or effective supervision;
- the person being removed from the task/activity/situation/role in which the conflict arises;
- requiring (where possible, and where no other management options are viable) the conflicted person to give up the personal interest; or
- requiring (depending on the severity of the conflict) the conflicted person to resign from their position at DDHS.

In deciding what approach to take, the following will be considered:

- DDHS' objectives and resources;
- the risk to the reputation of, or confidence in, DDHS as a charitable organisation by the community;
- whether the conflict of interest will realistically impair the conflicted person's capacity to impartially participate in any decision-making;
- how severe or significant the conflict of interest is (that is, whether the conflict needs to be appropriately managed or simply documented); and
- any alternative options to avoid the conflict.

### 3.3.3 Who Will Manage the Conflict of Interest?

Any action required in respect of a conflict of interest of a staff member will be managed under the direction of the CEO, or where the CEO has a conflict of interest, through such other way as may be determined by the Board.

Any action required in respect of a conflict of interest of a Director or a board subcommittee member will be managed in a way as may be determined by the Board.

The agreed actions and results of voting will be recorded in:

- the minutes of the Board meeting (where the conflict of interest was discussed at a Board meeting) or the minutes of the board subcommittee meeting (where the conflict of interest was discussed at a Committee meeting); and
- in a Declaration of Interest Register.

### 3.3.4 Compliance With, and Breaches of, the Conflict of Interest Policy

Where DDHS is notified of a conflict of interest that has not been declared by a Director or board subcommittee member, the Board of Directors (excluding the Director under investigation) must investigate the notice.

Following the investigation, and upon agreeing via majority vote, the Board of Directors may take any of the following actions:

- Issue a warning to the Director or board subcommittee member
- Remove the Director or committee member under article 8.6(h) of DDHS Constitution; or
- Take any other action the Board believes to be appropriate in the circumstances.

Where DDHS is notified of a conflict of interest that has not been declared by a staff member of DDHS, the manager of the staff member must investigate the notice or, in the case where the staff member in question is the CEO, the Board must investigate.

Following the investigation, the manager or, in the case where the staff member in question is the CEO, the Board may decide to do the following:

- Issue a warning to the staff member;
- Take disciplinary action against the staff member under the misconduct policy; or
- Take any other action the manager believes to be appropriate in the circumstances, including in relation to all staff members other than the ceo, to bring the outcome of the investigation to the board for consideration.

Disputes over alleged conflicts of interests may be resolved through DDHS Grievance Policy.

## 4 Related Party Transactions Policy

Under the Corporations Act, DDHS cannot engage in related party transactions unless DDHS obtains member approval by way of an ordinary resolution, or an exception under the Corporations Act applies. As a registered charity with the ACNC, DDHS also has obligations in relation to related party transactions.

In essence, this policy seeks to ensure that, where related party transactions are conducted, they are conducted:

- On arm's length terms, or that one of the other exceptions under the Corporations Act applies; and
- Where required, with the approval of the DDHS members.

This policy is in addition to any express requirements under the Regulations and Guidance.

### 4.1 What is a Related Party Transaction

Related party transactions are those transactions in which a Financial Benefit is given by DDHS to a Related Party.

DDHS may from time to time undertake transactions with Related Parties or related organisations. It is important for DDHS to identify these transactions so DDHS can carefully manage these transactions, ensure DDHS is acting transparently and the details of the transactions are recorded appropriately.

If Directors or board subcommittee members are uncertain whether an arrangement will become a Related Party transaction, they should discuss the possible arrangement with the Chairperson or Company Secretary.

If Key Management Personnel (see definitions) are uncertain whether an arrangement will become a related party transaction, they should discuss the possible arrangement with their manager or the Manager, People and Culture or the CFO.

### 4.2 What are Exceptions to the Restrictions on Related Party Transactions?



If one of the following exceptions apply, then member approval of the transaction may not be necessary:

- the Financial Benefit is given on 'arm's length' terms;
- the Financial Benefit is reasonable remuneration or reimbursement of an officer or employee expenses;
- the benefit relates to indemnities, exemptions, insurance premiums and payment of legal costs for company officers;
- the Financial Benefit is less than or equal to \$5,000 AUD in a financial year and is not otherwise considered material by the Board;
- the Financial Benefit is provided by a body corporate to a closely-held subsidiary of DDHS or by a closely-held subsidiary of a body corporate to DDHS or an entity it controls; or
- the Financial Benefit is given to the related party in their capacity as a member of DDHS, and the giving of the benefit does not discriminate unfairly against the other members of DDHS.

