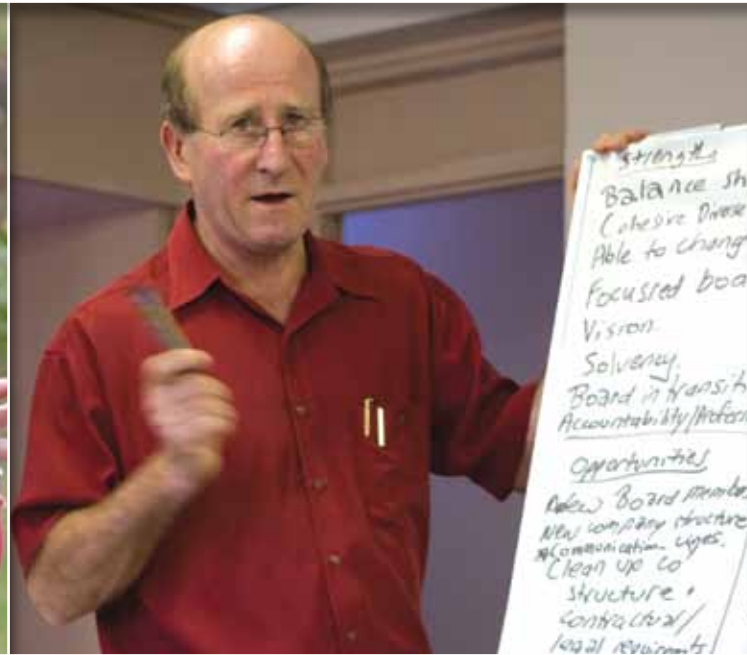


# CONFLICT *Of Interest...*



## ...My Gain, Your Ruin?

# Contents

The Big Picture Of Community Businesses (Not For Profits).....	3
The Big Picture Of Community Businesses .....	4-6
Community Businesses: The Difference .....	7-8
Community Businesses: A World In Transition .....	9-10
The Framework Within Which Boards Work.....	11-12
What A Conflict Of Interest Is .....	13
What A Conflict Of Interest Is Not.....	14
Conflict Of Interest Definitions .....	15-16
Conflict Of Interest: Three Dimensions .....	17
Conflict Of Interest: Legal, Moral Or Ethical .....	18
Conflict Of Interest In Reality.....	19
Perception Or Reality?.....	20
Examples Of Conflicts Of Interest .....	21-22
Examples Of Interest, Pecuniary & Non-pecuniary .....	23
Conflict Of Interest: One Of Many Duties & Responsibilities Of Directors.....	24
Potential Consequences Of Not Declaring A Conflict Of Interest.....	25-26
Tool One: Board Conflict Of Interest Self Assessment Tool .....	27
Tool Two: Conflict Of Interest Checklist .....	28
Tool Three: Potential, Perceived & Actual Conflict Of Interest Self Assessment Tool.....	29
Tool Four: Conflict Of Interest Register .....	30
Conflict Of Interest Considerations .....	31-32
Conflict Of Interest Contacts & Resources.....	33
My Next Actions.....	34
Governing Like Admirals On "SS Community Business" .....	35

