

Governance Newsletter

Volume 1, Issue 4

June 2008

M. J. SMITH
& PARTNERS

Board of Directors Conflict of Interest

Conflict of interest is a key issue pertaining to the role of the Board of Directors (the Board). Conflict of interest is part of the Board's Fiduciary Duty to act honestly, in good faith and to the best of his or her ability in the interest of the organisation. The role of the Board is to provide leadership within an organisation in an independent and objective manner, in doing so the Board must act in a manner that is just and unbiased in all facets of their functions and duties.

What is a Conflict of Interest?

A 'conflict of interest' is defined as, "a situation where a person has a personal interest in a matter that is subject, of a decision or duty of the person". A conflict of interest may arise in the discharge of a Board Member's official functions or duties, including decision making, applying Policy or Procedures, reporting, etc.

Conflicts of interest can be financial or personal and involve the interests of the Board Member, immediate/extended family or close friends of the individual. A lack of impartiality may arise as a result of a family relationship or close friendship, whether or not financial loss or gain is involved. Individuals should avoid situations in which private interests impact upon

or may impact upon the discharge of duties as a Board Member.

Managing/Mitigating a Conflict of Interest

Members of the Board must avoid conflict of interests at all times and have a duty to:

- Act in good faith in the best interests of the organisation;
- Act with care and diligence; and
- Avoid conflict of interests.

Conflicts of interest are the single most prevalent issue Board Members face. A guideline to managing a conflict of interest include:

- notify the Board of any conflict or potential conflict of interest
- Board keeps a register of members conflicts of interest
- individuals endeavour to remedy the conflict of interest

If the conflict is unavoidable the individual should remove themselves from decision making process.

Conflict of Interest Register

A register is kept of all member interests and potential interest that may arise in relation to the duties and responsibilities of the Board. Once a member has made a formal declaration of interest; in writing, of a conflict of interest the Board

then records these interests. The interests are then evaluated and if considered minor the member may not have to remove themselves from proceedings regarding their interests.

Breach of Conflict of Interest

Failure to avoid conflicts of interest, or failure to adequately disclose and manage unavoidable conflicts of interest, may result in:

- resentment amongst the Board who perceive others to be gaining an unfair advantage;
- the placing of the organisation and any Board Members concerned in a position where they are unable to respond effectively to unfounded accusations of personal benefit; and
- damage to the reputation of the organisation and the Board Member.

Failure to disclose a conflict of interest is considered a breach of policy and may be addressed in accordance with the Board Disciplinary Policy.

For more information, please contact Mark Smith on (07) 3839 1233.

Be sure to look out for Issue 5 of the MJSP Governance Newsletter in July.

About MJ Smith & Partners

MJ Smith & Partners (MJSP) is a specialist management consultancy that provides clients advice and support in establishing Board and Corporate Governance processes including:

- Establishing and maintaining Boards;
- Board Practices and Protocols including Performance Monitoring, Role Clarification and Evaluation and Board Review; and
- Review and Development of Constitution and Rules.

MJ Smith & Partners Services & Products

Board of Directors Governance Procedure Manual

The Board of Directors Governance Procedure Manual provide the Board, its Executive and Chief Executive Officer with a set of agreed policies and procedures to assist in establishing a Governance framework and guidelines for effectively managing the authority, operations and delegations of the Board. The 'manual' provides the Board with operational procedures that bring its Constitution and Rules into practical execution.

Board of Directors Advisory Service

MJ Smith & Partners can also provide an organisation with immediate telephone or e-mail advice relating to general Governance issues or to any of the policies contained in the Board Governance Procedure Manual. This service includes:

- Access by the organisation's Chairperson, CEO and Board Members to a dedicated MJSP Partner with specialist knowledge and experience in the provision of Governance advice;
- Telephone or email advice on all Governance matters, including interpretation or application of your Constitution and Rules as well as policies within the Board Procedure Manual. For example:
 - Performance Management;
 - Delegations of Authority;
 - Conflict of Interest.
- Exceptionally quick turnaround time on any call / email.

Governance Workshops

MJSP have developed a number of half and full day workshops (and related services) on a range of Board Governance issues, including:

- Developing a new Constitution and Rules
- Introduction to Good Governance
- Managing Conflict and Internal Dispute Resolution
- Delegations of Authority
- Strategic Planning
- Roles of Board Members
- Policy Development
- Implementing a Procedure Manual
- Board Performance Appraisal
- Board Member Induction Program
- CEO Performance Management and Evaluation
- Board Meeting Procedure and Management
- Role of CEO & Relationship to the Board