MANAGING CONFLICTS OF INTEREST

A guide for charity board members

Australian Government

Australian Charities and Not-for-profits Commission

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Important Notice

This guide is a summary giving you basic information about this topic. It does not cover all of the relevant law regarding this topic, and is not a substitute for professional advice. This guide is not intended to provide an approach to conflicts of interest that is suitable in all circumstances. In most cases, your particular circumstances must be taken into account when determining how the law applies to you and whether you are properly fulfilling your legal obligations.

Because this guide avoids legal language where possible, it might include generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications.

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Introduction from the Commissioner

The people on a charity's board make an enormous contribution to its work and to their community. Board members bring their experience, expertise and commitment to the board table and, across Australia, are doing wonderful things for the community through these roles.

One of the fundamental responsibilities of board members is to always act in the best interests of the charity and in a way that furthers its charitable purpose. There may be times when a personal interest can come into conflict with this responsibility, but through good governance, these conflicts can be identified and resolved, or even prevented.

The charity sector in Australia has built a reputation for integrity, ethical behaviour and trust. Indeed, charities are among the most trusted organisations in our community. This reputation inspires the confidence of donors and volunteers and is essential to the work of the charity sector. Having a robust process in place to respond to conflicts of interest helps to ensure that this good reputation can be sustained.

Good wishes,

Susan Pascoe

Susan Pascoe, AM

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About this guide

This guide has been developed to help explain what conflicts of interest are and how they can be managed. Conflicts of interest often occur and most people will encounter them when working or volunteering with a charity. They do not need to be a serious problem. However, if not managed properly, a conflict of interest can damage a charity's reputation and, in serious cases, lead the charity or its board members to break the law.

What this guide covers

This guide explains conflicts of interests and what needs to be considered when they arise.

Conflicts of interest can be more easily identified and managed by ensuring your organisation is properly informed on how to identify, prevent and manage conflicts of interest.

Who this guide is for

This guide is for people who are, or are considering becoming, board members of a charity registered with the Australian Charities and Not-for-profits Commission (ACNC). It may also be of interest to employees and volunteers of charities.

In using the term 'board members', we refer to members of the governing body of a charity. In your organisation, they may be called the directors, governors, trustees or members of the management committee.

For the ACNC, these people are also known as 'responsible persons'. These are the people with responsibility for governing your charity. Your charity has certain obligations that relate to responsible persons, so it is important that you know who these people are.

Find out more about who your organisation's responsible persons are, and their role, at **acnc.gov.au/responsiblepersons**

IDENTIFY

IDENTIFY **REAL, PERCEIVED** OR **POTENTIAL** CONFLICTS OF INTEREST.

PREVENT

PREVENT CONFLICTS OF INTEREST BY **TAKING STEPS TO REDUCE THE RISKS.**

MANAGE

MANAGE CONFLICTS WHEN THEY ARISE WITH **APPROPRIATE REMEDIAL ACTIONS.**

This guide will cover these three topics.

About conflicts of interest

Why conflicts of interest arise

Board members have an important role in the life of a charity and must always act in the charity's best interest. The governance standards recognise this, and require charities to ensure that board members have a duty to act in the charity's best interest. Board members are people with numerous family, social and business relationships. These relationships are often important factors in the establishment and growth of a charity.

However, these relationships can sometimes cause conflicts of interest.

What is a conflict of interest?

A conflict of interest occurs when your personal interests conflict with your responsibility to act in the best interests of your charity. The term 'personal interests' does not need to be your own interest, but may also arise from the interests of your family friends, or other organisations you are involved with. It also includes a conflict between your duty to the charity and another duty that you have (for example, to another charity).

The problem of conflicts of interest is that your duty to act in the best interest of a charity may be undermined by another interest you have, making it difficult to know if you are meeting your duties.

These conflicts can sometimes cause problems because they present a risk that you will make a decision based on, or affected by, these external influences, rather than in the best interests of the charity.

A good way to think about whether you have a conflict of interest is to ask:

QUESTION —

Would a reasonable person (properly informed about the nature of your personal interests) believe that you might be influenced by your personal interests when making decisions on behalf of the charity?

The three types of conflicts of interest

While you may believe there is no danger of you making a decision based on your own personal interests, instead of the charity's best interests, this does not mean the conflict of interest should be disregarded. It is important to take all conflicts of interest seriously.

While some conflicts may be obvious, there are others that might only have the potential to influence you, or others may perceive to influence you, even if they don't. Perception is just as important as your intention because it affects your reputation and that of the charity.

There are three types of conflicts of interest which you should be aware of. The following table will help you to tell the difference between these three types of conflicts, so you can identify and manage them responsibly.