# The Big Picture Of Community Businesses (Not For Profits)

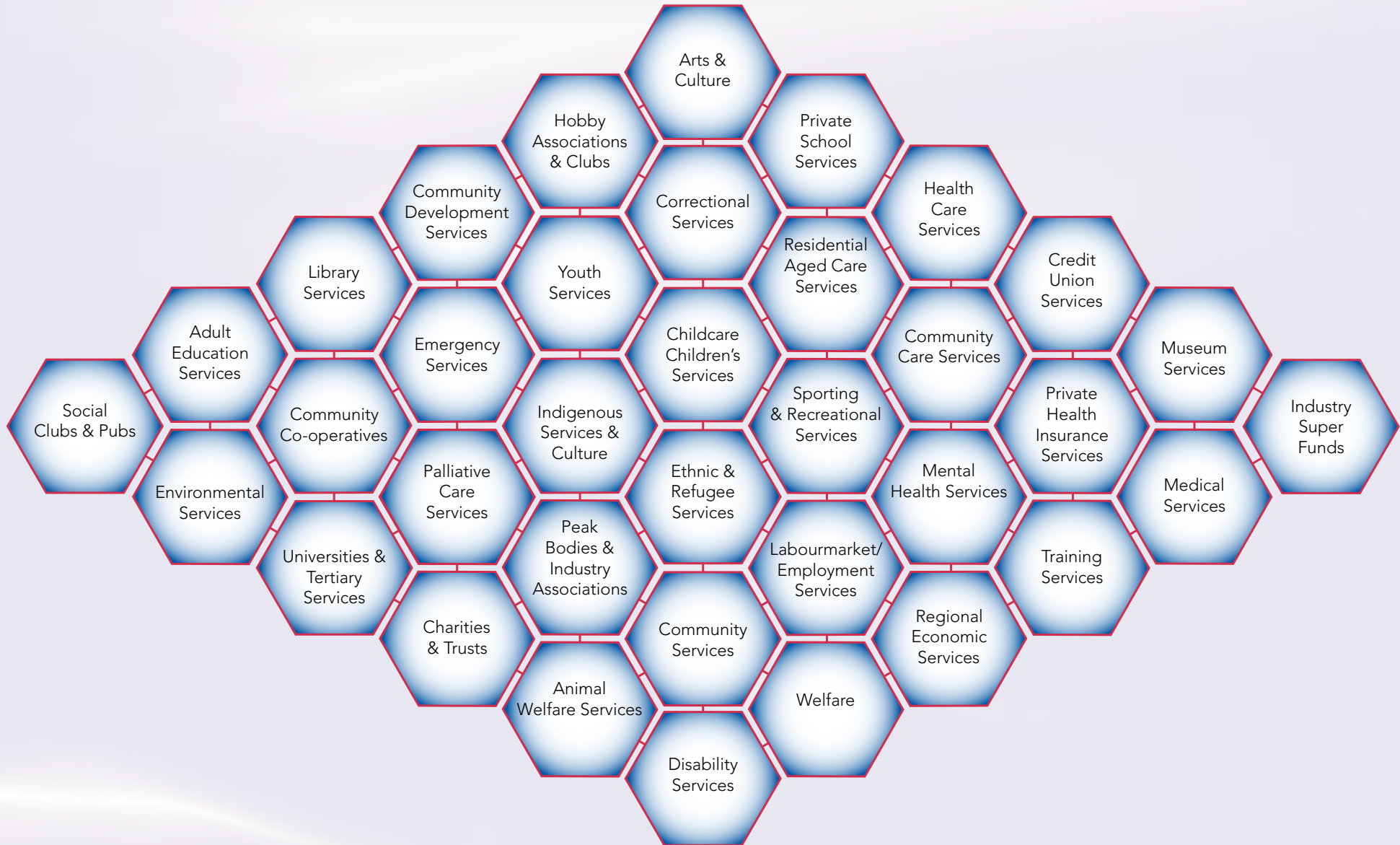
There are between 700,000 – 835,000 community businesses (Not for Profit) organisations operating in Australia, 12–15% of these remunerate their Boards.