If the Related Party transaction needs to be approved by a meeting of DDHS members, the relevant Related Party or an associate of the Related Party may not vote on the proposed resolution.

### 4.3 Documenting and Managing Related Party Transactions

Under section 3 of this policy, DDHS Directors, board subcommittee members and staff members have an obligation to disclose conflicts of interest, and the Company Secretary and Manager, People and Culture are responsible for maintaining a Conflicts of Interest Register.

Through the ongoing disclosure and maintenance of the Conflicts of Interest Register(s), the DDHS Board will be aware if there is a risk that DDHS will be entering into a related party transaction. In addition, procedures established for the Purchasing Policy will alert the CFO to potential Related Party Transactions.

All related party transactions are to be:

- conducted on an arm's length basis as determined by the Board; or
- conducted only after the Board has determined the related party transaction falls under one of the other exceptions under the applicable Regulations; or
- approved in a meeting of DDHS members.

This is to ensure that a Financial Benefit is not given to a Related Party without due consideration.

If a Director has an interest in the related party transaction, that Director must not attend the Board meeting while the matter is being considered or vote on the matter, unless approved in a resolution by non-interested Directors.

#### 4.3.1 Deciding if DDHS Should Proceed With a Related Party Transaction

In deciding what approach to take, the following will be considered:

- DDHS' objectives and resources;
- whether the related party transaction is on arms' length terms;
- what action(s) would be in DDHS' best interests;
- whether the related party transaction would be considered 'material' under the Guidance and relevant accounting standards;
- the risk to the reputation of, or confidence in, DDHS as a charitable organisation by the community; and

- what the alternatives are to the related party transaction, and what the consequences of these alternatives are.

In considering whether a related party transaction is conducted on an arm's length basis, the Board should consider the factors contained in ASIC Regulatory Guide 76, including:

- how the terms of the overall transaction compare with those of any comparable transactions between parties dealing on an arm's length basis in similar circumstances;
- the nature and content of the bargaining process, including whether DDHS followed robust protocols to ensure that conflicts of interest were appropriately managed in negotiating and structuring the transaction;
- the impact of the transaction on DDHS (for example, the impact of dealing on those terms on the financial position and performance of the DDHS) and non-associated members;
- any other options that may be available to DDHS;
- expert advice received by DDHS on the transaction (if any); and
- any other relevant factors.

#### 4.3.2 Related Party Transaction Register

Once the Board has considered a related party transaction, the related party transaction and the Board's consideration will be recorded in the minutes of the Board meeting. In addition, the Chief Financial Officer (CFO) will document the related party transaction and the outcome of the Board's deliberations in the register of related party transactions (**Related Party Transaction Register**) prior to entering into the transaction.

The Related Party Transaction Register should record:

- the relevant Related Parties;
- the nature of the Related Party relationship;
- a description of the Financial Benefit and if appropriate, the value of the Financial Benefit;
- the date on which the Board considered and decided to proceed with the related party transaction; and
- whether the Board determined DDHS would proceed with the related party transaction or not, and a brief summary of the reasons why (for example, if the Board considered the transaction to be at arm's length).

### 4.4 Member Approval Process

Directors should only rely on the exceptions when they are certain that the exception applies. If Directors are uncertain, they should seek member approval.

If it is determined that DDHS member approval is required, the Board will follow the required procedure under the Regulations and Guidance.

## 5 Responsibility for Administering this Policy

Positions	Responsibility
<b>Board</b>	<ul style="list-style-type: none"> <li>• establishing a system for identifying, disclosing and managing conflicts of interest and related party transactions across DDHS;</li> <li>• monitoring compliance with this policy, and</li> </ul>

	<ul style="list-style-type: none"> <li>reviewing this policy every two years to ensure that the policy is operating effectively.</li> </ul>
<b>All board subcommittee members</b>	<ul style="list-style-type: none"> <li>are responsible for implementation and compliance with policies and procedures that relate to their work and providing feedback on areas for improvement.</li> </ul>
<b>Chief Financial Officer (CFO)</b>	<ul style="list-style-type: none"> <li>is responsible for: ensuring that the Procurement Policy procedures allow for potential Related Party Transactions to be identified, maintaining the Related Party Transactions Register and preparing the Annual Statement for submission to the ACNC.</li> </ul>
<b>Manager – People and Culture</b>	<ul style="list-style-type: none"> <li>is responsible for maintaining a Conflict of Interest Register for Staff.</li> </ul>
<b>Company Secretary</b>	<ul style="list-style-type: none"> <li>is responsible for maintaining a Conflict of Interest Register for Directors and Committee Members.</li> </ul>
<b>All DDHS Staff members</b>	<ul style="list-style-type: none"> <li>are responsible for implementation and compliance with policies and procedures that relate to their work and providing feedback on areas for improvement.</li> </ul>
<b>Contractors / Volunteers / Students / Visitors</b>	<ul style="list-style-type: none"> <li>To comply with the policy and related procedures.</li> <li>They provide feedback on areas for improvement</li> </ul>