① ACTUAL YOU ARE BEING INFLUENCED BY A CONFLICTING INTEREST

For example – Your charity is considering whether to give a grant to a kindergarten that your child attends and you cannot make the decision impartially.

② POTENTIAL YOU COULD BE INFLUENCED BY A CONFLICTING INTEREST

For example – You've taken up employment with another charity and you may, at some point, apply for a grant as an employee of one charity and a board member of another.

③ PERCEIVED YOU COULD APPEAR TO BE INFLUENCED BY A CONFLICTING INTEREST

For example – You are reviewing quotes for a service and one of the potential providers is the employer of your sibling. While you believe you can make an impartial decision in the best interests of the charity, it could be perceived as being made in your own interest.

Why it is important to manage conflicts appropriately

Conflicts of interest, if managed appropriately, do not have to be a problem for your organisation. However, it is important to be aware of what can happen if a conflict is not managed appropriately.

Reputational risk

Your charity's reputation is one of its most valuable assets. Many charities rely on their good reputation to attract donations, funding and clients. As a board member, you have a responsibility to ensure that your charity's reputation is not compromised by poorly-managed conflicts of interest.

Failing to manage conflicts of interest can damage the reputation of your charity. They can cause others (such as funders, donors, volunteers, members and beneficiaries) to question whether decisions made by the board have been made in the best interests of your charity or whether the board members have the necessary expertise for their role.

Practically speaking, failing to manage conflicts of interest can have a negative impact on:

- fundraising and donations
- recruitment and retention of staff and volunteers, and
- public trust and confidence in your charity.

Responding to bad publicity can also be expensive. Your charity may need to devote time, energy and resources to defending its reputation, rather than pursuing its charitable purposes. Once lost, reputation can be difficult to restore.

By spending time on effectively managing conflicts of interest, you can be in a good position to protect your charity's reputation and ensure that its precious resources are wisely and productively spent.

Poor governance

Good governance is a central part of ensuring that your charity is effectively working towards achieving its purpose, and meeting its obligations under the law. Failing to manage conflicts of interest affects your charity's governance in a variety of ways.

1. Failing in your duty to act in its best interests

The most important responsibility of any board is to ensure that it always acts in the best interest of the organisation it governs.

It could be suggested that the failure to manage conflicts of interest indicates that the charity's board, or some members of it, are not acting in the charity's best interests. This can seriously impair a board's ability to make decisions that benefit the charity and can ultimately undermine the long-term sustainability of the organisation.

Read more about the duties of board members (directors) and how they relate to conflicts of interest on Page 8.

2. Risking accountability and transparency

When an organisation demonstrates 'transparency', it is open and honest about its work including about its decisions, operations and transactions.Transparency also means communicating the results of these activities in a way that your audience (be it the board, members, or the general public) can easily understand.

You cannot have accountability without transparency. For example, if a board member fails to disclose a conflict of interest, they are not being open, frank and honest about their personal interests in a decision before the board *(no transparency)*. This in turn prevents interested stakeholders, such as members or even other people on the board, from being able to scrutinise the decision, and hold the director accountable for it *(no accountability)*.

'Accountability' in this context relates to board members being held responsible by the people who have an interest in the charity – its staff, members, beneficiaries, funders and the general community. In a practical sense, this means explaining what actions you have taken and accepting responsibility for their results.

Appropriately identifying and managing conflicts of interest is essential in promoting accountability and transparency in your charity. Likewise, accountable and transparent decision-making processes can help you manage conflicts.

3. Negatively affecting board dynamics

A board's ability to function effectively as a group (which is an essential component of high-performing boards) can be undermined if conflicts of interest are not managed.

One hallmark of effective governance is a board's ability to have impartial and open discussions, as part of a thorough examination of a charity's affairs. If a board member has failed to disclose a personal interest or it isn't appropriately managed, this process can be hampered.

Boards make decisions as a collective – if a conflict of interest has not been appropriately managed then the integrity and effectiveness of its decision-making process can be put at risk. Board members should be able to rely on their colleagues always acting in the best interest of the charity and participate in open and honest discussions based on this assumption. Improperly managed conflicts of interest can undermine the confidence of board members to do this and can damage trust between them.

Conflicts of interest and the law

All charities are required to meet a set of ACNC governance standards, which set out core minimum standards of governance for all registered charities. Under governance standard five, a charity must ensure that their board members are aware of and are subject to a set of duties – one of which is to disclose perceived or actual conflicts of interest. Meeting the governance standards is a requirement of registration with the ACNC, and the ACNC may take action if a charity does not meet the standards.

Your charity's governing documents (usually called its constitution or rules) or other legislation that applies to it may also set out requirements about how conflicts of interest must be managed.

Remember: conflicts of interest are often inevitable, but it is how a charity responds to them that defines their effect on the charity. By following the steps in this guide, you can help ensure your charity is protected from the adverse effects of conflicts of interest.