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

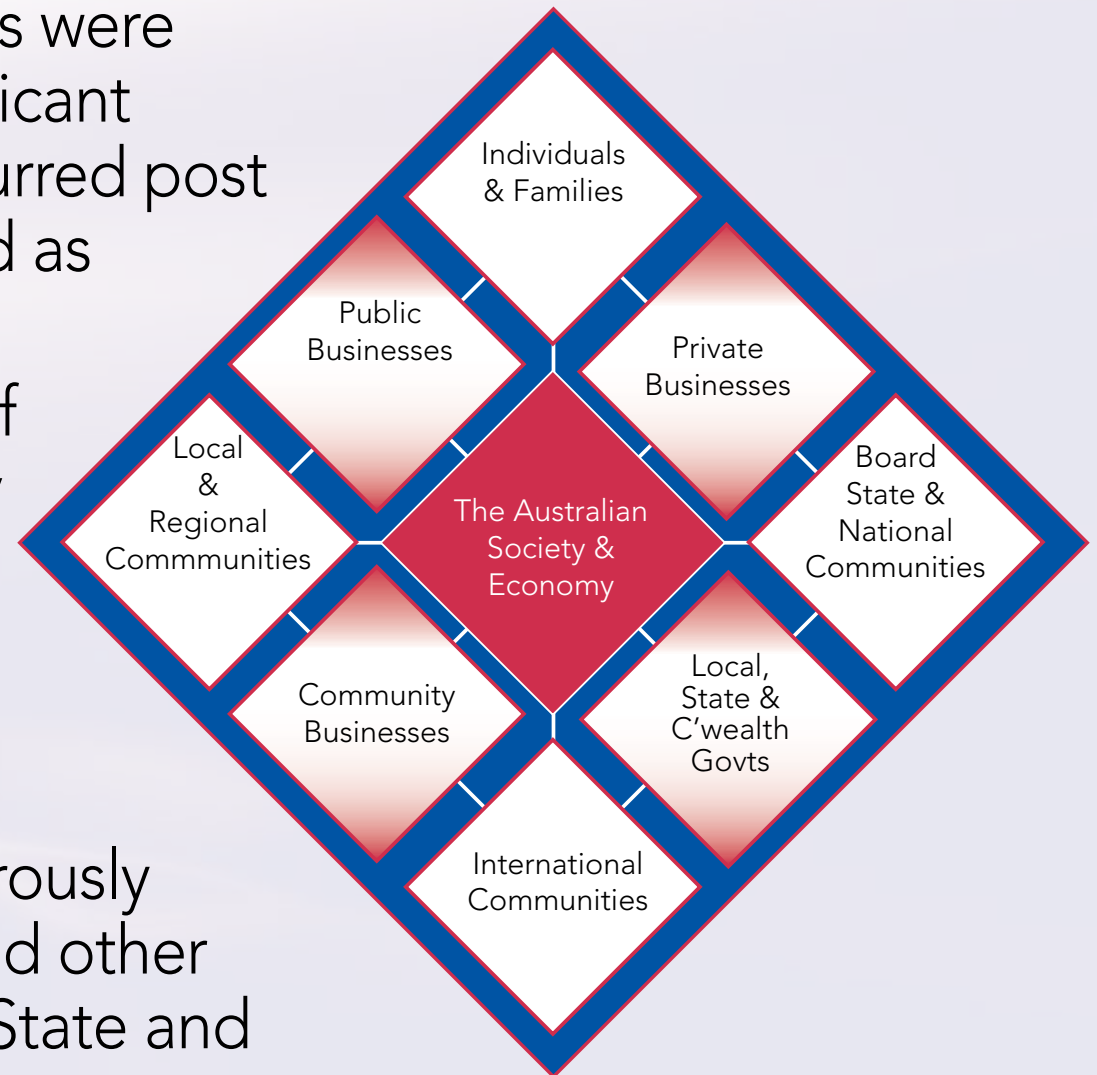


# The Big Picture Of Community Businesses

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.



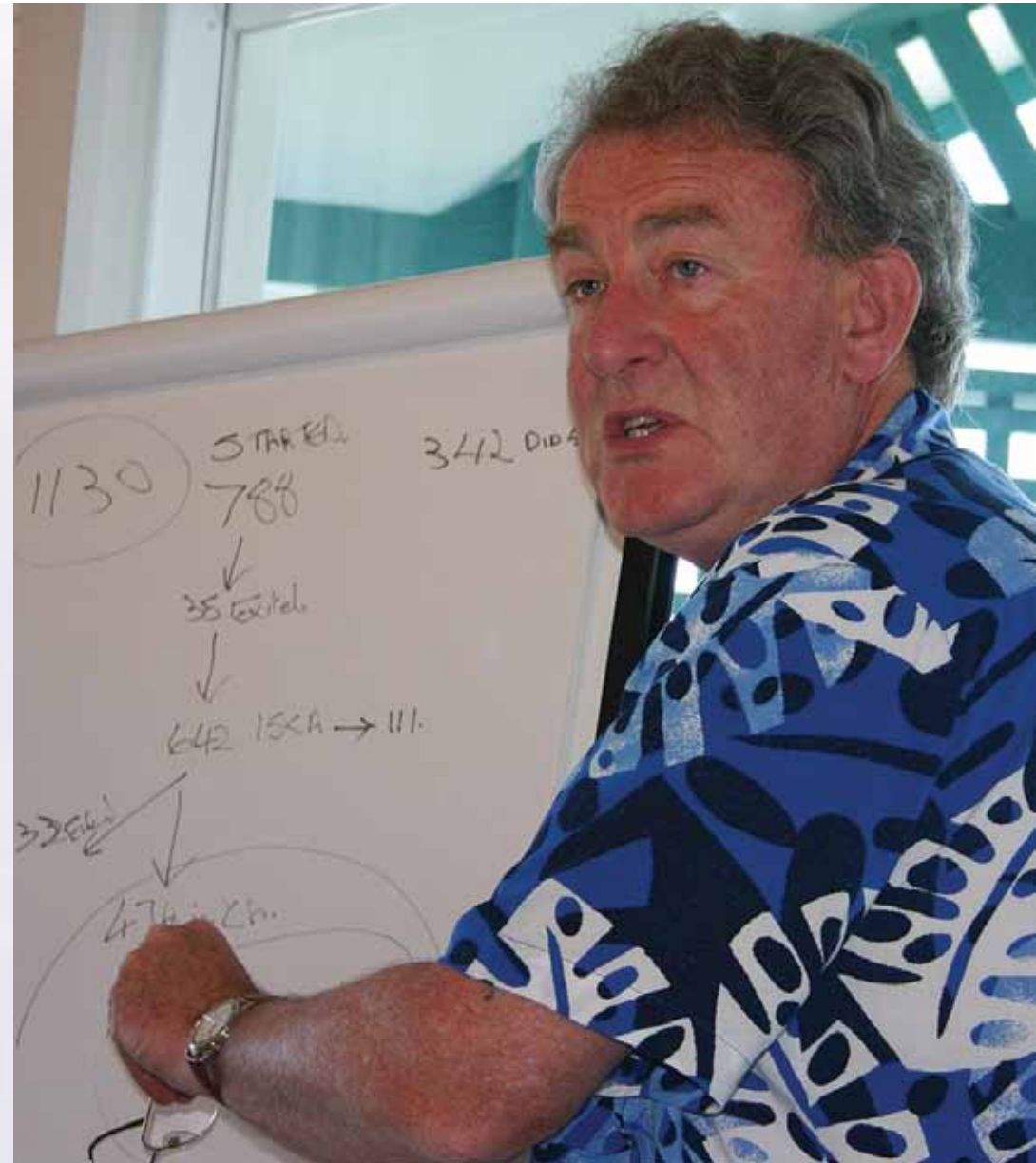
# The Big Picture Of Community Businesses



