

CONFLICT OF INTEREST POLICY



BACKGROUND

A Conflict of Interest occurs when 'a board member or staff person's duty of loyalty to the organization comes into conflict with a competing financial or personal interest that he or she (or a relative) may have in a proposed transaction.' (Panel on the Nonprofit Sector, NCOSS, October 2007)

From the point of view of your organisation's operation, a Conflict of Interest can impair its ability to function efficiently and effectively. An undisclosed and un-addressed Conflict of Interest can also lead to financial consequences and damage an Organisation's reputation in the community.

A Conflict of Interest Policy ensures that all board members and other parties with influence, understand the importance of identifying and avoiding actual and potential conflicts of interest.

Under the CATSI Act 2006, all Directors, as part of their duty of care, must disclose Conflicts of Interest. Other Acts also provide for the disclosure of a Conflict of Interest.

(It is important to note also that breach of the legislative provisions may result in a penalty, as well as a claim for a civil remedy such as compensation for loss)

CONTEXT

Sometimes it may be difficult to identify a conflict and a conflict may not be intentional, but it is still real and must be avoided. Examples of Conflicts of Interest may include:

- The granting of a commercial contract to an organisation or individual who is linked to a Board member or senior staff member.
- Being a Board Member while also working for a government agency that provides funding to the organization;
- 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 and one of the candidates is a personal friend or family member.¹
- Being a Board Member of or having some formal association with a second organization that is in direct competition with this organization.
- Being involved in decisions about employment, discipline, dismissal or service allocation, and the other party is a close personal friend or family member.
- An individual or their close friends or family members may make a financial gain or gain some other form of advantage.²
- When a Board member or his/her immediate family or business interests stands to gain financially from any business dealings, programs or services of the organisation.
- When a Board member him or herself offers a professional service to the organisation.
- When a Board member stands to gain personally or professionally from any insider knowledge if that knowledge is used to personal advantage.
- Where a Board member or the ex/officio member of the Board has a role on the governing body of another organisation, where the activities of that other body may be in direct conflict or competition with the activities of [name of organization].³

¹ Management Support Unit (MSU), NCOSS. Information sheet 14: Managing Conflict of Interest, pages 1 and 2

² Adapted from Draft Conflict of Interest Policy Template, NCOSS 2010

³ Adapted from Policy Bank: Conflict of Interest, ourcommunity.com.au

PURPOSE (*Why do we have a Conflict of Interest Policy?*)

The main purpose of a Conflict of Interest Policy is to ensure that an organization operates with integrity and impartiality with regard to decision-making and consequent actions.

'Actions and decisions taken at all levels in the organization need to be informed, objective and fair. A conflict of interest may affect the way a person acts, decisions they make, or the way they vote in group decisions. Conflicts of interest need to be identified and action taken to ensure that personal or individual interests do not affect the organisation's services, activities or decisions. Declaration and management of conflicts of interest are specifically required for all persons involved in decision making as part of their legal responsibilities as board members and staff.'⁴

SCOPE (*Who the policy affects*)

This policy applies to Board members, staff (including sub-contractors) and volunteers of the Organisation ie anyone associated with the organization who has the capacity to influence a decision.

POLICY OBJECTIVE

To ensure impartiality and accountability in the decision-making processes of the Organisation.

POLICY STATEMENT

The First Nations Media Australia Board is committed to the transparent disclosure, management and monitoring of existing and potential Conflicts of Interest. ⁵All Board members have a duty to avoid actual or perceived conflicts of interest.

PROCEDURES

Members of the Organisation's Board are required to disclose actual or perceived Conflicts of Interest and will sign a statement agreeing to refrain from attempting to influence any decisions in which they may have or be perceived to have a Conflict of Interest in. The Board of Directors will manage conflicts of interest under this Policy by three actions:

1. Disclose conflicts of interest
2. Manage and control the conflict
3. Prohibit any activity where necessary to avoid conflicts of interest

Directors will disclose existing or perceived Conflicts of Interest prior to the commencement of each Board Meeting. The Secretariat will respond to disclosures by:

1. Recording in the minutes of the meeting a member's disclosure of a conflict of interest relating to particular agenda items.
2. Record in the minutes of the next meeting a members Conflict of Interest disclosure made outside of meeting times.
3. Keep copies of declarations and standing declarations of Conflicts of Interest on the Conflicts of Interest Register documenting the names, affiliations, and conflicting agenda items of members.