How to identify conflicts of interest

The first step to effectively managing conflicts of interest is to know how to identify them.
You must consider three essential things to decide if you have a conflict of interest:

1. Your organisation's charitable purpose.
2. Your personal interests.
3. Your duties as a board member.

Being aware of these three things, and considering how they relate to each other, is the foundation of identifying a conflict of interest.

1. Know what your **charitable purpose** is

It is important to have a clear understanding of what the charitable purpose of your organisation is. Your purpose is the reason your charity has been set up and what it hopes to achieve. Some people also refer to this as your charity's mission.

While this may seem simple, it can sometimes be difficult to define exactly what a charity's charitable purpose is, particularly if the purpose or activities of the charity have changed over time or if there is more than one purpose.

It is a good idea to look at the purposes set out in your charity's governing documents (often called an objects clause) and the activities through which those purposes are achieved.

This information is a good starting point to working out whether an interest may conflict with the duty to act in the best interests of your charity.

Find out more about charitable purposes at **acnc.gov.au/charitablepurpose**

2. Be aware of your personal **interests**

It is important to know what your personal interests are, and the interests of any other people connected with you, and how these interests could influence you. How your interests may conflict with your charity's interests may not be apparent to you until a particular situation arises. Your interests can also change with time.

As a general rule, you should be aware of:

- current and previous paid or volunteer work
- current and previous trusteeships
- whether you are a board member of any other organisation
- whether you own a business or a share in a business
- membership of other organisations you hold, and
- any similar interests of your family or friends.

This is not an exhaustive list and there may be other interests of which you should be aware.

If you think there is a chance that these interests may conflict with the interests of your charity (even at some point in the future), you should make sure these are recorded in a 'register of interests' as soon as you identify them, as outlined on page 16.

3. Know what your **duties** as a board member are

All charities are required to meet a set of ACNC governance standards which set out core minimum governance standards for all registered charities.

Governance standard five requires a charity to ensure that its board members know and are subject to a set of duties outlined in the standard.

The duties are to:

- act with reasonable care and diligence
- act in good faith in the best interests of the charity and for its purposes
- not misuse their position as a responsible person
- not to misuse information they gain as a responsible person
- disclose any actual or perceived conflict of interest
- ensure that financial affairs are managed responsibly, and
- not allow a charity to operate while insolvent.

It is important to understand that these duties can overlap, and a number of duties may be relevant in a particular circumstance.

Following these duties will help ensure you and your board can respond appropriately to, or even avoid, conflicts of interest.

The following duties are some duties that are most relevant to managing conflicts of interest:

Duty 2: To act honestly and fairly in the best interests of the charity and for its charitable purposes

This duty requires you to always make decisions in the best interests of the charity and to further your charity's charitable purposes.

It can be difficult to make a decision in the best interest of your charity if that decision conflicts with your personal interests or those of your friends, family or other organisations you are involved with. A failure to manage any conflicts of interest can easily result in a breach of this duty.

01 CASE STUDY

Malcolm is a children's doctor. He sits on the board of the Healthy Hospital.

At a board meeting, the board members of Healthy Hospital discuss opening a new children's clinic in a nearby town, serviced by doctors from the Healthy Hospital. The proposed new clinic would be based five minutes away from Malcolm's private paediatric practice. He is concerned that, if the clinic goes ahead, he might lose patients.

In this situation, Malcolm may be at risk of breaching his duty to act in the best interests of the Healthy Hospital, due to his own interest in his paediatric practice.

Duty 3: Not to misuse your position as a responsible person

As a board member, you cannot improperly use your position to gain an advantage for yourself or someone else, or to act in a way that causes harm or detriment to the charity. For example, a board member that was in charge of recruitment would likely be in breach of this duty if they hired a friend in a circumstance where there was a more suitable candidate.

Duty 4: Not to misuse information you gain as a responsible person

As a board member, you have a responsibility to understand and keep yourself informed about the nature of your charity's activities, processes, finances, and the subject matter of all board decisions.

Through your role, you may have access to a range of confidential information or knowledge about your charity such as:

- your charity's financial statements
- your charity's proposed future activities
- personal information regarding members, employees, volunteers, donors or beneficiaries
- details of existing and proposed service agreements
- details of a potential merger with another charity
- your charity's intention to apply for a government grant or request for tender, or
- your charity's intention to donate some of its funds to another charity.

This information is made available to you to assist you in your responsibilities as a board member of your charity. Remember that you have a duty to not misuse your position, or any information obtained through it.

Misuse of information may sometimes be unintentional. Charities often work together, and it is common for board members to sit on a number of boards at the same time. In these situations, there is a risk of information being shared between organisations that should remain confidential.

