



CROQUET
NEW SOUTH WALES

Board Conflict of Interest Policy

Based Sport AUS Conflict of Interest Guidelines and Policy Template

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1. Purpose

The purpose of this policy is to assist the Croquet NSW (CNSW) Board of Directors to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of CNSW and manage risk.

2. Objective

The CNSW Board of Directors (called the 'board' in this policy) aims to ensure that Directors 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 the CNSW.

3. Scope

This policy applies to the CNSW Board of Directors.

4. Definition of conflicts of interest

A conflict of interest occurs when one's personal interests conflict with their responsibility to act in the best interests of the CNSW. 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 Director's duty to the CNSW and another duty that the Director has (for example, to another board). 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 CNSW 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 CNSW if they are openly and effectively managed. It is the policy of the CNSW 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 CNSW.

CNSW will manage conflicts of interest by requiring Directors 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.

6. Responsibility of the Board

The board is responsible for:

- Establishing a system for identifying, disclosing, and managing conflicts of interest
- Monitoring compliance with this policy; and
- Reviewing this policy regularly to ensure it is operating effectively.

CNSW must ensure that its Directors are aware of this Policy and that they disclose any actual or perceived material conflicts of interests as required by this policy.

7. Identification and disclosure of conflicts of interest

Once an actual, potential or perceived conflict of interest is identified, it must be entered into CNSW Conflict of Interest Register, as well as being raised with the board. The register

must be maintained by the Chief Executive Officer 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).

8. Action required for management of conflicts of interest.

9. Conflicts of interest of Directors

Once a conflict of interest has been appropriately disclosed, the board (excluding the Director disclosing and any other conflicted Director) must decide whether or not the conflicted Director 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 Director 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.

10. 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 CNSW objects and resources; and
- The possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the CNSW.

The approval of any action requires the agreement of at least a majority of the board (excluding any conflicted Director/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.

11. 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 position as a Director.

If a person suspects that a Director has failed to disclose a conflict of interest, they must notify the Chair who will contact the Director to discuss the alleged breach of policy.

Appendix A - Conflict Of Interest Guidelines

1. Introduction

- 1.1. Directors hold an important position of power and trust within a company and are therefore subject to both statutory and common law (case law) directors' duties.
- 1.2. One of the primary duties imposed on directors is to avoid conflicts of interest, which can undermine objective decision-making in relation to the affairs of the company.
- 1.3. Directors are subject to personal legal obligations under the *Corporations Act 2001* (Cth) (**Act**) in relation to the disclosure of, and response to, material personal interests. Failure by directors to comply with their statutory obligations can lead to significant penalties through enforcement action by the Australian Securities & Investments Commission

2. Definition of Conflicts of Interest

- 2.1. A conflict of interest occurs when a director's personal interests' conflict with their responsibility to act in the best interests of the organisation. A conflict of interest may be actual, potential or perceived and may be financial or non-financial.
- 2.2. Personal interests include direct interests (held by a director) and indirect interests (those of family, friends or other organisations a director may be involved with or have an interest in)
- 2.3. "Material personal interest" is not defined in the Act and is given the meaning attributed to it under case law. Such an interest arises where a director holds an interest that has a realistic capacity to influence the director's decisions, while the interest must be of some substance or value, and not merely remote or contingent.

3. Obligations of Disclosure

- 3.1. A director who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest.
- 3.2. The notice must:
 - i. Be given at a directors' meeting at which the director in question attends, as soon as practicable after the director becomes aware of their interest in the matter.
 - ii. Give details of the nature and extent of the interest and the relation of the interest to the affairs of the company
- 3.3. Where a director has a material personal interest in a matter being considered at a directors' meeting, the director must not (except in limited circumstances as set out in the Corporations Act):
 - i. Be present while the matter is being considered at the meeting; or
 - ii. Vote on the matter
- 3.4. A director can give a standing notice of the nature and extent of a particular interest in a matter. Such a notice may be given before the interest becomes a material personal interest.
- 3.5. Such a notice must give details of the nature and extent of the interest and be given at a directors' meeting or to the other directors individually in writing. If the interest increases to become a material personal interest, a new disclosure must be made.