⁴ Management Support Unit (MSU), NCOSS. Information sheet 14: Managing Conflict of Interest, pages 1 and 2

⁵ Management Support Unit (MSU), NCOSS. Information sheet 14: Managing Conflict of Interest, pages 1 and 2

A Board member who believes another Board member has an undeclared Conflict of Interest is required to specify the basis of the potential conflict in writing prior to the respective Board Meeting through the Chairperson for resolution. Should this issue not be resolved through discussion, final resolution rests with the Chairperson.

Where a Conflict of Interest or potential Conflict of Interest has been disclosed, the Board member concerned shall withdraw from the meeting and leave the room. The member who has disclosed the conflict cannot vote on that item or take part in any Board discussion on that topic. The Chairperson and remaining Board members can, on a case-by-case basis, reach unanimous agreement on an appropriate course of action.

The Conflict of Interest Register will keep records for seven years and record:

- Conflicts identified and actions taken;
- Any reports given provided to the Board of Directors and senior management about Conflict of Interest matters; and
- Copies of written conflict of interest disclosures to the Board of Directors.⁶

Additional Strategies for dealing with Conflicts of Interest

- Build a culture and practice of full disclosure from everyone in the organisation.
- Create a Disclosure Declaration for the organisation which must be signed by all Committee members annually at the AGM, and by all employees upon recruitment.
- Establish a permanent Board sub-committee to deal with conflict of interest issues. The sub-committee should consist of the Chair, an independent member and the Manager of the organization.⁷

RESPONSIBILITIES

It shall be the responsibility of the Chair to ensure that Conflict of Interest strategies and procedures are implemented. The Chair shall request that any Conflicts of Interest are disclosed at the beginning of a meeting. The Secretariat will ensure that the name of Board or staff member, the nature of the Conflict, and the response to the perceived conflict are recorded in the minutes of the meeting. (If necessary a Conflict Checklist can be used. Refer Appendices).

RESOURCES & BACKGROUND DOCUMENTS

Information Sheet 14: Managing Conflict of Interest, Council of Social Service of New South Wales
ourcommunity.com.au: Conflict of Interest Policy
Australian Centre for Philanthropy and NonProfit Studies, Queensland University of Technology
<https://wiki.qut.edu.au/display/CPNS/Conflict+of+interest+policy>

⁶ Peak Indigenous Organisation Company – COI Policy (From QUT)

⁷ Information Sheet 14: Managing Conflict of Interest, Council of Social Service of New South Wales

APPENDICES AND ABBREVIATIONS

CHAIRPERSON'S CONFLICT OF INTEREST DECLARATION PRO FORMA

Date of Meeting:

Name of Member	
Issue of Conflict (Description)	
Notes on the disclosure of the conflict of interest and the decision of the Board on how to deal with this conflict	
Recorded in Minutes	YES NO

Dated the _____ day of _____ 201__

Signed _____ Position _____

INTRODUCTION

This form is to be used by the Chair of the Board at each meeting to record conflicts of interest identified by Board or Staff members. Completed forms should be stored with the minutes of each meeting. (This form replaces a Register of Conflict of Interest, however the information included here is the same information that should be include in the Register.)

This form should be used in conjunction with the Board *Conflict of Interest Policy*.

PURPOSE

This form has been developed to provide consistency in documentation of conflicts of interest relating to Board meetings.

PROCEDURE

Following the opening of the meeting Chairperson asks all members to declare any potential conflict of interest arising out of any of the issues to be put to the meeting, and records the following information.

(This form has been adapted from the 'Conflict of Interest' Checklist, from ourcommunity.com.au)