



NSW Office of Environment & Heritage

Probity Management Plan: NABERS Program

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1 Introduction

1.1 Background

The National Australian Built Environment Rating System (NABERS) Program is a national program delivered by the NSW Government (the National Administrator) under the guidance of the Commonwealth, State and Territory governments (the NABERS National Steering Committee). The program provides a suite of rating tools that measure the environmental performance of Australian buildings and tenancies.

The NABERS Program aims to uphold the following values:

- **Integrity** – to be ethical, impartial, open and transparent
- **Quality** – to operate a robust, reliable program of rating tools
- **Collaboration** – to work with industry and government to ensure relevant and effectiveness
- **Leadership** – to demonstrate and advocate practical environmental benchmark performance measures for industry and government
- **Public service** – to serve the public good and delivery public value by communicating trusted results.

1.1.1 Key probity principles for the NABERS Program

The NABERS Program ensures that it maintains probity of the Program on the basis of three key principles:

- **Segregation of duties:** the National Administration is responsible for the key decision making regarding the NABERS Program including the accreditation process, NABERS Ratings and the NABERS Auditing process. Accredited Assessors, NABERS Auditors, NABERS Supervisors and Trainee Accredited Assessors complete their work and provide recommendations to the National Administration prior to a final decision being made.
- **Requirements for the identification of conflicts and appropriate management:** it is a requirement within the Accredited Assessor contracts, Auditor contracts and policy and procedure documents that any individual that has a conflict of interest regarding the NABERS Program is required to disclose the conflict to the National Administrator. The National Administrator will review the disclosed interest and consider the appropriate action to take, including recording this in the Conflict of Interest Register maintained by the Senior Compliance Manager.
- **NABERS Auditors are required to relinquish their accreditation:** during the period in which a NABERS Auditor is appointed to the Auditing Panel, they are required to relinquish their accreditation to ensure that they are not in a position to be able to audit their own ratings. This is a key risk management strategy implemented by the NABERS Program to ensure the integrity of the Program.

The NABERS Program is committed to the values of integrity, quality, public services, leadership and collaboration. The National Administrator works closely with NABERS Trainers, Supervisors, Auditors and Trainee and Accredited Assessors to deliver excellent services and a relevant, reliable practical measure of building performance that supports a more sustainable built environment.

The NABERS 2013-2018 Strategic Plan identifies five key objectives for the Program, one being accountability which is intended to focus on responsive and responsible governance and openness and transparency. It is also a key objective to ensure the governance structure provides public value; upholds the integrity of the rating system and delivers on strategic objectives. The NABERS Program aims to be open and transparent through making key documents and information about the Program

publicly accessible while maintaining confidentiality requirements and ensuring adequate protection of intellectual property.

The NABERS Program has established a number of documents which set out the frameworks for the accreditation, auditing and rating system and makes these available on the www.nabers.gov.au website.

The intention of the NABERS Program Probity Plan is to highlight the probity considerations and strategies that the National Administrator has put in place to clearly demonstrate how the National Administrator partners with industry to deliver the program in a fair and effective manner.

1.2 What is Probity?

The term probity means integrity, fairness, honesty and transparency.

For public officials and public sector agencies, creating and maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying and complying with public sector values and duties such as impartiality, accountability and transparency. Ensuring probity in public sector activities is part of every public official's duty.

Effective probity management is concerned mainly with the procedures, processes and systems used rather than the outcome of an activity, undertaking or project. It should also be recognised that – despite good management of probity risks – mistakes, delays and disputes can arise. Similarly, even the best probity processes do not guarantee that a project or activity will be immune from issues or criticism.

The Independent Commission Against Corruption (ICAC) position is that considering and addressing probity issues should be a normal part of any significant project, regardless of whether an external probity auditor is appointed.

According to the ICAC guidance material, the management of probity issues in a public sector project can:

- Improve the quantity and quality of private sector involvement by generating confidence in the process
- Remove ambiguities in the assessment of proposals
- Assist in ensuring overall project objectives are met
- Minimise costly challenges in the future concerning the integrity or processes of the project.

1.3 Objectives of the Probity Plan

This Probity Plan provides a broad framework to put in place processes and procedures required to mitigate any identified probity risks in accordance with the generally accepted probity principles of:

- Accountability of the participants and transparency of the process;
- Fairness, impartiality and honesty in carrying out the process;
- Management of actual, potential and perceived conflicts of interest
- Maintenance of confidentiality and security of documentation and information; and
- Attaining best possible value for money under the prevailing circumstances.

The NSW Office of Environment and Heritage (OEH), in its role as the NABERS National Administrator, commissioned this Probity Plan to set out the principles and strategies by which probity is to be maintained for the NABERS Program. The Probity Plan relates specifically to:

- The NABERS Accreditation process
- The NABERS Rating Auditing process

- The NABERS Supervision process.

The NABERS Accredited Assessors, NABERS Supervisors and NABERS Auditors are engaged under relevant agreements by the National Administrator to perform public official functions in relation to the NABERS Program. Under Section 8 of the *Independent Commission Against Corruption Act 1988*, corrupt conduct is “any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority”. We therefore consider these roles as public officials in the context of this Probity Plan.

This Plan may be amended if required by the National Administrator. Reasons for amending the Probity Plan will be clearly documented and amendments will be approved by the relevant Senior Manager prior to implementation.

1.4 Documentation references

This Probity Plan is not intended to replace or supersede any previous government requirements or NABERS documentation, rather, it is intended to provide guidance and be read in conjunction with these documents.

