CONFLICT

Of Interest...

...My Gain, Your Ruin?
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The Big Picture Of Community Businesses (Not For Profits)

There are between 700,000 – 835,000 community businesses (Not for Profit) organisations operating in Australia, 12–15% of these remunerate their Boards.

As these organisations can be broadly divided into some thirty-five different industries and sectors, it’s a given that many organisations operate in a variety of service types.

The thirty-five industries or sectors operate on a spectrum that spans corporate/commercial to community/welfare to social/hobby.
The Big Picture Of Community Businesses
The Big Picture Of Community Businesses

Whilst some community businesses were established pre-World War I, significant growth of these organisations occurred post World War II, an era acknowledged as “the welfare paradigm”.

Since the mid-1990s the majority of community businesses, particularly those involved in human services have commercialised and corporatised with the rise of “the market paradigm”.

Today, community businesses rigorously compete against public, private and other community businesses and Local, State and Commonwealth Governments.
The Big Picture Of Community Businesses
Community Businesses: The Difference

Community businesses have an important place in local, regional, state and national communities, society and economies; they have either Not for Profit and/or Deductible Gift Recipient and/or Public Benevolent Institution registrations.

Community businesses primarily deliver a social or community dividend, whilst private businesses and public businesses primarily deliver a financial or economic dividend.
Community Businesses: The Difference

Research does not yet tell us who delivers better services, private, public or community businesses.

However, if you are passionate about community businesses and their roles and responsibilities in developing and delivering human services into the future, then how does a Board ensure their organisation’s future success?
Community Businesses: A World In Transition

Service Mentality

Managers of Service/s

Allocations

Collaboration/Cooperation

Welfare Paradigm

Not for Profits

Service Agreements

Limited Accountability, Transparency & Performance

Are We A Service? Are We A Business?

Management to Leadership

Block Funding

Commercialisation

Market Paradigm

Tendering & Competition

Tenders/Contracts

Contacts, Funding Agreements & Performance Reports

Organisational Mentality

Leaders & Developers of Organisations

Individual Focused Funding

Corporatisation

ESE Paradigm

Private, Public & Community Businesses

Preferred Providers

Significant Accountability, Transparency & Performance
Community Businesses: A Board In Transition

- Management Committee
- Incorporated Associations
- Volunteers
- Limited Accountability
- Limited Transparency
- Large Committees
- I’m Only A Volunteer
- Stakeholder Representative Models
- Nil/Limited Committee Training
- Committee/Board?
- Which Legal Entity?
- Manage or Govern?
- Accountability?
- Transparency?
- Who’s In, Who’s Out?
- What Legal Obligations?
- Why & How?
- Governance Training?
- Board of Directors
- Companies Ltd by Guarantee
- Professional Boards
- Significant Accountability
- Significant Transparency
- Small Boards
- I’m A Director
- Skills/Experience Based Models
- Director’s Training
The Framework Within Which Boards Work

One of the gravest dangers of community businesses is the notion, “this our business, not your or my business”.

In other words, as Board members who are custodians or stewards on behalf of members, we may:

* see each other with rose coloured glasses, not wishing to challenge or offend

* tend to “collaboratively agree”, not wishing to raise awkward issues

* rarely make decisions on a true vote

* develop a culture of mutuality, appeasing the noisiest Board member the “squeakiest wheel”

* easily fall in line with the most dominant or dictatorial Board member/s

* feel pressured to say nothing or yes/no rather than make a decision based on logic, evidence or a sequential and robust process
In essence, each Board develops its own culture, its value set, attitudes and behaviours that set the scene/platform within which it will/will not address conflict of interest.
What A Conflict Of Interest Is

Conflicts: “Financial (Pecuniary) or Personal (Non-pecuniary) relationships, undertakings, arrangements or events that influence decisions, situations and outcomes of other parties, individuals or organisations.”

A potential, perceived or actual conflict of interest can exist whether or not an individual believes or acknowledges that potential or actual conflict of interest.

Conflicts of interest can be anything personal, financial, religious, political, commercial, social etc.

It is not up to individual Board members to determine whether they do/do not have a conflict of interest; it is however, their responsibility to disclose a conflict of interest and/or potential conflict of interest.
What A Conflict Of Interest Is Not

Conflict of interest:
* is not always present
* may be potential rather than actual.

Some dual interests are better termed “competing” rather than “conflicting” interests.

Having a conflict of interest is, in itself, not wrong and may be unavoidable. It is the potential for wrong doing, fraud or corruption that must be avoided.

Disclosing competing interests should not be seen as an admission of wrong doing, but rather as promoting transparency and actioning and/or recording it in the appropriate Board tool, eg: Conflict of Interest Register or Declaration Schedule.
Conflict Of Interest Definitions

“a situation in which a person has a personal or private interest sufficient to appear to influence the exercise of his or her official duties as, say a public official, an employee or a professional”.