# 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.



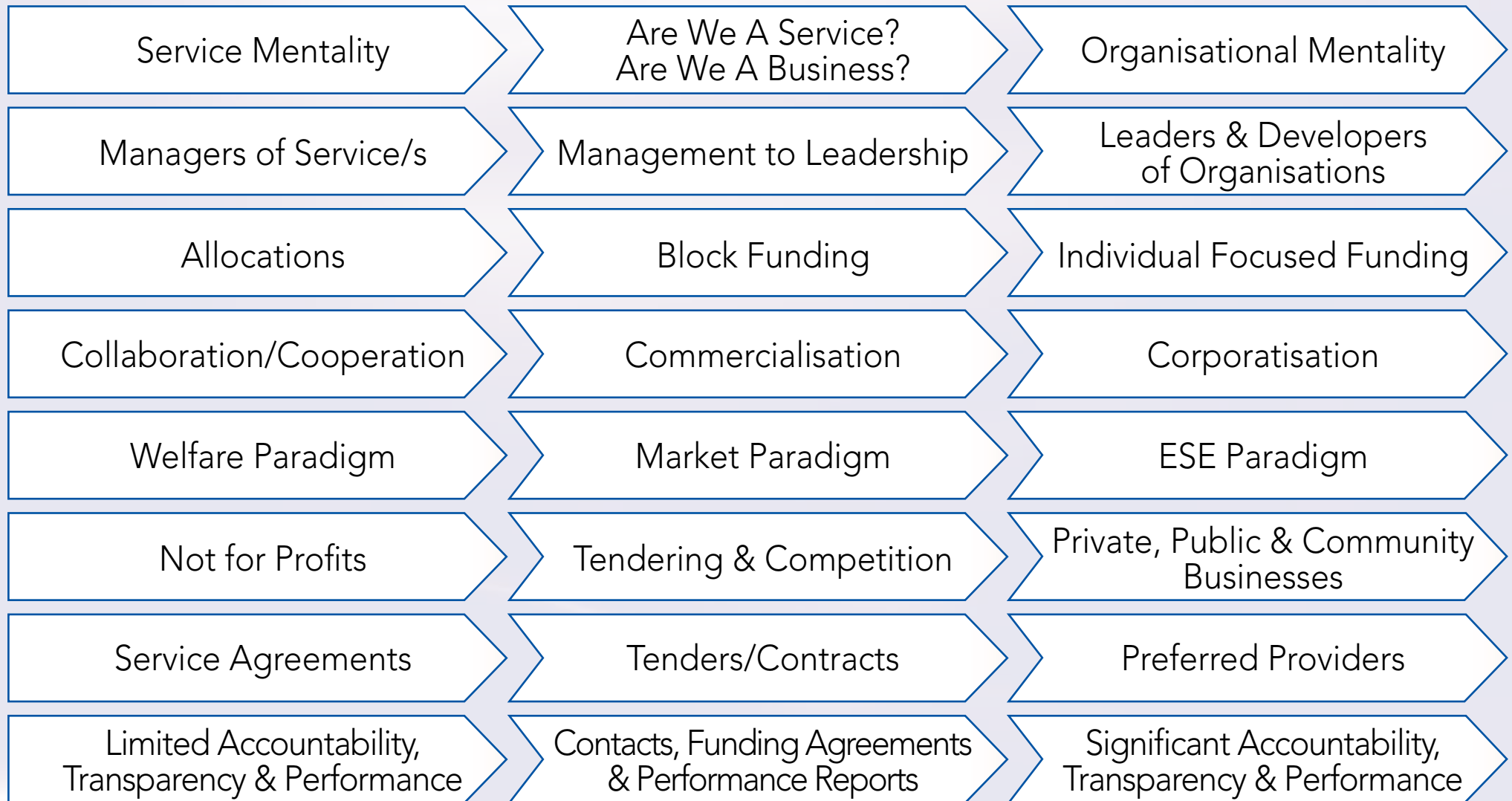
# Community Businesses: The Difference

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



# Community Businesses: A Board In Transition



# The Framework Within Which Boards Work

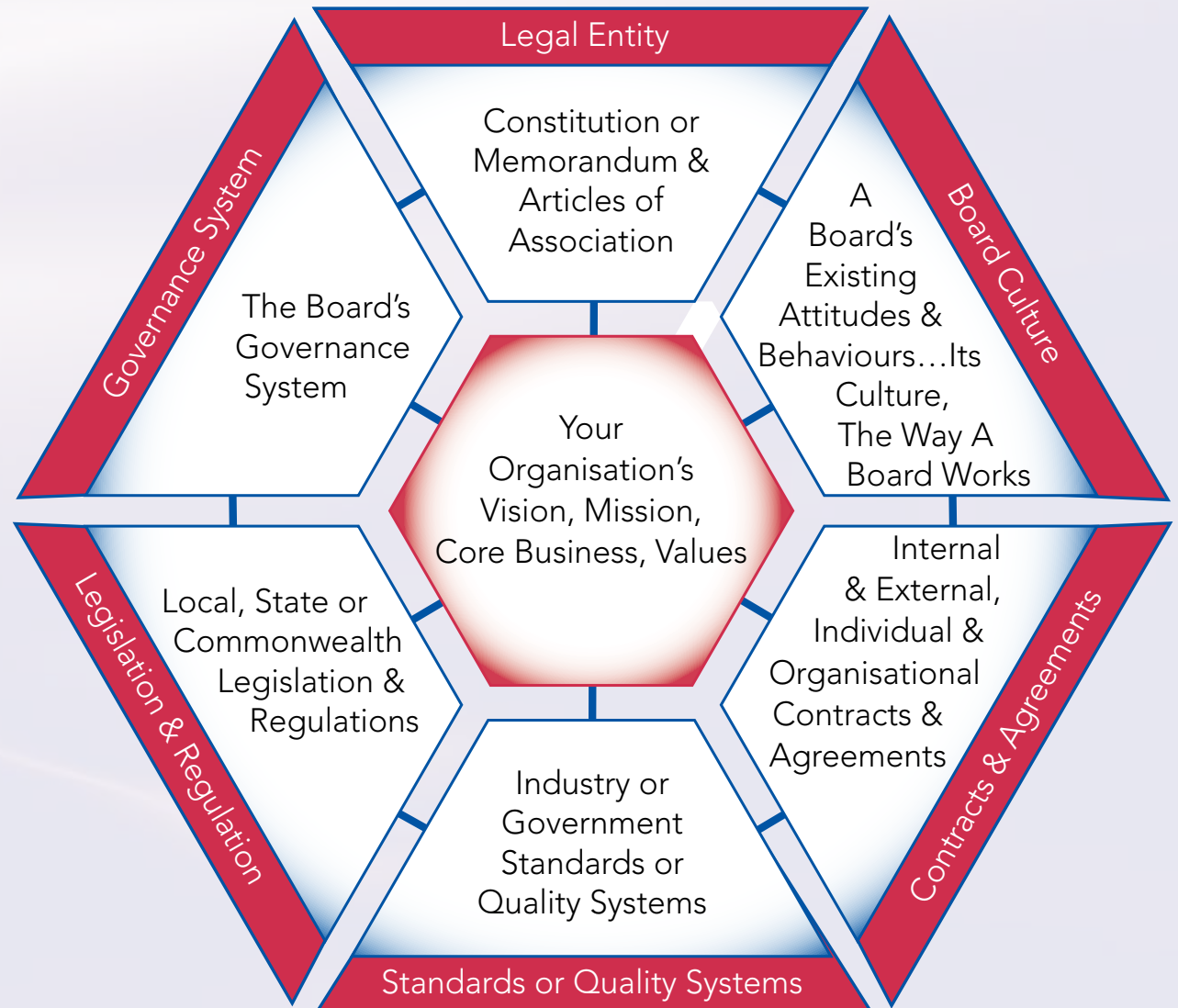
One of the gravest dangers of community businesses is the notion, “this our business, not your or my business”.