The documentation relevant to this Probity Plan includes:

- NABERS Strategic Plan 2013-2018
- NABERS Rating Auditing Procedure V4.0 (November 2013)
- NABERS Auditing Policy (November 2013)
- NABERS Accreditation Procedure V4.1 (October 2013)
- NABERS Guideline for Ruling Requests & Technical Advice V2.0 (July 2013)
- NABERS Accredited Assessor Agreement
- Accredited Assessor Code of Practice
- NABERS Auditor Agreement
- *NSW Independent Commission Against Corruption and Qld Crime and Misconduct Commission – Conflict of Interest Toolkit* (November 2004)
- *NSW Independent Commission Against Corruption – Identifying and managing conflicts of interest in the public sector* (July 2012)
- *NSW Independent Commission Against Corruption – Contracting for services – the probity perspective* (May 1995) *Government Information (Public Access) Act – 2009*.

2 Governance framework

The following governance and resourcing framework has been established to support and coordinate the NABERS Program.

2.1 NABERS National Steering Committee

The NABERS National Steering Committee is a committee of representatives from Commonwealth, State and Territory governments and non-voting industry and international observers. The National Steering Committee is the primary decision making body that provides the overall strategic and operational direction for the program.

Membership of the National Steering Committee is as follows:

- Chair - Australian Government Department of Industry
- Secretariat - Australian Government Department of Industry
- National Administrator - NSW Office of Environment and Heritage
- Committee Members:
 - Victoria - Sustainability Victoria
 - South Australia - Department of Planning, Transport and Infrastructure
 - Western Australia - Department of Finance
 - Northern Territory - Department of Planning and Infrastructure
 - ACT - Planning and Land Authority
 - Tasmania - Department of State Growth
 - Queensland - Department of Housing and Public Works
- Industry Observers
 - Australian Institute of Refrigeration Air-conditioning and Heating (AIRAH)
 - Australian Sustainable Built Environment Council (ASBEC).
- International Observer
 - New Zealand Energy Efficiency and Conservation Authority (EECA)

2.2 NABERS Stakeholder Advisory Committee

The NABERS Stakeholder Advisory Committee is the peak advisory body to the NABERS Program. The Stakeholder Advisory Committee provides a valuable national forum for industry to have input into the development and ongoing management of the NABERS suite of rating tools.

Membership of the NABERS Stakeholder Advisory Committees is as follows:

- Australian Sustainable Built Environment Council (ASBEC).
- The Australian Institute of Architects (AIA)
- The Australian Institute of Refrigeration, Air Conditioning and Heating (AIRAH)
- The Association of Building Sustainability Assessors (ABSA)
- The Air conditioning and Mechanical Contractors' Association (AMCA)
- The Australian Property Institute (API)

- The Chartered Institution of Building Services Engineers (CIBSE)
- The Energy Efficiency and Conservation Authority New Zealand (EECA)
- The Energy Efficiency Council (EEC)
- The Facilities Management Association of Australia (FMA)
- The Green Building Council of Australia (GBCA)
- The Property Council of Australia (PCA)
- The Property Funds Association (PFA)
- The Real Estate Institute of Australia (REIA)
- The Royal Institution of Chartered Surveyors (RICS)
- The Shopping Centre Council of Australia (SCCA)

2.3 National Administrator

The National Administrator develops, maintains and updates rating tools and builds capacity in the market to deliver NABERS ratings by accrediting assessors, providing technical support and running quality assurance auditing processes.

Under the NABERS Accredited Assessor Process Outline, the National Administrator has the following responsibilities:

- Provide national marketing for the NABERS Program
- Provide specific NABERS training and testing for Accredited Assessors
- Ensure that all Accredited Assessors are performing to the same high national standards to maintain the integrity of the NABERS Program
- Ensure that technical support is available to Accredited Assessors in order to clarify any uncertainty
- Ensure that regular and random audits of NABERS Ratings are conducted, this includes audits of ratings performed under previous agreements
- Notify the Accredited Assessors in writing of any amendments to the Process Documents including the Code of Practice.

3 Probity Principles

The NABERS Program is conducted according to the following probity principles:

3.1 Accountability and transparency

Accountability and transparency are related concepts. Accountability involves agencies being able to justify the use of public resources by allocating and taking responsibility for past and expected performance. This includes aligning the decision making process with the appropriate delegated authority, and keeping adequate records that will leave an auditable trail. Transparency refers to the preparedness to open a project and its processes to scrutiny and possible criticism. This also involves providing reasons for all decisions that are taken and the provision of appropriate information to relevant stakeholders.

3.2 Fairness, Impartiality and Honesty

Individuals and organisations affected by the NABERS Program are entitled to expect impartial treatment at all parts of their involvement, whether it be during the NABERS Ratings process, the Accreditation process or the NABERS Auditing process. If customers and users of the NABERS Program do not consider it to be fair, impartial and honest, they may lose confidence in the integrity of the Program.

Any perceived bias, whether driven by personal interests or not, may jeopardise the reputation of the NABERS Program. Procedures that include multiple Supervisors, Trainers and Accredited Assessors, as well as the oversight and decision-making role of the National Administrator effectively mitigate this risk.