“Conflict of interest cannot be “committed”, it is not wrong, it is how you deal with it that is important.”

Narelle George, Acting Senior Misconduct Prevention Officer, Queensland.
Conflict Of Interest Definitions

“Conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of their official duties and responsibilities.”

OECD generic definition.

“It would be helpful if we had Australian standards for recognising and managing conflicts of interest.”

Moira Rayner
Smooth ethical edges give way to corruption
Conflict Of Interest: Three Dimensions

There are three dimensions or types of conflicts of interest:

* potential conflicts of interest, eg: a Board member believes the office they own would be suitable for the organisation’s new office.

* perceived conflicts of interest, eg: a Board member’s son/daughter is appointed to a position with the organisation after a robust recruitment process.

* actual conflicts of interest, eg: a Board member’s business is awarded a contract with/without a tender brief, quote and/or contract.
Conflict Of Interest: Legal, Moral Or Ethical

Generally a conflict of interest arises when a Board member’s duty to his/her organisation clashes with his/her own duties, obligations, arrangements, undertakings or interests elsewhere.

Conflict of interest can cause real damage to the reputation/public confidence of Board members, the organisation or its services.

Failing to deal with a conflict of interest may not be illegal, but it may well raise varying degrees of moral or ethical dilemmas, consequences or reactions.
Conflict Of Interest In Reality

A conflict of interest involves a conflict between the public duties and private interests of a director, in which the director has private capacity interests which could improperly influence the performance of their official duties and responsibilities.

A potential conflict of interest is, and may remain, a potential one if the director is never in a position to make a decision and/or take action that affects himself/herself and the organisation.

A perceived or actual conflict of interest remains even if the director makes a decision that affects the organisation and improperly influences the performance of their public and private duties, but was not actually influenced by personal preferences.
Perception Or Reality?

“It should be noted that the perception, by others, of a potential or perceived conflict of interest can often be of concern equal to or greater than the actual conflict of interest itself. This is usually because those who perceive a conflict of interest are usually led to conclude that some office or duty is unlikely, or less likely, to be discharged either fairly or impartially.

This is a particular concern when one of the parties to a conflict exercises some kind of public office, such as a director.

In such circumstances, the need to maintain public confidence in the probity of decision making processes is seen to be of sufficient importance to make the issue of conflicts of interest one of considerable significance.”

St James Ethics Centre
Examples Of Conflicts Of Interest

Examples of potential conflicts of interest include:

* an organisation needs new headquarters and a Board member believes the vacant office buildings he/she owns would be perfect
* a Board is planning to engage a consultant and a Board member wants his/her company to bid
* a Board is planning to engage a consultant and a Board member wants his/her sister’s company to bid
* a person is serving simultaneously on two Boards, and, expected to help raise funds for both, finds he/she is expected to approach the same people or organisations for donations for the two different groups.
Examples Of Conflicts Of Interest

Examples of perceived or actual conflicts of interest include:

* a Board member’s daughter is put to the top of a long waiting list for the child care services provided by the organisation the Board member governs
* a Board member’s family business is given a contract without any other quotes being asked for
* a Board member’s sister’s business bids for a Board controlled contract and is successful, even though it’s not the most competitive bid
* a Board member’s son or daughter is given a job with the organisation and the position was not advertised.
Conflicts of interest, potential, perceived or actual, can be regarded as:

* pecuniary interests, financial gain
* non-pecuniary interests, no financial gain.

This view of conflict of interest can be used as one criterion of a number of criteria for determining a potential, perceived or actual conflict of interest.
Conflict Of Interest: One Of Many Duties & Responsibilities Of Directors

Incorporated Associations
* State Associations Incorporations Act
* State-based legislation and organisations

Eg: Conflicts of Interest
* Avoid perceived, potential or actual conflicts between your interests and those of the organisation
* You must disclose actual or potential conflicts of interest.

Eg: Honesty & Good Faith
* Act honestly at all times in the exercise of your powers and discharge of duties
* Act in the utmost good faith for the benefit of the organisation, not your personal interests.

Eg: Skill & Care
* You have a duty of skill and care, not just duty of care
* You must exhibit an acceptable level of skill or attain it
* It is important to understand the various duties you have.

Eg: Improper Use of Information or Position
* Not cause detriment to the entity or make improper use of information for yourself or others
* You must ensure personal confidentiality.