4. Register of Interests

- 4.1. A company should maintain a register of interests, outlining the disclosures made by directors of discrete interests, standing interests, discrete material personal interests and standing material personal interests.
- 4.2. Not all interests disclosed and recorded on the register of interests will constitute a conflict (either initially or at all). Similarly, interests may only result in a conflict for certain, defined matters and not more broadly. For instance:
 - a) Certain interests may be so minor or immaterial that they do not constitute a "material" personal interest.
 - b) Interests that do not initially result in a conflict may subsequently result in a conflict where the board is dealing with subject matter that relates to that interest.
 - c) A recorded interest may not result in a conflict for the entirety of the director's term in office where the board does not deal with a matter that does or could relate to the particular interest.
- 4.3. The register should incorporate all disclosures made by directors either at board meetings, or in between board meetings. Common headings for a register include the director's name, description of the interest, date of notification, date of disclosure, steps taken by the board to deal with the arising conflict (if any) and steps taken by the director with the interest.
- 4.4. A standing agenda item at all board meetings should deal with the register of interests and any updates, new disclosures or removal of previous disclosures. This item should also prompt directors to consider whether any of their existing interests recorded on the register, which may not have previously constituted a material personal interest or conflict, become a conflict with respect to any new matters to be dealt with by the board.

5. Managing Conflicts

5.1. Avoidance

- i. The simplest means of managing conflicts of interest is identifying and avoiding conflicts wherever possible.
- ii. This may entail, to the extent possible, incoming directors divesting existing interests that constitute a material personal interest from their commencement as a director or will likely constitute such an interest in future.
- iii. Where avoidance of a conflict or holding a particular interest (whether material or not) is not possible, the following management techniques should be adopted.

5.2. Disclosure And Register Of Interests.

- i. The board must ensure that material personal interests are disclosed by individual directors in accordance with the Act. The board should also encourage the disclosure of relevant interests (which do not reach the threshold to become material personal interests) by directors as they arise.
- ii. The appointment documents for each incoming director should refer to applicable conflict policies/guidelines and prompt the director to disclose all existing interests prior to their appointment or commencement.
- iii. All disclosures made at board meetings must be recorded in the minutes of the meeting and transferred to the register of interests.

- iv. A register of interests should be maintained, with an individual officer (usually the company secretary or CEO) delegated responsibility for storing and maintaining the register.
- v. Maintenance of the register of interests should comply with applicable provisions of the Constitution (if any).

5.3. Standing Agenda Item

- i. The board should incorporate a standing item into the board agenda to deal with conflicts, interests and the register.
- ii. Directors should be encouraged to disclose relevant interests, which may not be (or may not yet constitute) material personal interests, to minimise the likelihood of conflicts arising in future, or the possibility of conflicts failing to be dealt with as required by law.

5.4. Board Papers

- i. The chair, company secretary and/or CEO should carefully review board agendas and minutes to ensure that conflicted directors are not sent those sections of either document relating to the matter(s) for which they are conflicted.
- ii. Necessary systems should be adopted by those responsible for board papers to ensure that, if one or more directors are conflicted in relation to a particular matter, that the conflict is highlighted.
- iii. Where a conflict is highlighted, the sections of the agenda/paper relating to that matter should not be sent to any conflicted directors, with a consequence that multiple versions of the papers are prepared.

5.5. Ongoing Material Personal Interests

- i. Where a director is subject to a material personal interest that inherently relates to their directorship, the board should collectively consider whether it is appropriate for the director in question to remain on the board.
- ii. If the ability of the director in question to participate in a wide range of ongoing board matters is fundamentally negatively impacted, their reduced effectiveness may result in resignation being the most appropriate course of action for the organisation.

5.6. Failure To Comply

- i. If the board has reason to believe that a director has failed to comply with their legal obligations in relation to a conflict of interest, it should investigate the circumstances. This can involve engaging an independent party to investigate and provide advice.
- ii. If the board determines that a director has failed to disclose a material personal interest, or comply with an applicable conflicts policy, the board should seek advice on appropriate next steps.