3.3 Management of Conflicts of Interest

The Independent Commission Against Corruption's *Identifying and managing conflicts of interest in the public sector* (July 2012) and the *Conflict of Interest Toolkit*, a joint publication with the Queensland Crime and Misconduct Commission, defines a conflict of interest as follows:

“A conflict of interest occurs when you as a public official are in a position to be influenced, or appear to be influenced, by your private interests when doing your job. A conflict of interest can involve avoiding personal disadvantage as well as gaining personal advantage. A conflict of interest is not limited to circumstances where you, or others close to you, may gain or lose financially from your public position. It includes situations where your official decisions may be influenced by your private interests in social and professional activities, and interests with individuals or groups, including family and friends.”¹

The community and individuals participating in the NABERS Program, including Trainee Accredited Assessors, building owners and any individual impacted by a NABERS Rating, have a right to expect that NABERS officers will make decisions that are not influenced by private interests. Similarly, when the private sector is engaged to perform public sector duties, there is an obligation to ensure that conflicts of interest are disclosed and effectively managed. Perceived or potential conflicts of interest can be as damaging as actual conflicts, and procedures should be implemented to mitigate the effect.

¹ Independent Commission Against Corruption *Identifying and managing conflicts of interest in the public sector* (July 2012): What is a conflict of interest?

3.4 Maintenance of Confidentiality and Ensuring Security

Although accountability and transparency are fundamental to the work of public sector organisations and public officials, including all individuals involved with the NABERS Program, there is some information that needs to be kept confidential such as some client data provided for NABERS Ratings, information arising from a complaint or appeal process, and information relating to the performance of Trainee Accredited Assessors during supervised ratings. This is important to protect the integrity of the NABERS Program, including the accreditation process, the NABERS Auditing process and the NABERS Rating process, including the establishment of new Rules.

Confidential information can include the details of NABERS Ratings, requests for Rulings, outcomes of accreditation processes and information known to Supervisors and Auditors regarding supervision and reviews being conducted. Procedures are implemented to ensure that no unauthorised release of confidential information occurs including the confidentiality provisions in place in the Accredited Assessor Agreements and other requirements in the existing policy and procedure framework.

3.5 Attaining value for money

Value for money is achieved by fostering an open competitive environment. Lapses in probity often end with one or more parties obtaining unreasonable financial gains at the expense of the public interest. For the NABERS Program, the engagement of NABERS Auditors, Supervisors and Trainers is done through the establishment of a Panel contract which is in place for a period of two years. The Panel is established through an open competitive tender process which the NSW Office of Environment and Heritage conducts in accordance with the NSW Government Procurement Policy Framework.

4 Probity principles applied

4.1 Accountability and Transparency

The National Administrator is responsible for ensuring that all program delivery partners involved in the NABERS Program are appropriately qualified and experienced to undertake their particular role in the Program and this is achieved through the accreditation process, with the assistance of Supervisors, and the NABERS Auditing process.

The table below outlines key probity risks that have been identified for the NABERS Program and the strategies the National Administrator has in place to mitigate these risks.

Key risk	Probity strategy in place to mitigate the risk	Reference
<p>The National Administrator not clearly identifying the objectives of the NABERS Program, including the criteria against which NABERS Ratings will be completed, leading to inconsistency in the application of the Ratings for different buildings.</p>	<p>Establishment of predetermined and published NABERS Rules for the NABERS Ratings. The NABERS assessment tools are supported by the Rules that provide a detailed methodology for gathering, interpreting and using data for the purpose of obtaining an accredited NABERS rating.</p> <p>100% of NABERS Ratings are the subject of a Level 1 audit completed by Technical Officers within the National Administrator to confirm that the Rating has been undertaken in accordance with the Rules and the required level of documentation is provided to support the Rating.</p> <p>Records are maintained of all NABERS Ratings, Audits and Supervised Ratings.</p> <p>In accordance with the Auditing Procedure, the NABERS Auditor should be able to complete the audit through the application of the Rules, Rulings, process and procedures to the documentation provided by the Accredited Assessor. In other words, the level of documentation maintained of the NABERS Rating should be such that the NABERS can 'repeat' the</p>	<p>NABERS Rules and Validation Protocols</p> <p>NABERS Auditing Policy</p> <p>NABERS Auditing Procedure</p> <p>NABERS Accredited Assessor Agreement</p> <p>NABERS Company Agreement</p>

Key risk	Probity strategy in place to mitigate the risk	Reference
	NABERS Rating from the documentation provided for the audit.	
<p>The Accredited Assessors not clearly documenting the NABERS Ratings process to enable the National Administrator to ensure that the decision making process is clearly aligned to the objectives of the NABERS Program and that the Rating is repeatable.</p>	<p>The National Administrator is responsible for the overall management of the NABERS Program, including accrediting assessors and setting and administering Assessor standards of practice and procedures.</p> <p>The National Administrator is the ultimate decision maker when reviewing a supervised rating completed by a Trainee Accredited Assessor and determining whether the Trainee is required to undertake a further supervised rating prior to being Accredited.</p> <p>The National Administrator is the ultimate decision maker when reviewing a NABERS Ratings as part of the Level 2 audit process and determining whether the Rating provided is consistent with the Rules and the data provided by the client.</p> <p>Establishment of predetermined and published NABERS Rules for the NABERS Ratings. The NABERS assessment tools are supported by the Rules that provide a detailed methodology for gathering, interpreting, using and documenting data for the purpose of obtaining an accredited NABERS rating.</p> <p>100% of NABERS Ratings are the subject of a Level 1 audit completed by Technical Officers within the National Administrator to confirm that the Rating has been undertaken in accordance with the Rules and the required level of documentation is provided to support the Rating.</p> <p>In relation to Ruling Requests and Technical Advice, the National Administrator has the responsibility to ensure that the assessment process is undertaken to the highest possible standard and to manage the ruling</p>	<p>NABERS Rules and Validation Protocols</p> <p>NABERS Accredited Assessor Agreement</p> <p>NABERS Company Agreement</p> <p>NABERS Code of Practice</p>