Consider treating information as confidential

Whilst information sharing is generally good for the health and competitiveness of the charity sector and can encourage innovation, board members must be mindful of their duty not to misuse information. It is important to consider whether information made available to you in your role as a board member should be treated as confidential.

Information is generally considered to be confidential if:

1. it is not in the public domain, including financial or accounting details, unofficial communications, strategic or marketing plans, or the charity has agreed to keep it confidential
2. disclosure of the information could be detrimental to your charity, and/or advantageous to others, or
3. within your charity's industry, the information would usually be considered confidential or worthy of protection.

Whether or not information should be treated as confidential will often depend on the situation or purpose for which that information is being disclosed. It may be that your charity's governing document sets out what information should be treated as confidential. If you are ever in doubt about whether information can be disclosed, you should be open and transparent with the other board members, and consider what is best for your charity.

02 CASE STUDY

Steve is a board member of Helping the Kids, a charity whose purpose is to assist children living in poverty.

Helping the Kids is currently preparing a response to a government tender to provide services to indigenous children in rural South Australia. It has not previously undertaken work in this area.

Indigenous Children in Need (ICIN) is much smaller charity whose purpose is to assist indigenous children with learning difficulties. Steve is also a board member of ICIN. For the last five years, ICIN has been the successful recipient of the government tender that Helping the Kids is applying for.

Steve is concerned that if Helping the Kids wins the tender, ICIN will lose the majority of its funding and may be forced to close. Steve wonders how he could help ICIN to win the tender.

In this situation, Steve's access to the confidential information of both Helping the Kids and ICIN means he has a conflict of interest.

4. Duty 5: Duty to disclose any actual or perceived conflicts of interest

One of the duties of board members is to disclose actual or perceived conflicts of interest. Disclosing conflicts of interest generally means reporting them to the board. There are a number of ways you can do this, but it is a good idea to make sure that any conflicts of interest are recorded in writing, either through setting them out in writing yourself to the members of the board or through having them recorded through a register of interests.

TIP: Use a 'register of interests'

If you aren't sure whether something is worth disclosing, it is a good idea to be cautious and raise it with your fellow board members. This will allow for a more impartial evaluation of whether an interest represents a potential conflict and will help if ever it becomes an issue in the future. You may wish to ask that this discussion is recorded in the minutes.

There may be circumstances when you are required to disclose a conflict to the members of your charity. For example, where you are the sole board member, or where the other directors share the same conflict. There may also be times when you cannot disclose the interest to the board or the members, for example, where there is only one board member who is also the sole member of a charity. If you find yourself in this situation, or you are otherwise unsure of your obligations, please contact the ACNC so we can discuss options with you.

There is more information on this duty throughout this guide.

Find out more about your duties at **acnc.gov.au/governancestandards**

4. Situations where conflicts of interest may arise

It can be helpful to be aware of the different situations in which conflicts of interest may arise so that you can confidently identify them when you need to. There are a number of different situations in which conflicts can arise. There are a number of different situations in which conflicts can arise. It is possible for more than one situation to occur at a time.

Situation 1: Direct financial interest

You may receive a direct financial benefit as a result of a decision or action by the board of your charity. An example may include the payment of fees to you by the charity in exchange for a service you provide to the charity.

03 CASE STUDY

Remember Me is a charity whose purpose is to fund research on Alzheimer's Disease.

Remember Me's accountant has recently retired and the board is looking for a new accounting firm.

Michael is a board member of Remember Me. He is also a partner at accounting firm Accounts-R-Us. Remember Me is considering a number of potential firms, including Accounts-R-Us.

If Accounts-R-Us is appointed, Michael stands to benefit financially from the extra work, which means he has **direct financial interest** in this decision. This is a conflict of interest.

Situation 2: Indirect financial interest

Your family or close friend, or another organisation in which you are involved, may stand to benefit financially as a result of a decision made by your board.

04 CASE STUDY

South School is a small private girls school. Last year the school board decided to open a canteen at the school's campus.

Jenny is a director of South School. She told the board that she had heard of a cheap wholesaler, Food4Less, which could stock the canteen with healthy, low-price food.

Jenny's sister owns a share in the Food4Less business. As a result, Jenny has an **indirect financial interest** in South School's contract with Food 4 Less. This is a conflict of interest.

Situation 3: Non-financial or personal conflicts

Not all conflicts of interest are about money. In some cases, your personal or religious opinions, values or beliefs may be in conflict with a proposed action or decision of your board. In some situations, the conflict may arise simply because you want to do a favour for a friend. Alternately, a proposed decision of your board may result in your family or friends receiving a non-financial benefit they would otherwise not be entitled to receive.

05 CASE STUDY

Lito is a director of Curing Kids, a charity that raises money to assist children living with cancer.

