

Managing Conflicts of Interest

Conflicts of interest are a serious issue all organisations need to actively prepare for by establishing strong policies and creating a culture of responsible disclosure of all potential conflicts. This ensures services can avoid the risk of compromising the organisation.

This information sheet will define what a conflict of interest is and provide a framework for managing the risks associated with real or perceived conflicts. It also includes a list of key resources and a sample template of a conflict of interest disclosure statement. The sample template and statement can be adopted or adapted to the needs of your organisation.

Definition

The NSW Associations Incorporation Act 2009 defines a conflict of interest as an *'interest [that] appears to raise a conflict with the proper performance of the committee member's duties in relation to the consideration of the matter.'* (Sec 3 (1) (b))

A conflict of interest may occur when a board/committee or staff member's duty of loyalty to the organisation comes into conflict with a competing financial or personal interest that he or she (or a person closely associated with that individual such as a family member, friend or business associate) may have in a proposed transaction.

Examples of Potential Conflicts of Interest

It is important to recognise that a conflict of interest does not have to be 'real'. The perception of dishonest behaviour from the Committee or senior management can still damage the reputation of the organisation.

Examples of potential conflicts of interest for both Committee members and senior staff include:

- The granting of a commercial contract to an organisation or individual who is linked to a Committee member or senior staff member.
- Being a member of a Committee whilst also working for a government agency that provides funding to the organisation.
- A staff member providing consultancy services to a competitor without informing their primary employer.
- Appropriating the intellectual property of the organisation for your own benefit.
- Being on a job selection panel where a candidate is a personal friend.

Avoidance is the Best Policy

The above examples represent potential conflicts of interest. None need become real conflicts of interest if the organisation manages the potential conflict appropriately.

In the granting of a contract to a party with links to a Committee or staff member, an organisation could insulate itself from facing claims of a conflict of interest by implementing strategies including:

- Ensuring your organisation has a clear set of policies on how to deal with potential conflicts of interest
- Ensuring the selection process for the contract is transparent and accountable
- Having policies and processes to ensure potential conflicts of interest are disclosed (See Appendix for Declaration of Interest form)
- Ensuring that any potentially conflicted Committee member or employee is excluded from all discussion and decision making associated with the contract
- Formally writing down all steps taken to ensure that the potential conflict of interest has been averted
- Providing a written response addressing the concerns of any party about the perceived conflict of interest.

A Comprehensive Approach to Avoiding Conflicts of Interest

Conflicts of interest, real or perceived, will damage the functioning and reputation of your organisation. To avoid this occurring, your organisation needs to be clear and transparent, inviting scrutiny from all parties.

The following strategies are designed to protect your organisation if and when potential conflicts of interest are raised:

- Develop a culture where board members disclose the nature of any potential conflict at the next board meeting after the relevant facts have come to their attention. In some instances disclosure should occur immediately, particularly where discussion concerning the matter is occurring outside the board meeting.
- Once the disclosure has been made the board member must not be present during the discussion to assess if there is an actual conflict.
- If it is agreed there is a conflict interest, the board member cannot be present during any discussion regarding the matter that will lead to a decision being made without the approval of the committee membership.
- The details of the disclosure and any decision regarding the outcome (ie whether it is or is not a conflict of interest) must be recorded.

If your organisation is an incorporated association, under Section 32 of the *Associations Incorporation Act 2009 (NSW)*, the above are actually prescribed and must be enacted in the event of a direct or indirect conflict of interest. In addition the Act requires that:

- the details of the disclosure must be recorded in a book kept for that purpose
- The book can be inspected during reasonable hours by any member of the association on payment of a fee determined by the committee (however the fee cannot exceed the amount prescribed by the *NSW Associations Incorporation Regulation 2010*)
- It must be kept with the register of board members.

Other strategies include:

1. Establish and enforce a Conflicts of Interest policy for the organisation. This policy must apply to all persons in the organisation who can influence decisions. Ensure disciplinary procedures for breaching the policy are included.
2. Build a culture and practice of full disclosure from everyone in the organisation.
3. Create a Disclosure Declaration for the organisation which must be signed by all Committee members annually at the AGM and all employees upon recruitment.
4. At Board meetings, place Conflict of Interest as a standing agenda item to be discussed at the beginning of the meeting to provide board members the opportunity to raise potential conflicts. Both the potential issue and the outcome should be recorded in the minutes.

Where it has been established that there is a conflict, as noted above, the board member can put forward their views regarding the matter however they cannot be present during any discussion leading to a decision nor should they lobby other members in support of their interest.

Appendix: [Declaration of Interest Template](#)

Resources

NCOSS Sector Support

- [Templates and Resources](#)
 - [Ethical frameworks: Codes of ethics and codes of conduct](#)
 - [A Guide to Ethical Decision Making](#)
 - [Good Governance](#)
 - [Board Delegations](#)

NSW Legislation

- [Associations Incorporation Act 2009 \(NSW\)](#)
- [Associations Incorporation Regulation 2010 \(NSW\)](#)

Australian Charities and Not-for-profits Commission

- [Managing conflicts of interest - A guide for charity board members](#)

NSW Family and Community Services (FACS)

- [Corporate Governance Chapter 1 in Good Governance: It's your business](#)

Institute of Community Directors Australia

- [Conflict of Interest Policy Template](#)

Board Connect

- [Sample Conflict of Interest Policy](#)

NB: The above websites were accessible on 15 December 2015. If the links do not work search on the title of the document or go directly to the organisation's website.