Key risk	Probity strategy in place to mitigate the risk	Reference
	<p>requests for particular premises or situations not covered by the existing Rules to ensure the credibility, reliability and integrity of the NABERS Program.</p> <p>The NABERS Guidelines for Ruling Requests and Technical Advice has been developed to ensure a transparent process to review requests relating to existing Rules that govern the current assessment tools based on a particular issue or situation and/or to provide technical advice.</p>	
<p>The NABERS Supervisors not clearly documenting the reasons why a supervised assessment undertaken by a Trainee Accredited Assessor was passed or failed.</p>	<p>NABERS Supervised Rating Report Cards are in place for each of the categories of assessments which provides consistency in the NABERS supervision ratings and requires the Supervisor to provide comments on a large number of questions relating to the assessment, which provides the basis for the 'pass' or 'fail'. These are provided to the Trainee Accredited Assessor.</p> <p>Records are maintained of all NABERS Ratings, Audits and Supervised Ratings, including the ratings against the NABERS Rules and Validation Protocols to support the decisions.</p> <p>The National Administrator allocates different NABERS Supervisors to different NABERS ratings to diversify the assessment approach and ensure impartiality throughout the supervision process.</p> <p>In order to ensure a fair and transparent assessment of NABERS Trainee Accredited Assessors' capabilities, the National Administrator will not allow an individual to undertake two supervised ratings of the same premises.</p> <p>A NABERS supervisee may appeal the result from a Supervised Rating where they feel that a fair and consistent technical standard of assessment has not been</p>	<p>NABERS Accreditation Procedure</p> <p>NABERS Dispute Resolution Procedure</p>

Key risk	Probity strategy in place to mitigate the risk	Reference
	observed. The appeal process is undertaken by the National Administrator.	
<p>Program delivery partners involved in the NABERS Program are not clear on their roles and responsibilities, including the role of the National Administrator as the ultimate decision maker.</p>	<p>A NABERS Accredited Assessors Code of Practice sets out the responsibilities and obligations under the NABERS Program, including ethical and commercial codes of conduct.</p> <p>The responsibilities of all persons with a role in the NABERS Program are clearly defined in the NABERS Process Outline. Further, the roles and responsibilities of each individual involved in key aspects of the NABERS Program are clearly defined in each of the Process documents.</p> <p>All key decisions are documented and signed-off by the National Administrator. This includes:</p> <ul style="list-style-type: none"> • NABERS Ratings • Supervised ratings completed by Trainee Accredited Assessors • NABERS Audits. 	<p>NABERS Accredited Assessor Agreement</p> <p>NABERS Company Agreement</p> <p>NABERS Process Outline</p> <p>NABERS Code of Practice</p> <p>NABERS Rating Auditing Procedure</p> <p>NABERS Accreditation Procedure</p> <p>NABERS Guideline for Ruling Requests & Technical Advice</p>

4.3 Demonstrating fairness, integrity and impartiality

The table below outlines key probity risks that have been identified for the NABERS Program and the strategies the National Administrator has in place to mitigate these risks.

Key risk	Probity strategy in place to mitigate the risk	Reference
<p>There is an inconsistent application of the Rules by Accredited Assessors in the assessment of a building during a NABERS Rating leading to a Rating which is not 'repeatable' or inconsistent with the Rules or scheme for that type of building, bringing into question the overall fairness of the Program.</p>	<p>A NABERS Accreditation Procedure is in place to ensure a fair and consistent approach is taken to assessing an individual's knowledge, understanding and ability to correctly apply the NABERS rules, policies and procedures.</p> <p>The National Administrator rotates new ruling requests or technical advice between the registered NABERS Auditors, to ensure impartiality of the review of ruling requests and consideration for technical advice.</p> <p>Refer to section 4.2.1.1 below for details on the NABERS Audit process.</p>	<p>NABERS Accreditation Procedure</p> <p>NABERS Auditing Procedure</p> <p>NABERS Rules and Validation Protocols</p>
<p>A NABERS Supervisor allocating a 'fail' mark to a Trainee Accredited Assessor during a supervised rating without providing clear justification and inconsistent with the Rating Report Cards.</p>	<p>The NABERS system is set up to identify when a NABERS Rating is required to be undertaken under supervision and will automatically establish the correct procedure to be followed, including the requirement for information to be entered for Supervisors to identify if they have a conflict of interest.</p> <p>The National Administrator, through the NABERS system, allocates Trainee Assessors with a supervisor for the completion of a Supervised Rating to remove the potential for Trainees to nominate their own Supervisor.</p>	<p>NABERS Accreditation Procedure</p> <p>NABERS Accredited Assessor Agreement</p>