Curing Kids recently undertook a large community fundraising event. The board is now deciding whom the money should be donated to.

The board is deciding between the existing cancer ward of Green Hospital and the children's ward of Blue Hospital (so that they can establish a new dedicated cancer unit).

Lito lives down the road from Blue Hospital. His son, Peter, has leukemia. He currently needs to travel two hours to Green Hospital for treatment. If the board of Curing Kids donates the money to Blue Hospital, Lito will no longer need to take his son to Green Hospital for treatment.

In this situation, Lito has a **personal, non-financial conflict** in this decision. This is a conflict of interest.

Situation 4: Conflict of loyalties

Many people who volunteer on the boards of charities are members of more than one charity's board at a time, often in the same field or industry. If this applies to you, you will need to be able to identify situations where being involved in a decision on one board may impact upon another organisation of which you are a board member.

It is important that, in addition to disclosing the relevant conflict, you are careful to always act in the best interests of the organisation when making a decision for that organisation. When you make any disclosure, be careful that you do not provide any confidential information.

06 CASE STUDY

Mental Health Advocates (MHA) is a charity whose purpose is to improve the quality of mental health services in Western Australia.

MHA is considering funding 10 practitioner positions at hospitals in their mental health wards. One of the candidates for the subsidy is the Central Children's Hospital (CC Hospital). Nelly, a board member of MHA, is also a board member at CC Hospital.

In this scenario, Nelly has a **conflict of loyalties** between her duty to MHA (to award the subsidy to the neediest hospital), and her duty to the CC Hospital (to improve that hospital's services.) While the purposes of the two organisations are similar, it may not necessarily be the case that the CC Hospital is the neediest of all the candidates. This is a conflict of interest.

Quick tip – the impartial observer test

A useful way to identify conflicts of interest is to use the 'impartial observer test'. The test is as follows:

1. You are a member of a charity's board.

2. You have some personal interests.

3. Would an impartial observer think that you are likely to, or may be likely to, be improperly affected by these personal interests?

If you answer yes to the final question, then it is likely that you have a conflict of interest.

How to prevent or minimise the impact of conflicts of interest

Some conflicts of interest are inevitable but they do not have to be a serious problem for your charity. Even though you may not be able to prevent all conflicts of interest, you can still work to make sure that you are prepared to respond to them when they arise.

Once you have learnt to identify **actual**, **potential** or **perceived** conflicts, there are some simple steps you can take to help prevent conflicts of interest from becoming a problem:

1. Adopt a conflicts of interest policy.
2. Maintain a register of interests.
3. Promote a culture of disclosure.
4. Manage any conflict of interest appropriately.

1. Adopt a conflicts of interest policy

Setting out how your charity will manage conflicts of interest in a policy is a great way to set expectations for your board and charity, and to develop an agreed procedure on how to respond to them.

This policy can help directors to fulfil their duties, asset out in governance standard 5.

We have developed a template conflicts of interest policy which is available on page 21. This policy should be used as a guide only and adapted to the needs and circumstances of the particular charity using it.

Find out more about appropriate policies and procedures at **acnc.gov.au** under 'Manage my charity', then 'Meet governance standards'

A good conflict of interest policy should include:

Objective of policy	The objective of this policy should be to prevent and manage conflicts of interest.
Scope of policy	This should outline who the policy applies to. Generally this will be at least your charity's board members, but it is worth considering whether it is necessary for your staff and volunteers to be included in this policy, or to have a different policy that applies to them.
Definition of conflict of interest	Including a definition of conflict of interest will help the people at your charity to understand the policy.
Disclosure policy	This should outline when you are expected to disclose a conflict of interest. You may like to consider whether it is necessary to make a full disclosure at the point of becoming a board member and then keep information up-to-date through a register of interests.
Disclosure procedure	Make sure you have a clear procedure about how conflicts are to be disclosed. It's a good idea to disclose any conflicts in writing, but you will need to decide in what format, to whom they are disclosed and who needs to be notified of the disclosure.
Confidentiality of disclosure	In order to support your board members to disclose their conflicts of interest, it is a good idea to set out what the level of confidentiality associated with any disclosure is.
Identifying failures to disclose	This should outline what the procedure should be if you suspect that one of your fellow board members has failed to disclose a conflict of interest.
Consequences of failure to disclose	If a board member fails to disclose a conflict of interest, it may be appropriate to take action such as issuing a warning or, if the situation is serious or there are repeat instances, asking them to stand down from their position.

2. Maintain a register of interests

A register of interests is a document that records any relevant interests of your charity's board members and the steps taken, if any, to manage them. This document assists the charity to identify any actual, potential or perceived conflicts of interest, and to ensure that these are remembered and dealt with appropriately if they present a conflict.

