Policy and Procedure

Board Related Parties

Purpose

The purpose of this policy is to guide the Board of Directors and Executive in how the SWSPHN effectively manages related party transactions

It serves to support informed decision-making and consistency when addressing interactions with related parties (see 'Identify related parties' section below).

Policy Statement

In order to ensure SWSPHN conducts its business in accordance with its legal and funding obligations, code of meeting practice and Board conflict of interest policy, as well as its values and principles of good governance SWSPHN will appropriately manage and report transactions with related people or organisations.

Conflicts of interest and related parties transactions are a practical reality of running an organisation and may arise at any point of decision making for any PHN.

Many SWSPHN personnel (including Board members) may be associated with other local organisations and individuals, such as health service providers. While these connections are essential for understanding the needs of the community and embedding the SWSPHN in the local health landscape, they may give rise to actual, potential or perceived conflicts of interest or related party transactions. These situations are not necessarily wrong or unethical but must be appropriately identified and managed to give the community and the Commonwealth confidence in the SWSPHN's use of public funds.

This policy is intended to provide general direction only, based on a review of current legislation, regulations, guidelines and industry best practice. It is not intended to replicate or supersede any specific legal advice obtained pertaining to Member activity and related parties transactions.

Applicability

All SWSPHN staff.

This policy applies to the activities of the key management personnel (in particular Directors and Executive) and all constitutional requirements, contractual arrangements and other documents which effectively shape the relationship between the SWSPHN and its Members.

Associated Documents

Legislation and best practice guidelines:

- Australian Accounting Standards Board (AASB) 2021 *AASB 124 Related Party Disclosures*
- Australian Charities & Not-for-profits Commission (ACNC) *Related Party Transactions*
- Australian Institute of Company Directors (AICD) 2013 *Good Governance Principles and Guidelines for Not-for-Profit Organisations*
- Australian Securities & Investment Commission (ASIC) 2011 *Regulatory Guide 76: Related Party Transactions*
- Commonwealth Department of Health *Terms and Conditions for the Standard Funding Agreement Corporations Act 2001* [Cth]
- Governance Institute of Australia 2016 *Good Governance Guide: Conflicts of interest in not-for-profit organisations*
- *Commonwealth Department of Health Primary Health Network (PHN) Conflicts and related parties policy*
- Latham M.G, 2011 **"***Related party transactions and the arm's length exception: guidance for directors" International Law Office 25th July 2011*

Internal policies and documents:

- SWSPHN *Constitution South Western Sydney Primary Health Network Limited as at 24 October 2024*
- SWSPHN Board *Governance Manual*
- SWSPHN Strategic Plan 2021 to 2026
- Board Conflict of Interest Policy
- SWSPHN Member Engagement Plan 2021

Roles and Responsibilities

Document Owner	Ensure that this policy document is published and implemented, progress is monitored and that it is reviewed according to the document control schedule outlined in the document.
Executive Sponsor	Provide advice to the Policy Owner, approve the final document and present it to the Clinical Council or Senior staff meeting for approval.
Board	Directors have a fiduciary duty under law to act honestly and fairly in the best interests of the SWSPHN. When making decisions affecting the SWSPHN they should not seek to benefit from the SWSPHN nor be influenced by their wider interests (e.g. competing loyalties to another entity or person). Directors are required to: • Declare any conflict of interest; and/or • Disclose any "material personal interests" (irrespective of whether a conflict exists); In relation to contracts and other transactions with related parties, including Members. Non-interested Directors are required to exercise "special vigilance" with "scrupulous concern" when making decisions that will benefit a related party, including Members.
Executive	In making decisions about engagement with Members in any given circumstances, the Executive should be sufficiently knowledgeable, experienced in the business, and well-advised to form a sound judgement that is in the SWSPHN's interests.

Policy Statement

Applying effective Member engagement strategies benefits the SWSPHN because it supports the achievement of the company's vision:

"Better health for South Western Sydney"

In turn, mutual benefits with Members should accrue through the sharing of relevant communications and the building of robust, arms-length partnerships, where appropriate.