<p>Owners of buildings using their own Accredited Assessors to complete the NABERS Rating, leading to perceived impartial ratings.</p>	<p>Any factor that may cause bias in a person involved in the assessment process, and that is not directly declared in the conflict of interest documentation, should be brought to the attention of the National Administrator by the Accredited Assessor for resolution as soon as it becomes apparent. Factors outside the scope of the NABERS Rules or the Rating Report Card during a supervisor rating and that do not affect the desired outcome for the NABERS Program are not be considered.</p> <p>Accredited Assessors are required to declare if they have a conflict of interest in relation to a building they have been engaged to conduct an NABERS Rating.</p> <p>100% of NABERS Ratings are the subject of a Level 1 audit completed by Technical Officers within the National Administrator to confirm that the Rating has been undertaken in accordance with the Rules and the required level of documentation is provided to support the Rating.</p>	<p>NABERS Accredited Assessor Agreement</p> <p>NABERS Auditing Policy</p> <p>NABERS Auditing Procedure</p>
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4.3.1.1 NABERS Audit process

The NABERS Program routinely undertakes two levels of audit. A Level 1 audit is conducted on 100% of NABERS Rating applications. It is a quality assurance process undertaken by NABERS Technical Officers to ensure that an Accredited Assessor has correctly completed the rating form, has made no apparent errors in data entry and has correctly applied the Rules to the data entered. The Technical Officers within OEH also undertake the Accredited Assessor training at the commencement of their role as well as relevant training which ensures the consistent application of the Rules and review of the Ratings against the Rules during the Level 1 Audits.

A NABERS Rating Level 2 Audit is undertaken on 5% of all NABERS Ratings and these are selected on a random basis or alternatively at the discretion of the National Administrator on the basis of risk. In order to maintain the highest standards and to ensure the impartiality and consistency of NABERS Ratings, Level 2 audits are undertaken of the entire rating process. The purpose of the audit is to verify that a NABERS Accredited Assessor has complied with the NABERS Rules, the NABERS Code of Practice and other relevant policy and procedure documents when completing the NABERS Rating. NABERS Auditors undertake a complete review of the NABERS Rating against the Rules and, if it is identified that an error has been made in the Rating that changes the Rating result, there is the potential for the National Administrator to amend the Rating.

NABERS Auditors are selected from the Panel of NABERS Auditors, which is established following a competitive tender process every two years. There are currently 11 NABERS Auditors on the Panel. The panel contract arrangement for NABERS Auditors is on the basis of a one year contract with a one year option to extend.

In order to ensure that NABERS Auditors are impartial in conducting NABERS Audits, the National Administrator requires that Auditors declare any conflicts of interest they may have regarding the Rating, which includes instances where the NABERS Rating was undertaken by an Accredited Assessor who works for the same company as the NABERS Auditor. Further, during the period in which the NABERS Auditor is on the panel, they are required to relinquish their Accredited Assessor status to mitigate any conflict of interest risk. This is discussed further in the *Managing Conflict of Interest* section below.

4.4 Managing Conflicts of Interest

Inadequate handling of conflicts of interest of persons involved the NABERS Program could result in a perceived lack of independence which could affect the integrity of the Program.

The table below outlines key probity risks that have been identified for the NABERS Program in relation to managing conflicts of interest and the strategies the National Administrator has in place to mitigate these risks.

Key risk	Probity strategy in place to mitigate the risk	Reference
The National Administrator not ensuring that individuals associated with the NABERS Program are aware of how a conflict of interest arises and their responsibilities to report conflicts, perceived, potential and actual, to the National Administrator	<p>Conflicts of interest are addressed as part of the Accredited Assessor training, which is a requirement as part of the accreditation process.</p> <p>The Code of Practice includes a definition of conflict of interest being “a situation where your actions as an Accredited Assessor may be at odds with another role. This conflict may be seen to encourage a rating that is either higher or lower than a true rating.”</p>	<p>NABERS Accreditation Procedure</p> <p>NABERS Code of Practice</p> <p>NABERS Accredited Assessor Agreement</p>
The National Administrator not adequately addressing conflicts of interest once disclosed.	<p>Conflicts of interests are documented in the Conflict of Interest Register which is maintained by the Senior Compliance Manager. The Register includes the details of the interest as well as the agreed strategy for the management of the interest.</p> <p>Accredited Assessors have entered into a contract with the National Administrator which requires them to disclose any potential conflict of interest when making</p>	<p>NABERS Accredited Assessor Agreement</p>

Key risk	Probity strategy in place to mitigate the risk	Reference
	<p>an application for an Accredited Rating and Certificate. Failure to notify a potential conflict of interest may result in the accreditation being revoked.</p>	
<p>Inadequately documenting how conflicts of interest, once identified, are addressed.</p>	<p>Conflicts of interests are documented in the Conflict of Interest Register which is maintained by the Senior Compliance Manager. The Register includes the details of the interest as well as the agreed strategy for the management of the interest.</p> <p>Conflicts of interest are documented in the NABERS members section of the website for each of the Ratings completed (where an interest is disclosed) and this information is provided to the Technical Officers for the completion of the Level 1 Audit as well as for Level 2 Audits, if undertaken.</p>	<p>NABERS Auditing Procedure NABERS Accredited Assessor Agreement</p>
<p>Not establishing a monitoring process to identify conflicts once they have been declared and if it is determined that an Accredited Assessor, NABERS Auditor or NABERS Supervisor can continue to act in their role</p>	<p>Conflicts of interest are documented in the NABERS members section of the website for each of the Ratings completed (where an interest is disclosed) and this information is provided to the Technical Officers for the completion of the Level 1 Audit as well as for Level 2 Audits, if undertaken.</p> <p>NABERS Supervisors must declare any potential and/or perceived conflicts of interest to the National Administrator before accepting a supervision.</p>	<p>NABERS Accreditation Procedure NABERS Accredited Assessor Agreement</p>
<p>Not clearly communicating confidentiality requirements to all persons with access to confidential information.</p>	<p>The Accredited Assessor Agreement includes requirements regarding the management of confidential information and what information is to remain confidential.</p>	<p>NABERS Accredited Assessor Agreement</p>
<p>Accredited Assessors, NABERS Auditors and NABERS Supervisors may all work for the same company but are engaged by the National Administrator as an individual. This means that Trainee Accredited</p>	<p>The National Administrator is the final decision maker regarding supervised ratings and the outcome of audits completed to ensure there is the appropriate oversight of this function.</p>	