Completing a register of interests may assist you and your charity to detect conflicts before they arise, giving the board more time to consider how best to manage them. It can also be a useful way to demonstrate to any stakeholders – or to regulators like the ACNC – that you have taken appropriate steps to manage conflicts of interest.

If you have a conflict of interests policy, you should include in it details about how the register of interests should be used.

What to include on the register of interests

A register of interests may include some or all of the following:

- name of the board member
- the date of their appointment
- record of interests, such as:
  - current and previous paid work
  - current and former trusteeships
  - current and former directorships
  - current and former membership of other organisations, or
  - relevant interests of family or friends (including financial, non-financial personal interests)
- relationship of interests (if any) to the organisation's activities or proposed activities
- date of disclosure, and
- steps taken to prevent or manage the conflict, if any.

For assistance in determining if an interest is relevant and should be disclosed on the register, please refer to page 7 of this guide on identifying conflicts of interest. While it can be difficult to determine whether an interest is relevant, it is always best to err on the side of caution and disclose the interest. It may become relevant in the future and it can be a helpful reminder if you forget. It is a good idea to refer to this document regularly.

Administration of the register

The register of interests should be kept by the organisation, and updated whenever a change occurs.

If your organisation has staff, it is a good idea for your chief executive officer or a senior manager in the organisation to have responsibility for updating the register of interests. This will help ensure that there is consistency in how it is maintained and will also place responsibility for maintenance in the hands of an impartial person. Remember, it is your responsibility as a board member to notify the organisation if your interests change, or as soon as you feel a potential conflict may arise.

It is a good idea to create a form for declaring conflicts of interest that should be available to all board members or published online, and to include it in any induction process. This will help everyone involved with your charity understand how conflicts of interest are recorded, to promote transparency and accountability in the process.

We have developed a sample register of interests which is available at Annexure B.

3. Promote a culture of disclosure

Most board members will encounter a conflict of interest (or several) at some point in their duties. Many board members sit on more than one charity's board and may have a vested interest in other organisations due to a personal connection or experience. It is these interests and experiences that make them passionate and good at what they do, but they are also the source of conflicts of interest.

Your organisation's attitude and behaviour towards (conflicts of interest) is a key factor in how successful it is at responding to them when they arise. As a board member, you should never feel apprehensive about disclosing a potential conflict. Rather, you should view disclosing your interests as part of your role as a director and you should encourage your colleagues to do the same. The key to managing these conflicts responsibly is to **encourage**, **facilitate** and **record** all disclosures.

The cornerstone of creating a culture of disclosure at your charity is to have and encourage open discussion on conflicts of interest in a way that is supportive and non-judgmental. Those leading your charity play a key role in creating this culture of disclosure.

Your organisation can promote a culture of disclosure by:

- informing newly appointed board members about your charity's policy on conflicts of interest
- providing newly appointed directors with a copy of your charity's policy on conflicts of interest and refer to it regularly
- providing board members with access to other materials relating to conflicts of interest (such as this guide)
- providing opportunities for board members to undertake training on conflicts of interest if they feel they require it
- clearly stating the expectation that all directors must record any real, potential or perceived conflicts of interest in a register of interests
- providing easy access to the register of interests so board members can:
  - record new or additional interests
  - review interests already listed on the register, and
  - review other board members' interests (this can be useful in identifying potential or perceived conflicts which may not be initially apparent to a conflicted board member)
- reviewing the register of interests before every meeting
- at board meetings:
  - making conflicts of interest a regular agenda item – a conflict may not be apparent until after a motion has been proposed. This also has the benefit of routinely reminding directors of their duties, and
  - recording any conflicts raised during meetings in the register of interests.

ENCOURAGE → **FACILITATE** → **RECORD**

your fellow board members to be open with their conflicts of interest and to actively participate in discussions on how they influence their role as a board member.

the disclosure of any real, potential or perceived conflicts through having processes in place that all board members know and understand.

any conflicts of interest in a formal document (such as a register of interests) and ensure that it is kept up-to-date and made available to all board members.

How to manage conflicts of interest once they are identified

Once a conflict of interest has been identified the next step is to ensure that it is appropriately managed. Having proper processes and taking appropriate remedial action will be an essential part of mitigating any negative impact of those conflicts on your charity.

Processes for managing conflicts of interest

The responsibility for managing a conflict of interest is shared between the board member who has the conflict (the conflicted board member) and all other board members.

The conflicted board member must firstly identify their conflict of interest and notify the other board members as soon as practicable. As discussed above, this may occur prior to or during a board meeting. As a general rule, it is a good idea to make any disclosure as soon as possible to provide yourself with as much time as possible to address the conflict.

It is then the responsibility of the remaining board members to decide what the appropriate next steps are. This is called **remedial action**.