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

# The Framework Within Which Boards Work

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”.*

Chris MacDonald, Michael McDonald & Wayne Norman, Charitable Conflicts of Interest, Journal of Business Ethics, August 2002.

*“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

*“A 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

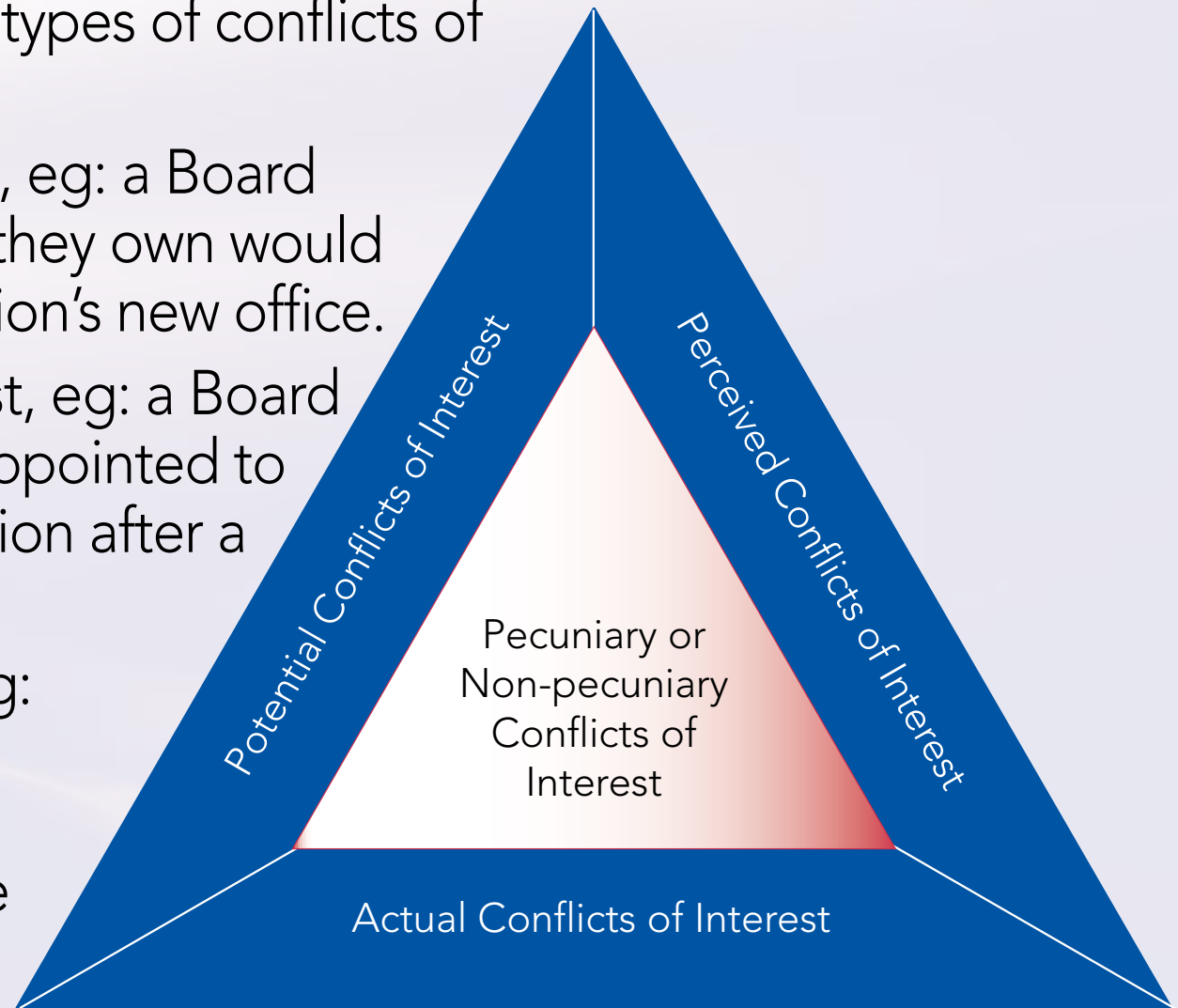
Smooth ethical edges give way to corruption