Key risk	Probity strategy in place to mitigate the risk	Reference
Assessors that may be the subject of a supervised rating by a NABERS Supervisor or an Accredited Assessor that has a NABERS Rating audited may be from a competing company.	<p>The National Administrator has an appeal process in place for supervisions and exams (for the Accreditation process), as described in the NABERS Accreditation Procedure, where an Accredited Assessor is of the view that a fair and consistent technical standard of assessment has not been observed.</p> <p>In accordance with the Accredited Assessor Code of Practice, the failure of an Accredited Assessor to disclose a conflict of interest may lead to their accreditation being revoked.</p>	

4.4.1 What is a conflict of interest?

A conflict of interest arises when an employee is in a position to be influenced or appear to be influenced by his or her private interests (financial, personal or business) when doing their job.

Conflicts of interest of those involved in any process for the NABERS Program may result in a lesser standard of independence than that required to maintain the integrity of the process. Interests may also be categorised as financial or non-financial depending on whether there is a financial advantage involved.

A conflict of interest may either be actual, perceived or potential which are differentiated in the table below:

Actual conflict of interest	Perceived conflict of interest	Potential conflict of interest
An Accredited Assessor <i>is in a position to be influenced</i> by their private interests when doing their job.	An Accredited Assessor <i>is in a position to appear to be influenced</i> by their private interests when doing their job.	An Accredited Assessor <i>is in a position where they may be influenced in the future</i> by their private interests when doing their job.

A typical conflict of interest management flowchart is outlined in **Appendix A**. This can assist in individuals involved in the NABERS Program determining the appropriate action if a conflict of interest is identified.

The multiple policy and procedure documents in place for the NABERS Program outline various examples of where a conflict of interest can exist. It is important that the National Administrator is aware of any conflict of interest that may exist with an Accredited Assessor, NABERS Supervisor or NABERS

Auditor, to ensure that this can be reviewed and considered to determine the appropriate strategy to manage the interest. Once an interest or association has been identified, the National Administrator will be required to assess whether the interest is such that it needs to be specifically managed, in that it is likely to, or is likely to be perceived to, have the potential to interfere with proper decision making.

If it is considered that the interest is one that requires management, the National Administrator will consider a variety of options, from restricting that person's duties in particular areas of the Program to eliminating that person from the Program altogether. In most instances the National Administrator may determine that the appropriate management strategy for the conflict is to register the interest in the Conflict of Interest Register maintained by the Senior Compliance Officer without a need for the individual to be precluded from further participation in the NABERS Program. It is important to note that having an interest does not necessarily preclude a person from participating in the NABERS Program but the key thing from a probity perspective is that any interest is disclosed to the National Administrator and consideration is given to the appropriate management strategy.

The National Administrator gives consideration to the ICAC's "Six R's" for the management of conflicts of interest² and the management strategy adopted will depend on the nature and severity of the interest.

- **Register** - details of the existence of possible or potential conflicts of interest are formally registered. For the NABERS Program, the interest will be documented in the Conflict of Interest Register maintained by the Senior Compliance Officer, including the strategy adopted to manage the interest.
- **Restrict** - restrictions are placed on the public employee's involvement in the matter. This may include requiring the Accredited Assessor to decline the NABERS Rating on the basis that the National Administrator forms a view that an impartial rating could not be made in the circumstances.
- **Recruit** - a disinterested third party is used to oversee part or all of the process that deals with the matter. For the NABERS Program, the National Administrator performs an oversight role of the NABERS Ratings, including undertaking Level 1 and Level 2 audits of Ratings and has the role of the final decision maker.
- **Remove** - where a public employee chooses to be removed from the matter. For the NABERS Program, a NABERS Supervisor may decline a Trainee or Accredited Assessor supervision on the basis of a conflict of interest.
- **Relinquish** - where the public employee relinquishes the private interest that is creating the conflict. For NABERS Auditors, the National Administrator has adopted this strategy through the requirement that Auditors are required to relinquish their accreditation during the period in which they are appointed to the NABERS Auditors Panel.
- **Resign** - where the public employee resigns from their position with the agency. This would involve an Accredited Assessor relinquishing their accreditation on the basis that they feel their impartiality could not be maintained due to associations they have in the market.

The National Administrator documents how it addresses the related interests of persons involved in the process in the Conflict of Interest Register. This enables the National Administrator to show, if questions are asked about the probity of decision making, how a related interest did not interfere with proper decision making. It also helps increase the transparency of decision making with the NABERS Program.

² Independent Commission Against Corruption: Managing conflicts in the public sector – Toolkit (November 2004)

4.5 Maintenance of Confidentiality and Ensuring Security

A significant quantity of confidential information is likely to be generated during the NABERS Rating process and the NABERS Auditing process. Confidential information will also be generated regarding supervised ratings, particularly regarding the performance of a Trainee Accredited Assessor. It is therefore critical that individuals involved in the NABERS Program understand their obligations in relation to confidential information they have access to as part of their role.