The most relevant values of the SWSPHN applied in this policy include:

- Trust: Maintain mutual respect for one another and act in good faith
- Empathy: Gather insights and understanding of others' experiences
- Fairness: Make decisions free from bias and discrimination
- Integrity: Behave honestly and accept responsibility for one's conduct

Identifying a Related Party

The Standard Funding Agreement's (SFA) terms and conditions (March 2015) defines a related party as:

a) An entity that controls or has significant influence over SWSPHN at any time
b) An entity that SWSPHN controls or has significant influence over at any one time, including a subsidiary
c) A person who is a member of SWSPHN's Board or governing body
d) A member on the Board of an entity that controls or has significant influence over SWSPHN; or a member of the Board of an entity that SWSPHN controls or has significant influence over
e) A member of SWSPHN's personnel other than in their capacity as an employee
f) A spouse or immediate family member of:
    - A member of SWSPHN personnel
    - A person specified in c or d above who is not themselves an SWSPHN employee.

Under the Primary Health Networks Conflicts and Related Party Policy, a related party transaction is:

When a PHN pays part of the Grant funds it receives under the standard funding agreement (SFA) or transfers an Asset (as defined in the SFA) to another party that is related to it.

Related party transactions involve a conflict of interest because the related party is in a position to influence whether a benefit is provided to it and the terms of that benefit. Related Party transactions are not permitted under the SFA without the Department's prior written consent, as outlined in Clause 9.5.2 of the SFA Terms and Conditions. See Appendix 2 for Illustrative examples of related parties transactions provided by DHDA.

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The Member Engagement Strategy employed by SWSPHN covers a range of elements, including:

1. Scope of Membership
2. Membership Entitlements
3. Member Endorsements
4. Transactions with Members
5. Communications with Members

1. Scope of Membership

- In law, the Members of the SWSPHN "own" the company (though as a company limited by guarantee, they have no claim on SWSPHN assets, as it is a separate legal entity). As such, they must be considered a "related party" of the SWSPHN.
- The SWSPHN is constituted as a company limited by guarantee, therefore the Members do not hold shares in the SWSPHN and are not entitled to receive a dividend from any monies earned. Further, Members' liability for SWSPHN debt is limited only to a $10 contribution for the costs of winding up the company.
- Clause 9 of the SWSPHN Constitution sets out the acceptance criteria for entities (incorporated companies and incorporated associations) that may apply to be a Member of the SWSPHN.

2. Membership Entitlements

- Members are entitled to:
    - receive a copy (website; electronic; or hard copy) of the SWSPHN Annual Report (including audited financial statements) at least 21 days prior to the Annual General Meeting (AGM) and within four (4) months of the end of the financial year.
    - inspect the minutes of general meetings of Members onsite at the SWSPHN head office. If they request a copy, the SWSPHN is entitled to charge a statutory fee for this service.
    - attend and vote at general meetings of Members.

3. Member Endorsements

- From time to time, the SWSPHN may receive requests from one or more Members seeking formal endorsement for their products, services or causes.
- In responding to such requests, the SWSPHN should be both mindful of:
    - Its responsibilities to the Commonwealth for the treatment of grant funds; and
    - To ensure that an endorsement in favour of one Member should not be to the detriment of the remaining Members.
- Endorsement requests should be in writing and require approval by the Board of Directors to establish a formal agreement. Particular considerations of an endorsement agreement include that it:
    1. Must be consistent with the vision, mission and strategic objectives of the SWSPHN.
    2. Does not expose either party to legal or financial liabilities.
    3. Specifies the nature of the endorsement.
    4. Ensures recognised quality control parameters are in place for the specified term.
    5. Preserves the SWSPHN's right to withdraw at any time.
    6. Does not conflict with other existing endorsement or sponsorship arrangements.

4. Transaction with Members

- On occasion, the SWSPHN will need to consider transactions with Members for the exchange of financial and/or in-kind contributions (e.g. sponsorships; contracted services etc.). In each case, these must be addressed as "related party transactions".
- The SWSPHN should demonstrate commercial prudence and only contemplate related party transactions with Members when it is comfortable that the best interests of the organisation are adequately protected. In particular, care needs to be taken that it:
    1. Must be consistent with the vision, mission and strategic objectives of the SWSPHN.
    2. Demonstrates an expected return for the SWSPHN's investment.
    3. Is on fair terms and has reasonably considered the risks to the SWSPHN's performance, financial position, prospects and reputation.
    4. Recognises any special value or advantage in the transaction is not solely made available because it is a related party, to the exclusion of others. Decisions in favour of one Member should also not be to the detriment of the remaining Members.
    5. Applies robust controls to conflicts of interest for key management personnel (in particular Directors and the Executive), whether perceived or real.
    6. Does not use grant funds from Commonwealth schedules without the prior written consent of the Department of Health.

For these reasons, the Board of Directors should only support related party transactions where they are confident and clearly persuaded by the Executive that "arms-length" terms reasonably apply in the prevailing circumstances (see Appendix 1).