Eureka Street.com.au, April 2008.

# 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.

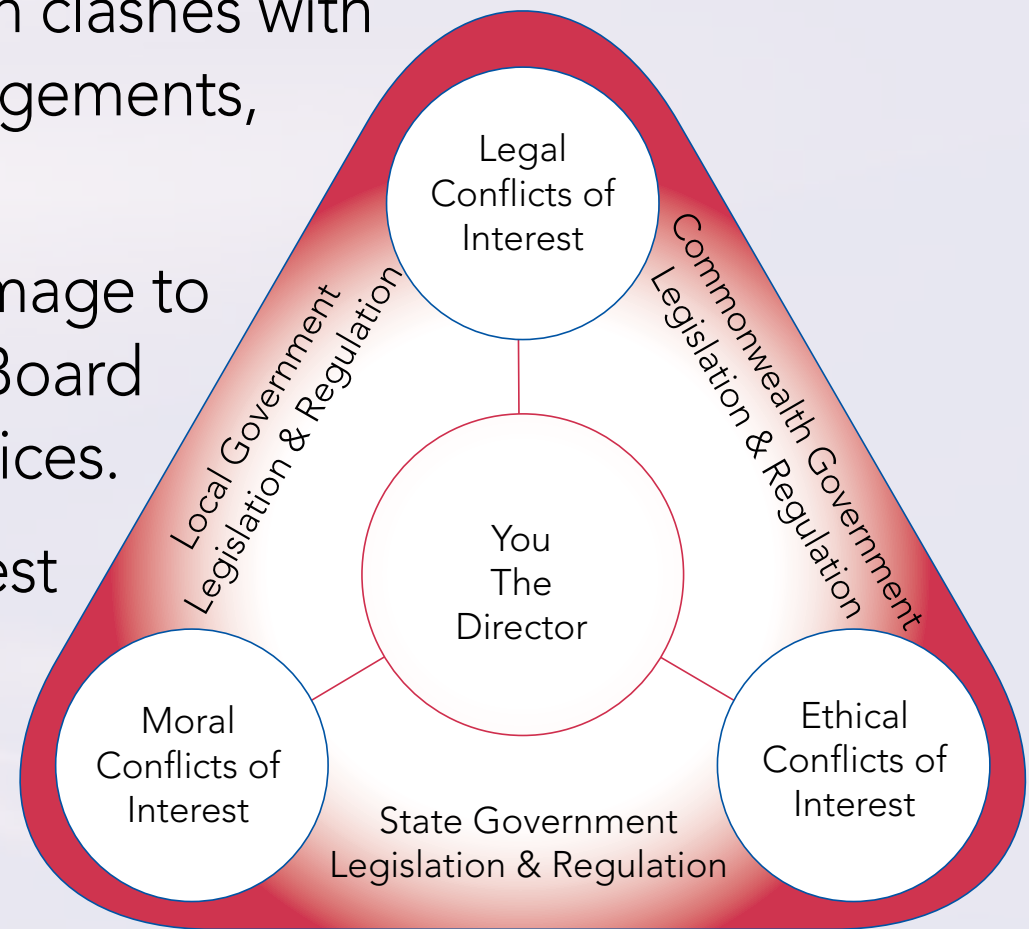


# Conflict Of Interest: Legal, Moral Or Ethical

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.

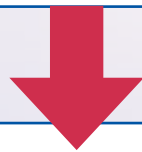
Conflict of interest can cause real damage to the reputation/public confidence of Board members, the organisation or its services.

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.