If there are doubts about the confidentiality status of any information then it should be referred to the National Administrator. Any information that is deemed by the National Administrator to be kept confidential will be confidential.

Outlined in the table below are some key probity risks that have been identified for the NABERS Program and the strategies the National Administrator has in place to mitigate these risks.

Key risk	Probity strategy in place to mitigate the risk	Reference
<p>Not establishing security over confidential assessment information or commercially sensitive information and not documenting these requirements</p>	<p>Assessment of the NABERS Ratings by Accredited Assessors are completed via the members section of the NABERS website which is a secure environment and is only accessible by the Accredited Assessor completing the NABERS Rating and the National Administrator.</p> <p>All confidential information held by the National Administrator in electronic format is appropriately secured and protected from unauthorised access.</p> <p>When a NABERS Auditor is appointed, and therefore required to relinquish their accreditation, the National Administrator will amend their access to the NABERS website to ensure they only have access in the NABERS Program to information applicable to a NABERS Auditor (including access to NABERS marketing material) ..</p>	<p>NABERS Accredited Assessor Agreement</p>

<p>Possible leakage of information about the commercial in confidence or confidential information arising from the NABERS Rating or NABERS Auditing process</p>	<p>Requirement for all Accredited Assessors to adhere to the confidentiality requirements as set out in the Accredited Assessors Code of Practice, specifically that they must “not disclose to other employees, employers, agents or otherwise any confidential information provided by the National Administrator”. Accredited Assessors may be deemed in breach of the Assessor Agreement if the National Administrator identifies that confidentiality requirements have not been adhered to.</p>	<p>NABERS Accredited Assessor Agreement NABERS Accredited Assessor Code of Practice</p>
<p>Not clearly communicating confidentiality requirements to all persons with access to confidential information</p>	<p>The Accredited Assessor Agreement includes requirements regarding the management of confidential information and what information is to remain confidential.</p> <p>Customers can elect to have the NABERS Ratings remain confidential.</p>	<p>NABERS Accredited Assessor Agreement</p>
<p>Possible disclosure of confidential information regarding the outcome of a NABERS Supervised rating for personal advantage, such as against a competitor in obtaining advisory or consulting work.</p>	<p>Any information that is commercially sensitive or commercial in confidence will remain confidential. Any information that is proprietary information will remain confidential and access should be limited to a “need to know” basis. Accredited Assessors may be deemed in breach of the Assessor Agreement if the National Administrator identifies that confidentiality requirements have not been adhered to.</p> <p>If an appeal is lodged regarding an Supervised Rating, the National Administrator will keep confidential all information provided and the information will only be made available to staff who have a need to access this information.</p>	<p>NABERS Accredited Assessor Agreement NABERS Accredited Assessor Code of Practice NABERS Accreditation Procedure</p>

4.5.1.1 Confidential Documents

The following items are required to be maintained as confidential:

- Data provided by the building owner or client during the NABERS rating process which includes *identifying and/or commercial in confidence* information. This may include leasing arrangement information, energy data, building management system data of the building, energy billing information, details of third party arrangements including car parking leasing and air quality data
- Information obtained during a supervised Rating relating to the performance of a Trainee Accredited Assessor
- Information regarding the NABERS Auditing process, including any details regarding performance against the NABERS Rules and identified inconsistencies
- Details of conflicts of interest which may become known to employees of the National Administrator or NABERS Auditors
- Other information related to the processes that is not publicly available
- Any other information determined by the National Administrator to be confidential.