Companies Limited By Guarantee
* Commonwealth Corporations Act
* Commonwealth Legislation, National focus

You have a range of legal responsibilities if you take part in, or are concerned with, the governance and/or management of an Incorporated Association, Company Limited by Guarantee or other legal entity.
Potential Consequences Of Not Declaring A Conflict Of Interest

* Individual Board Member Examples*

* Reaction or action from individual or all Board members, members, stakeholders or government
* Removal from the Board
* Loss or damage to personal reputation, community standing etc
* Internal or external investigations, audits or inquiries
* Exclusion from tenders, funding and/or actual or perceived bias from a government department or stakeholder group
* Public exposure, eg: TV, newspapers etc
Potential Consequences Of Not Declaring A Conflict Of Interest

**Whole Board Examples**

* Reaction or action from members and/or other stakeholders, eg: government
* Legal action that may/may not result in prosecution and other consequences
* Damage to the Board and/or organisational reputation
* Investigations, audits or inquiries, eg: government departments, independent consultants, police etc
* Re-enforcement of a contribution towards non disclosure, limiting transparency, honesty and good faith
* Exclusions from tenders, funding
* Government departments take a position and/or actions
# Tool One: Board Conflict Of Interest Self Assessment Tool

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<tr>
<th>Conflict of Interest</th>
<th>Board Member Name</th>
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<tr>
<td>1.</td>
<td>I am a Board member on the Board or a Chief Executive Officer or staff member of a direct competitor to this organisation.</td>
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<td>2.</td>
<td>My husband/wife/partner/family member is also on the Board of this organisation.</td>
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<td>3.</td>
<td>My husband/wife/partner/family member has an undisclosed/disclosed conflict of interest.</td>
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# Tool Two: Conflict Of Interest Checklist

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<tr>
<th>Requirements, Documentation or Tool</th>
<th>Actions and Strategies</th>
<th>Who</th>
<th>Timeframe</th>
<th>Status</th>
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<td>New or existing Board members have signed:</td>
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<td>* A Board Confidentiality Agreement</td>
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<td>* A Board Code of Conduct</td>
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<td>Our governance system contains and we use a Conflict of Interest policy, procedures, indicators and tools</td>
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<td>Our governance system contains and we use:</td>
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<tr>
<td>* Board Conflict of Interest Register</td>
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<td>* Board Conflict of Interest Self Assessment Tool</td>
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## Tool Three: Potential, Perceived & Actual Conflict Of Interest Self Assessment Tool

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<tr>
<th>Board Members</th>
<th>Conflict of Interest Type</th>
<th>Potential Conflict of Interest</th>
<th>Perceived Conflict of Interest</th>
<th>Actual Conflict of Interest</th>
<th>Agreed Actions</th>
<th>Who</th>
<th>Time-frame</th>
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Tool Four: Conflict Of Interest Register

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<tr>
<th>Name</th>
<th>Description of Conflict of Interest</th>
<th>Date Board Notified</th>
<th>Verbal/Written Notification</th>
<th>Agreed Board Actions</th>
<th>Meeting Date/Minutes</th>
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Conflict Of Interest Considerations

1. The likelihood of conflict of interest has never been greater. As previously mentioned the big picture trends, forces and requirements, in particular transparency, accountability and performance collide.

2. Having a conflict of interest is, in itself, not wrong and may be unavoidable. It is the potential for misconduct, fraud or corruption that must be avoided.

3. Disclosing competing conflicts of interest should not be seen as an admission of wrong doing, but as promoting transparency and actioning and/or recording it with the appropriate Board process and tool/s.

4. “It takes distance to recognise conflicts of interest and therein potential risks. Dealing with them demands clarity and transparency”. Moira Rayner, Smooth ethical edges give way to corruption, Eureka Street.com.au, April 2008
5. Did you note the word “could or may” have a conflict of interest, throughout this presentation?

Finding that you have a conflict of interest is not a revelation or wrong doing…

…It’s like playing a game of chess, when you find your king is in check, the situation must be resolved, and if it is not, the consequence will be the end of the game.

6. Remember,
   conflict of interest = risk,
   risk = hazard + outrage.
## Conflict Of Interest Contacts & Resources

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td>Brian Herd</td>
<td>Carne Reidy Herd 07 3236 2900 <a href="mailto:bherd@crhlaw.com.au">bherd@crhlaw.com.au</a></td>
</tr>
<tr>
<td>The Australian Governance System (TAGS™)</td>
<td>Michael Goldsworthy 03 5429 6331 <a href="mailto:asspl@bigpond.com">asspl@bigpond.com</a></td>
</tr>
<tr>
<td>St James Ethics Centre</td>
<td>Refer to web for contacts 02 9299 9566 <a href="mailto:contact@ethics.org.au">contact@ethics.org.au</a></td>
</tr>
<tr>
<td>ourcommunity.com.au</td>
<td>Refer to web for contacts 03 9320 6800 <a href="mailto:service@ourcommunity.com.au">service@ourcommunity.com.au</a></td>
</tr>
<tr>
<td>Australian Institute of Company Directors</td>
<td>Contact your State office 03 9211 9255 <a href="mailto:aicd@companydirectors.com.au">aicd@companydirectors.com.au</a></td>
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# My Next Actions

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<tr>
<th>My Next Actions</th>
<th>Who</th>
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Governing Like Admirals On “SS Community Business”

“Boards Govern, Managers Manage”

For further information, a copy of this presentation, other presentations or to discuss your Board’s requirements contact:

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