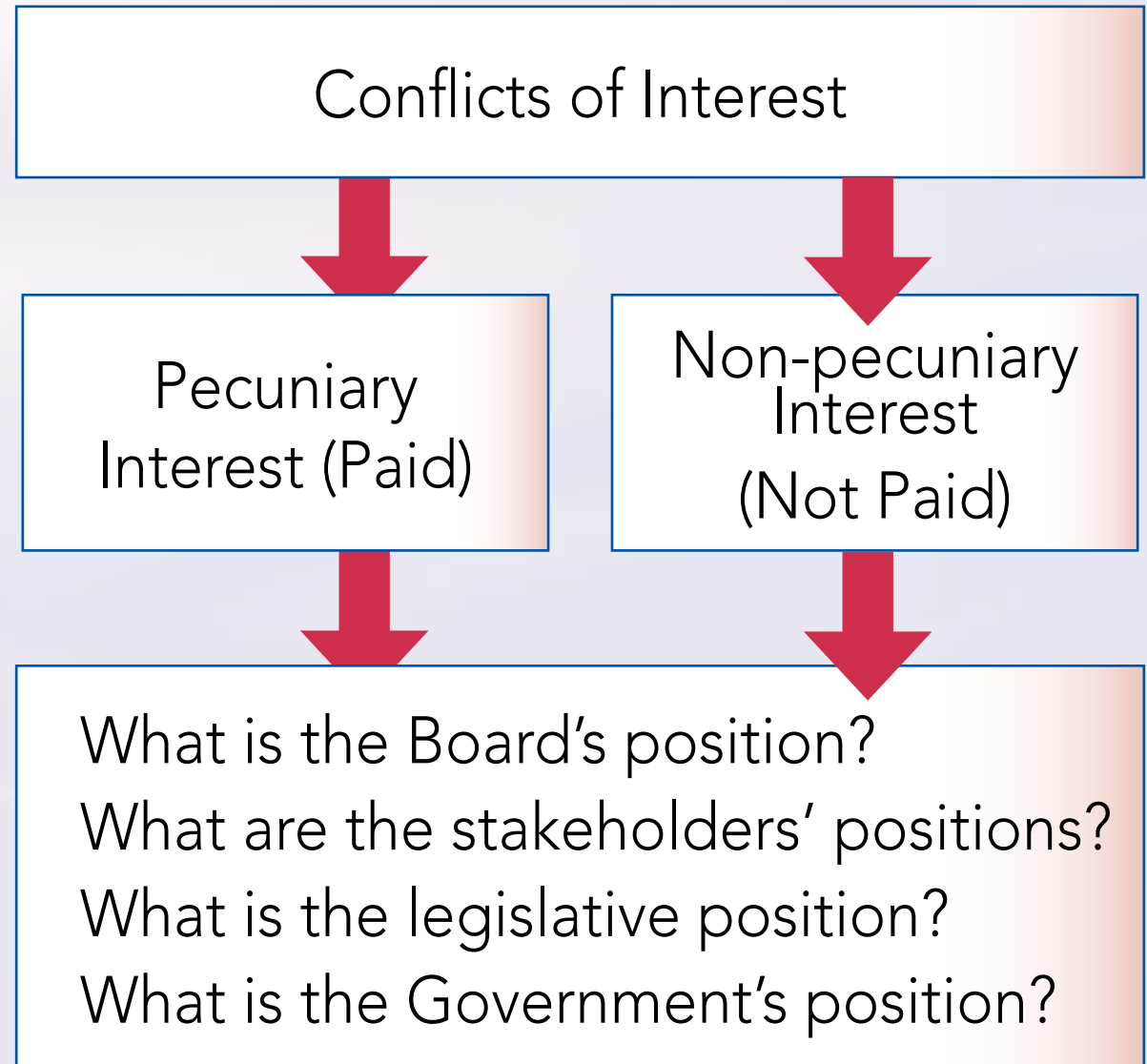


# Examples Of Interest, Pecuniary & Non-pecuniary

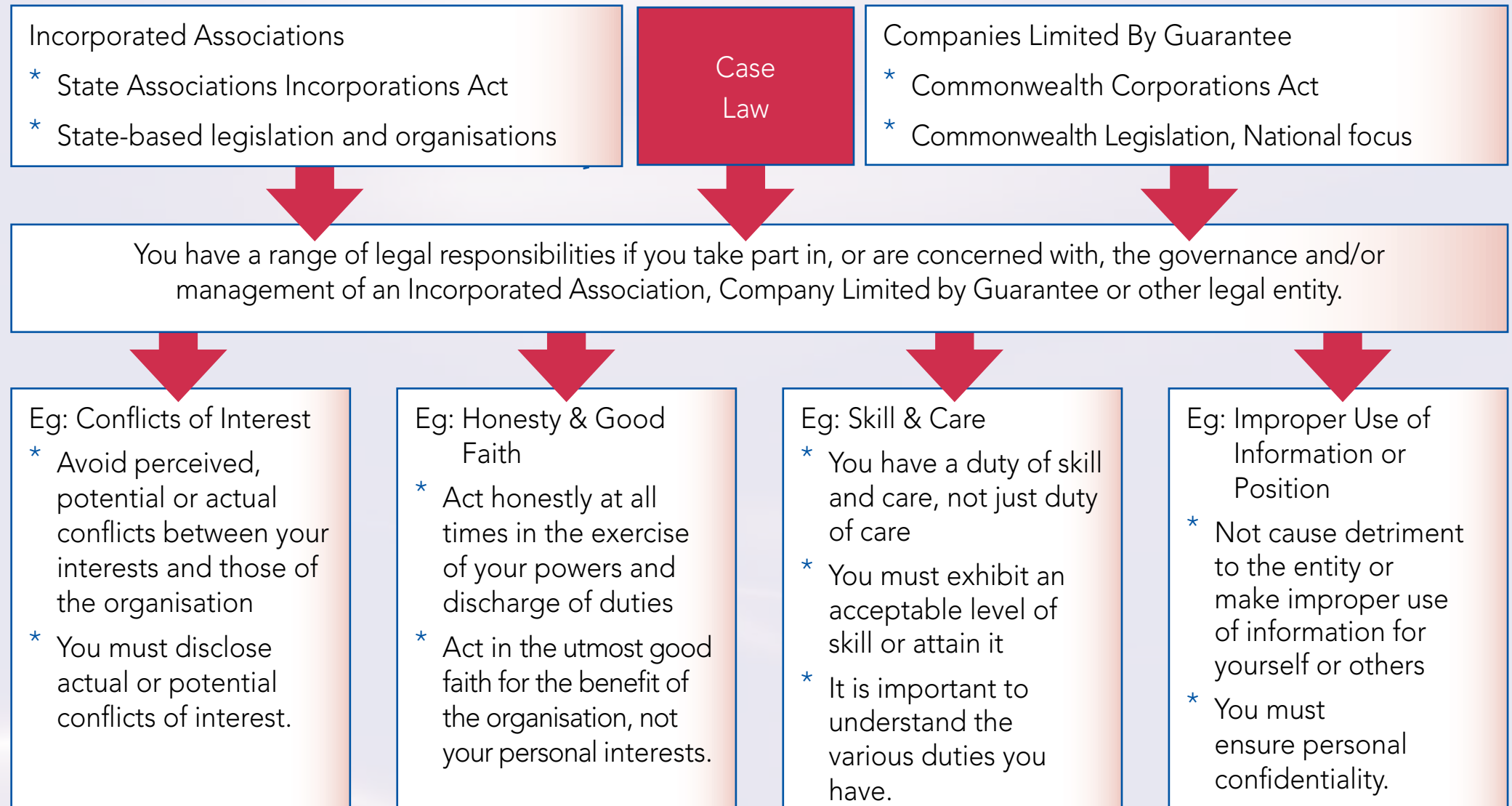
Conflicts of interest, potential, perceived or actual, can be regarded as:

- \* 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



# 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

Conflict of Interest	Board Member Name	(Name)	(Name)	(Name)	(Name)	(Name)	(Name)	(Name)	(Name)	(Name)	(Name)
1. I am a Board member on the Board or a Chief Executive Officer or staff member of a direct competitor to this organisation.											
2. My husband/wife/partner/ family member is also on the Board of this organisation.											
3. My husband/wife/partner/ family member has an undisclosed/ disclosed conflict of interest.											

# Tool Two: Conflict Of Interest Checklist

Requirements, Documentation or Tool	Actions and Strategies	Who	Timeframe	Status
<p>New or existing Board members have signed:</p> <ul style="list-style-type: none"> <li>* A Board Confidentiality Agreement</li> <li>* A Board Code of Conduct</li> </ul>				
<p>Our governance system contains and we use a Conflict of Interest policy, procedures, indicators and tools</p>				