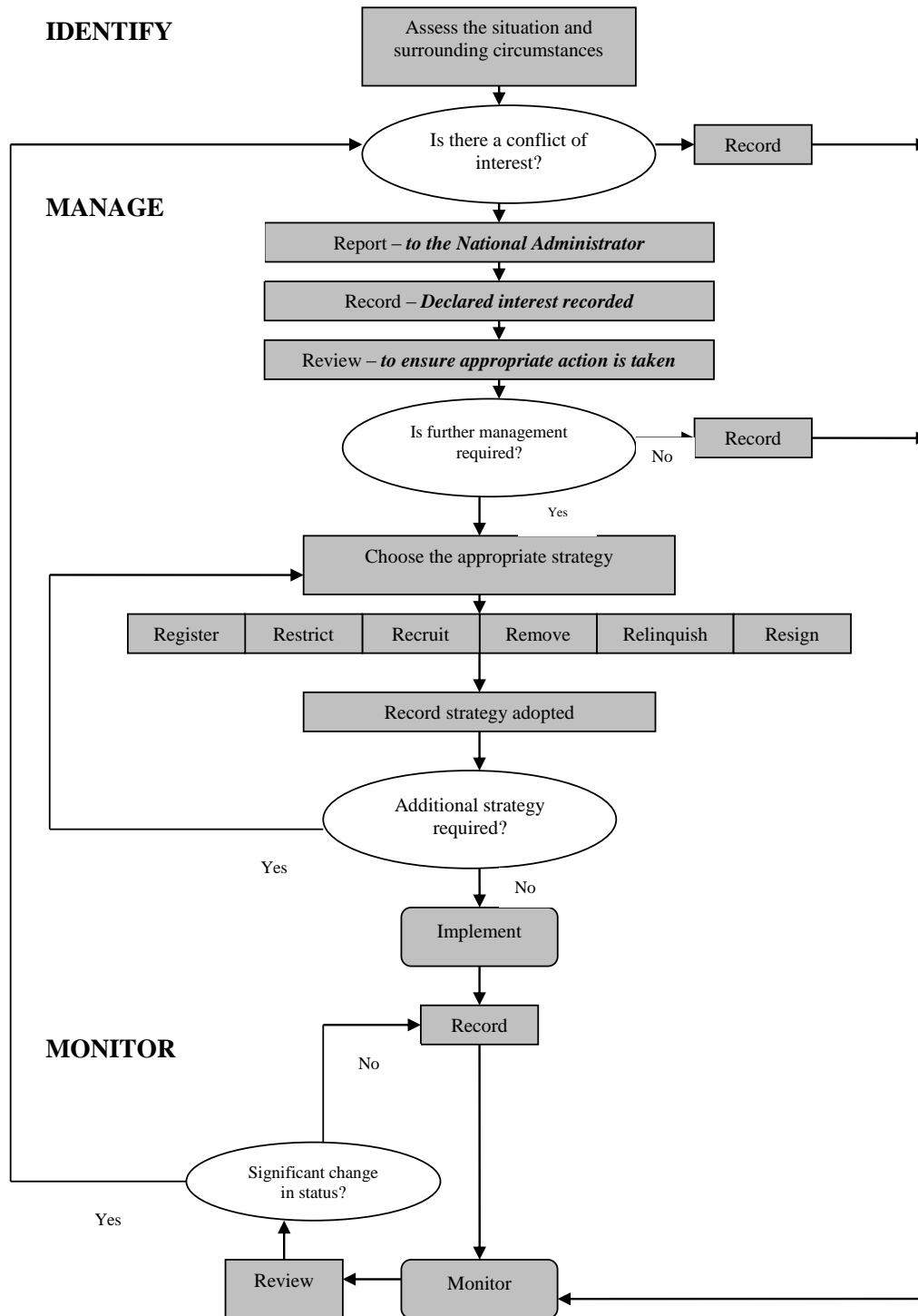
4.6 Attaining Value for Money

For NABERS Program, value for money of the program is maintained through continually providing value to clients on undertaking NABERS ratings. This is achieved through the thorough assessment of Rating applications by Accredited Assessors, the quality assurance review of these by Technical Officers as part of a Level 1 Audit, and the detailed audit of 5% of the Ratings as part of the Level 2 Audit process to ensure that the overall objectives for the NABERS Program are being met and the Rules are being consistently applied to the data assessed.

The National Administrator undertakes an open and competitive process for the engagement of NABERS Supervisors, Auditors and Trainers and the appointment of these to a Panel Contract. The Panel Contract is in place for a period of two years, after which the market will be tested again. The National Administrator undertakes the procurement process for the establishment of this Panel arrangement in accordance with the NSW Government Procurement Policy Framework.

Lastly, there are currently approximately 680 Accredited Assessors available in the market for clients to engage for undertaken NABERS Ratings, which provides competition for these services.

Appendix A: Conflict of Interest flowchart



Appendix B: Conflict of Interest Checklist

The first step is to recognise what situations could give rise to conflicts of interest. To achieve this, individuals should:

- Assess the situation and the surrounding circumstances that could affect any decisions or actions in the matter and identify whether a related interest exists.
- Determine what type of conflicts may exist.

A good general test to help individuals decide if they have a conflict of interest is to ask:

- *Would I be happy if my colleagues became aware of my involvement?*
- *Would I be happy if my involvement appeared in the newspaper?*

The checklist below can be used to determine if a conflict of interest exists. If an individual answers 'Yes' to any of the questions asked then they may have a conflict of interest and will need to seek advice from the National Administrator in relation to what further action should be taken in relation to the identified interest.

It is important to note that the strategies that will be implemented to manage the conflict of interest will vary depending on the nature and type of the conflict of interest. For example, some interests which are only minor may only need to be documented without the need for further action to be taken to manage the conflict whereas other conflicts may create a need for the employee to be removed from aspects of the Project.

Conflict of interest checklist

	YES	NO
• Would I or anyone associated with me benefit from or be detrimentally affected by my proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>
• Could there be benefits for me in the future that could cast doubt on my impartiality?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I have a current or previous personal, professional or financial relationship or association of any significance with an interested party?	<input type="checkbox"/>	<input type="checkbox"/>
• Would my reputation or that of a relative, friend or associate stand to be enhanced or damaged because of the proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I or a relative, friend or associate stand to gain or lose financially in some covert or unexpected way?	<input type="checkbox"/>	<input type="checkbox"/>
• Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I contributed in a private capacity in any way to the matter the National Administrator is dealing with?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I made any promises or commitments in relation to the matter?	<input type="checkbox"/>	<input type="checkbox"/>
• Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?	<input type="checkbox"/>	<input type="checkbox"/>

- Am I a member of an association, club or professional organisation or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose by my proposed decision or action?
- Could this situation have an influence on any future employment opportunities outside my current official duties?
- Do I still have any doubts about my proposed decision or action?
- Will the matter affect my earning capacity or financial situation?
- Will it have an impact on the value of any shares or property that I own?
- Do I have a second job or private business that may be affected by the matter?
- Do I have any debts owing to a person who will be affected by the matter?
- Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by the matter?
- Is there a realistic expectation that someone in a personal or business relationship with me will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
- By nature of my relationship with this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?