## 6 Definitions

Term	Definition
<b>Board subcommittee member</b>	Any member of a committee as delegated according to article 8.6 of DDHS Constitution, and could include an individual who is neither a Director nor a staff member
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth)
<b>DDHS</b>	Danila Dilba Biluru Butji Binnilutlum Health Service Limited
<b>Financial Benefit</b>	<p>The legal definition of a ‘financial benefit’ is broad, and includes:</p> <ul style="list-style-type: none"> <li>a monetary benefit;</li> <li>the transfer of resources, services and obligations to and from DDHS;</li> <li>giving or providing a related party with finance or property;</li> <li>buying an asset from or selling an asset to a related party;</li> <li>leasing an asset from or to a related party;</li> <li>supplying services to or receiving services from a related party; or</li> <li>taking up or releasing an obligation of a related party’.</li> <li>giving a financial benefit indirectly, for example, through 1 or more interposed entities;</li> </ul>

	<ul style="list-style-type: none"> <li>giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force; or</li> <li>giving a financial benefit that does not involve paying money (for example by conferring a financial advantage)</li> </ul>
<b>Guidance</b>	Any relevant guidance issued by either the Australian Securities and Investments Commission (ASIC) or the Australian Charities and Not-for-profits Commission (ACNC)
<b>Key management personnel</b>	Key management personnel are defined as staff with the authority and responsibility for planning, directing and controlling the activities of DDHS. This currently relates to all members of the DDHS Executive Management Team.
<b>Material personal interest</b>	<p>The term 'material personal interest' has no strict legal definition but:</p> <ul style="list-style-type: none"> <li>an interest will be 'material' if it has the capacity to influence the vote or decision making of a director, board subcommittee member or a staff member; and</li> <li>to be 'personal', an interest does not have to be about money or benefits – it could also be about family or close relationships.</li> </ul> <p>An interest may not be 'personal' if it affects a wide group or class, in the same manner and to the same degree that it affects the other members of the group or class.</p>
<b>Regulations</b>	<ul style="list-style-type: none"> <li>Corporations Act</li> <li><i>Corporations Regulations 2001</i> (Cth)</li> <li><i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)</li> <li><i>Australian Charities and Not-for-profits Commission Regulations 2022</i> (Cth)</li> </ul>
<b>Related Party</b>	<p>The term 'related party' is defined by the Australian Accounting Standards Board in AASB 124 and the Corporations Act, and includes:</p> <ul style="list-style-type: none"> <li>DDHS key management personnel or Directors</li> <li>Relatives (as defined in the Constitution)</li> <li>Other organisations connected with DDHS with control or significant influence over DDHS</li> <li>organisations which DDHS has control or significant influence over</li> <li>other companies or entities which are controlled by Directors, or the spouses, parents or children of Directors</li> <li>other entities which DDHS has significant influence over or that share control of an arrangement with DDHS and have rights to the net assets of the arrangement.</li> </ul>
<b>Staff Member</b>	Any employee, volunteer or intern of DDHS.

## 7 Procedure

### 7.1 Steps

Step	Action	Who	Timeframe
1	Provide information on Conflict of Interest and Related Parties Policy to new staff as part of induction.	Manager, People and Culture	
2	Provide information on Conflict of Interest and Related Parties Policy to new directors and committee members as part of induction.	Company Secretary	
3	Include Declaration of Interest as standard item on all board and board subcommittee meeting agendas.	Company Secretary	
4	Include Declaration of Interest as standard item on all internal committee meeting agendas.	Committee Secretariat	
5	Ensure Conflict of Interest Register for Board and Committee members updated as required.	Company Secretary	
6	Ensure Conflict of Interest Register for staff updated as required and by requesting an annual update via an all staff email.	Manager, People and Culture	
7	Circulate the Related Parties Declaration Form annually to Directors.	Company Secretary	
8	Review completed Related Parties Declaration Forms completed by Directors annually and quantify the financial sums of relevant transactions as required.	CFO	
9	Ensure Related Party Transactions Register for DDHS updated as required and prepare annual statement on RP Transactions for submission to ACNC.	CFO	
10	Ensure that procedures as set out in the Purchasing Policy allow for potential Related Party Transactions to be identified.	CFO	

## 8 Flow Chart