It is important for conflicts to be managed by impartial decision-makers, who are not involved in the conflict. You will need to consider the risks associated with the conflicted board member being involved in a specific decision by the board, so that the board can determine the most appropriate remedial action. Usually, the conflicted individual will not be involved in a discussion regarding remedial action in relation to their particular conflict of interest. By removing the conflicted individual from the management process, your charity will be able to demonstrate it has acted responsibly and with reasonable care to address the issue.

Below is an example of how your charity may choose to manage a conflict of interest. Remember, the processes may vary depending on your charity's conflict of interest policy.

The steps your charity takes may vary depending on its processes and systems, and it is important to remember that sometimes a conflict of interest may be identified by someone other than the person who has the conflict.

STAGE 1

A board member identifies that they have a conflict of interest

STAGE 2

The conflicted board member notifies the board of their conflict

STAGE 3

Remaining board members determine the appropriate remedial action

STAGE 4

Remaining board members inform the conflicted board member of the outcome

Action to remedy the conflict

Some conflicts of interest may require that your board takes action to ensure that the conflict does not undermine the board's ability to do its job. The steps you take to address a conflict of interest are called remedial action.

The remedial action taken by your charity will depend on the nature of the conflict of interest and on your charity's particular circumstances (such as any policies it has in place for managing conflicts of interest).

For each conflict of interest, you should consider whether the board member who has a conflict of interest should, in relation to the matter in which they have a conflict:

1	Participate in any discussion	OR	Refrain from participating in any discussion
2	Be present (in the room) during the time of any discussion	OR	Remove themselves (from the room) during the time of any discussion
3	Vote on the matter	OR	Abstain from voting on the matter

You will need to determine, based on your obligations under the law and your charity's own circumstances and expectation, what form of remedial action is appropriate. It may be a combination of more than one of the above listed actions.

In some situations, conflicts can arise that are serious or which regularly impact on the ability of a board member to make decisions in the best interests of the charity. In these cases, it is sometimes best for the board member to consider whether it is appropriate for them to continue to be a board member, or whether they should resign.

Conflicts of interest commonly arise, but can be managed to help protect your charity. Taking the steps outlined in this guide will help you be proactive about identifying and managing conflicts in your charity.

07 CASE STUDY

Seven Day Smiles is a charity whose purpose is to brighten the lives of older Australians through undertaking home visits, facilitating social outings for disengaged people and facilitating attendance at medical appointments.

Seven Day Smiles wishes to purchase a new mini-van to assist in transportation to medical appointments.

Robert is a board member of Seven Day Smiles. His daughter, Patrice, runs a car dealership and offers to sell Seven Day Smiles a mini-van at a discounted price.

In this situation, the purchase of the mini-van from Patrice would result in an indirect financial benefit to Robert. Therefore, Robert decides to declare his conflict of interest to the rest of the board as soon as possible. Seven Day Smiles have a form on their website which board members can fill in to declare a conflict of interest and submit it to the chief executive officer, in line with their conflicts of interest policy.

The board decides that the offer is genuinely good value and are inclined to accept Patrice's quote. They recognise that Robert could, in this situation, reach an impartial decision, but they are concerned about how it might look to other potential providers if he participated in the decision. The board asks Robert to refrain from participating in the discussion about the purchase or from voting in the matter.

The conflict of interest and the action taken to address it are recorded in Seven Day Smiles' register of interests.

08 CASE STUDY

Monica is a member of the board of Art Plus, an organisation that promotes the arts in the suburbs of Darwin.

The board is meeting to discuss the awarding of three scholarships for talented young artists to attend a prestigious arts school course in Perth. Monica's step-son is one of the candidates for the scholarship.

Monica's position on the board means that she has a non-financial conflict of interest. Accordingly, Monica decides to disclose this conflict of interest to the rest of the board at their next meeting. She explains that although she thinks her step-son is a very good candidate, she loves him and doesn't think she could objectively assess his suitability.

When the board is discussing the candidates for the scholarship, Monica is asked to leave the room as they will be discussing her step-son directly and feel that they can have a more open and honest discussion if she isn't present.

Once the candidates have been selected, Monica is invited to return to the room and she is informed of the outcome of the discussion-making process.

The conflict of interest and the action taken to address it are recorded in Art Plus' register of interests.

Annexure A – Template conflict of interest policy

Important information: how to use this template

This template policy is for general purposes only and is intended to be used as a starting point for charities in developing their own conflict of interest policy. This means that you should use this as a guide only and adopt a policy that is suitable for your charity's own needs and circumstances.

The ACNC's general disclaimer, which is set out on the ACNC's website, applies to this template policy.

