



Aboriginal Participation on Boards Register

The Department of Planning and Community Development would like to thank and acknowledge the Wathaurung people for allowing the use of the word Wayaperri (meaning 'to meet') for the name of this initiative.

Help Sheet 8 Handling Conflicts of Interest

The number one duty of any Board member is to act in the interests of the Board and the organisation she is overseeing. So what do you do when your other, non-Board interests call for a different course of action than that which would be in the best interests of your Board?

This situation is called a conflict of interest and it is vitally important that any new or serving Board members learn how to spot one and know how to deal with one.

What is a conflict of interest?

Consult ten different sources and you will probably get ten different explanations of exactly what constitutes a conflict of interest. That's because a conflict of interest is a lot like beauty – it's often in the eye of the beholder. That is why Board members need to avoid even the *perception* of a potential conflict of interest.

Generally, a conflict of interest situation arises when a Board member's duty to her Board clashes with her duties elsewhere – to her business or workplace, or to her family or friends – or even to the business or personal interests of her family or friends.

Many people say that they can't readily define a conflict of interest, but they know one when they see one. One of the best ways, then, to illustrate when this problem might arise is to provide some examples.

- A Board member's daughter is put to the top of a long waiting list for the childcare services provided by the organisation she governs.
- A Board member delivers a speech on behalf of the organisation she is governing and accepts a personal cheque for her services, which she does not declare to the Board.
- A Board member's family business is given a contract without any other quotes being asked for.
- A Board member's family business bids for a Board contract and is successful, even though it's not the most competitive bid.
- A Board member's daughter is given a job with the organisation the member governs, despite the position not being advertised.

Such situations as described above can cause real damage to official and public confidence in the Board and the reputations of individual Board members – even those not directly involved in the conflict. Conflicts of interest may not always be illegal, but they are almost always unethical.

There are other situations that can give rise to *potential* rather than *actual* conflicts of interest. Steps you can take to prevent the potential conflict becoming a real conflict are outlined later in this help sheet.

Examples of potential conflicts of interests include:

- A Board's organisational headquarters need to be moved, and a Board member believes the vacant office buildings she owns would be perfect.
- A Board is planning to enter into a consultancy contract and a Board member wants her company to bid.
- A Board is planning to enter into a consultancy contract and a Board member wants her sister's company to bid.
- A person serving simultaneously on two Boards, and expected to help raise funds for both, finds she is expected to approach the same people or organisations for donations in her two different capacities.

As we mentioned above, scenarios such as these do not necessarily have to mutate into fully blown conflict of interest situations so long as correct procedures are followed and the decision that is made is truly **in the best interests of the Board**.

Strategies for avoiding a conflict of interest

Board have a range of other personal and professional interests and relationships. It is no surprise, then, that almost all Board members will come across a real, potential or perceived conflict of interest at some point.

Prevention is always better than a cure and you should check if the legislation under which your Board was formed has particular stipulations about how these situations should be handled. As a general rule, you should:

- Check if your Board has a conflict of interest policy. Such policies usually stipulate when and how a Board member should disclose their personal and financial interests, how they should deal with gifts made to them in the course of their Board role, under what circumstances relatives or friends of Board members can be hired, penalties for breaching the code, etc. If your Board has such a policy, read it and commit it to memory – then follow it. If your Board does not have such a policy, speak to your colleagues about introducing one.
- Ensure your Board has good policies and procedures in place and that all decisions are made fairly and transparently. This will help remove any perceptions that your Board processes are carried out in undue secrecy and that things are being hidden. It is a good idea if the Board has in place a competitive process to assess contracts and other business deals.
- Some Boards will require that all members make a yearly declaration detailing all the businesses, groups and other Boards they and their family members are affiliated with. If such a document exists in your Board, ensure you fill it in accurately and on time.
- Avoid joining Boards whose interests correspond too closely with those of your business or personal life as clashes will inevitably occur in these cases. Similarly, avoid joining highly homogenous Boards. Diverse Boards are the best at guarding against conflicts of interest as members represent a range of backgrounds, views and interests, usually leading to a more vigorous decision-making process.
- Seek legal advice whenever you think you or a Board colleague may be at risk of encountering a potential, real or perceived conflict of interest.

What to do when you have a conflict of interest

Despite your best intentions, you may one day find yourself exposed to a conflict of interest situation. Again, there are steps you can take to protect yourself and your Board from damage.

- As soon as you encounter a possible conflict of interest, notify the Board immediately. Provide information about the interest and how it may conflict with your Board role.
- Ask not to be posted any Board or internal papers that discuss the matter.
- Avoid any informal discussions that might influence fellow Board members on the matter.
- When the matter is raised formally during a meeting, declare your interest and leave the room. Don't wait to be asked. Ask to be called back when the item has been dealt with. Ensure the minute-taker notes why and when you left and when you rejoined the meeting.
- Seek legal advice if you are in doubt about how to handle a real or potential conflict of interest. If you feel it is impossible to resolve the conflict, consider resigning from the Board.

For more help sheets visit the following website and follow the links to Wayaperri:
<http://www.dpcd.vic.gov.au/indigenous/>

Queries should be directed to wayaperri@dpcd.vic.gov.au