5. Communications with Members

- The Board of Directors recognise that clear and transparent communication with the Members is key to effective engagement. It is important in each case that the SWSPHN's messaging with the Members is timely and consistent.
- Foremost, the Board should ensure effective processes are in place to facilitate the Members exercising their entitlements, as outlined above.
- Other relevant activities that the Directors and Executive should consider, for the mutual benefit of the SWSPHN and its Members, may encompass:

5.1. Broadcasts e.g.

- New Member information packs
- Access to Member information through website, posting key documents, copies of media releases, alerts regarding upcoming opportunities and other relevant information etc.).
- Connection to SWSPHN social media platforms.
- Community newsletter distributions.
- Sharing invitations to relevant forums and stakeholder presentations.

5.2. Direct communications e.g.

- Formal meetings with the Chair and CEO on request.
- Executive engagement in planning and consultation activities as required.
- Periodically survey feedback for quality improvement purposes.

Definitions

Word/Term	Definition
'Arm's-length'	A relationship between parties where neither bears the other any special duty or obligation i.e. they are unrelated; uninfluenced; and each act in its own interests.
Conflict of Interest	Where key management personnel of the SWSPHN have a perceived or actual interest with a related party and have difficulty demonstrating that they are able to meet their duty to act in the best interests of the SWSPHN. Such conflicts can cause harm to the SWSPHN (including damage to its reputation) and must be addressed.
DHDA	Department of Health, Disability and Ageing
Endorsement	The act of giving approval or sanction by one party to another for a product, service, or cause (normally without charge).
Key Management Personnel	Those persons having authority and responsibility for planning, directing and controlling the activities of the SWSPHN, directly or indirectly, including any Director (whether Executive or otherwise) of the SWSPHN.
Material Personal Interest	Interests of some substance or value and has the capacity to influence the vote of a Director (irrespective of whether it is direct, indirect, contingent, or contractual). The interest in question need not be pecuniary.

Word/Term	Definition
Related Party	A person or entity (including its subsidiaries, joint ventures and associates) that is connected to the SWSPHN and has control or significant influence over the organisation at any time.
Related Party Transaction	A transfer of resources, services or obligations between the SWSPHN and a related party, regardless of whether a price is charged.

Document Control

Document review every (choose most applicable) ☐ 1 year ☐ 2 years ☑ 3 years

Version	Date Commenced	Document Owner	Change Description	Review Date	Authorising Executive
V1.0	June 2022	CEO	New Policy	June 2025	Board
V2.0	July 2025	CEO	Policy Review	July 2028	Board

This document will remain in effect until replaced.

Appendix 1

'Arms-Length' Terms

An assessment of "arms-length" terms should not be based on only one of the following factors in isolation. All should be considered, though weighting may be applied to the importance of each, depending on the context and prevailing circumstances.

Factor	Treatment
Terms are either objectively reasonable in the circumstances or less-than favourable, compared with common market practice.	Regular procurement procedures and standard contract terms and conditions should apply i.e. there should be no evidence of extraordinary or excessively generous terms and provisions).
The nature and content of the bargaining process should be "real" and "disinterested".	Regular procurement procedures should apply as above. Documentation should transparently minute the nature of the transactions in terms of the initiation, structure and nature of negotiations. Apply standard contract terms to ensure they are documented and adequately binding.
The impact of the transaction on the entity is considered.	The transaction needs to demonstrate consistency with the SWSPHN's current Strategic Plan and work plans. An assessment should be documented on impact of the transaction on the SWSPHN's subsequent financial position, performance, and reputation.
There is consideration of any other options available to the entity	Co-design and market testing in the commissioning cycle should provide evidence of a good comparison with unrelated parties in the circumstances There needs to be a clearly documented justification for direct engagement if the related party is the only supplier.
Evidence of any expert advice received by the entity	An assessment needs to be made whether external advice is required, considering the knowledge and experience of Directors, Executive, staff and advisers plus access to publicly available information on the matter. It should always be noted that advice does not replace careful judgement by the Directors.
Directors declare a conflict of interest or material personal interest where evident	Where Directors do not self-declare, the Chair and or Company Secretary highlight if they consider a Director has either a conflict and/or material personal interest on the matter. Where either a conflict and/or material personal interest is declared on the matter, the Director concerned should be excused from discussions and abstain from voting.

Appendix 2

Illustrative Examples of Related Parties Transactions Provided by DHDA

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 [XYZ 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 Terms and Conditions.

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.