Conflict of interest policy

[INSERT NAME OF CHARITY]

1. Purpose

The purpose of this policy is to help board members of **[insert name of charity]** to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of **[insert name of charity]** and manage risk.

2. Objective

The **[insert name of charity's] [insert board, committee of management or other governance structure as relevant (called the 'board' in this policy)]** aims to ensure that board members are aware of their obligations to disclose any conflicts of interest that they may have, and to comply with this policy to ensure they effectively manage those conflicts of interest as representatives of **[insert name of charity]**.

3. Scope

This policy applies to the board members of **[insert name of charity]**.

[It may be appropriate for your policy to apply to other people who work within the charity or for the charity, for example, managers. If you include people other than board members, you will need to change the policy to take this into account.]

4. Definition of conflicts of interests

A conflict of interest occurs when a person's personal interests conflict with their responsibility to act in the best interests of the charity. Personal interests include direct interests as well as those of family, friends, or other organisations a person may be involved with or have an interest in (for example, as a shareholder). It also includes a conflict between a board member's duty to **[insert name of charity]** and another duty that the board member has (for example, to another charity). A conflict of interest may be actual, potential or perceived and may be financial or non-financial.

These situations present the risk that a person will make a decision based on, or affected by, these influences, rather than in the best interests of the charity and must be managed accordingly.

5. Policy

This policy has been developed because conflicts of interest commonly arise, and do not need to present a problem to the charity if they are openly and effectively managed. It is the policy of the **[insert name of charity]** as well as a responsibility of the board, that ethical, legal, financial or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with the obligations to **[insert name of charity]**.

[Insert name of charity] will manage conflicts of interest by requiring board members to:

- avoid conflicts of interest where possible
- identify and disclose any conflicts of interest
- carefully manage any conflicts of interest, and
- follow this policy and respond to any breaches.

5.1 Responsibility of the board

The board is responsible for:

- establishing a system for identifying, disclosing and managing conflicts of interest across the charity
- monitoring compliance with this policy, and
- reviewing this policy on an annual basis, **[following the annual general meeting]**, to ensure that the policy is operating effectively.

The charity must ensure that its board members are aware of the ACNC governance standards, particularly governance standard 5, and that they disclose any actual or perceived material conflicts of interests as required by governance standard 5.

5.2 Identification and disclosure of conflicts of interest

Once an actual, potential or perceived conflict of interest is identified, it must be entered into **[insert name of charity]**'s register of interests, as well as being raised with the board. Where all of the other board members share a conflict, the board should refer to governance standard 5 to ensure that proper disclosure occurs. The register of interests must be maintained by **[insert relevant person/role]**, and record information related to a conflict of interest (including the nature and extent of the conflict of interest and any steps taken to address it).

Confidentiality of disclosures

[Insert details of who will have access to the information disclosed, such as restricting to board members. It may also be necessary to provide for an alternative disclosure mechanism if additional restrictions on disclosure are required.]

6. Action required for management of conflicts of interest

6.1 Conflicts of interest of board members

Once the conflict of interest has been appropriately disclosed, the board (excluding the board member disclosing and any other conflicted board member) must decide whether or not those conflicted board members should:

- vote on the matter (this is a minimum),
- participate in any debate, or
- be present in the room during the debate and the voting.

In exceptional circumstances, such as where a conflict is very significant or likely to prevent a board member from regularly participating in discussions, it may be worth the board considering whether it is appropriate for the person conflicted to resign from the board.

6.2 What should be considered when deciding what action to take

- In deciding what approach to take, the board will consider whether the conflict needs to be avoided or simply documented
- whether the conflict will realistically impair the disclosing person's capacity to impartially participate in decision-making
- alternative options to avoid the conflict
- the charity's objects and resources, and
- the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the charity.

The approval of any action requires the agreement of at least a majority of the board (excluding any conflicted board member/s) who are present and voting at the meeting. The action and result of the voting will be recorded in the minutes of the meeting and in the register of interests.

7. Compliance with this policy

If the board has a reason to believe that a person subject to the policy has failed to comply with it, it will investigate the circumstances.

If it is found that this person has failed to disclose a conflict of interest, the board may take action against them. This may include seeking to terminate their relationship with the charity.

[Insert any other relevant sanctions that are proportionate to the seriousness of a breach]

If a person suspects that a board member has failed to disclose a conflict of interest, they must **[insert relevant action, such as: discuss with the person in question, notify the board, or the person responsible for maintaining the register of interests]**.

Contacts

For questions about this policy, contact the board or **[insert relevant person]** by **[insert contact details]**.

Annexure B – Template register of interests

[INSERT NAME OF CHARITY]

Register of interests

Name of board member	Description of interest	Has the board been notified of the interest?	Date of disclosure	Steps taken by board for dealing with the conflict	Actions taken by the board member to address the conflict

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