<p>Our governance system contains and we use:</p> <ul style="list-style-type: none"> <li>* Board Conflict of Interest Register</li> <li>* Board Conflict of Interest Self Assessment Tool</li> </ul>				

# Tool Three: Potential, Perceived & Actual Conflict Of Interest Self Assessment Tool

Board Members \ Conflict of Interest Type	Potential Conflict of Interest	Perceived Conflict of Interest	Actual Conflict of Interest	Agreed Actions	Who	Time-frame	Status
(Name)							
(Name)							
(Name)							
(Name)							

# Tool Four: Conflict Of Interest Register

Name	Description of Conflict of Interest	Date Board Notified	Verbal/Written Notification	Agreed Board Actions	Meeting Date/ Minutes

# 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

# Conflict Of Interest Considerations

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

Brian Herd	Carne Reidy Herd	07 3236 2900	bherd@crhlaw.com.au
The Australian Governance System (TAGS™)	Michael Goldsworthy	03 5429 6331	asspl@bigpond.com
St James Ethics Centre	Refer to web for contacts	02 9299 9566	contact@ethics.org.au
ourcommunity.com.au	Refer to web for contacts	03 9320 6800	service@ourcommunity.com.au
Australian Institute of Company Directors	Contact your State office	03 9211 9255	aicd@companydirectors.com.au

# My Next Actions

<i>My Next Actions</i>	<i>Who</i>	<i>Time</i>	<i>Status (To Do, Underway, Done)</i>

