Ballarat Symphony Orchestra Conflict of Interest policy

1. Purpose

The purpose of this policy is to help board members of Ballarat Symphony Orchestra (BSO) to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest to protect the integrity of BSO and manage risk.

2. Objective

The BSO Committee of Management (called the 'board' in this policy) aims to ensure that board members are aware of their obligation 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 BSO.

3. Scope

This policy applies to all board members and subcommittee members of BSO.

It also applies to any independent contractors, consultants, and artistic personnel (including guest conductors, soloists, and tutors) engaged by BSO from time to time to perform work, lead ensembles, or make operational or artistic decisions on behalf of the organisation.

4. Definition of conflicts of interests for the BSO

A conflict of interest occurs when a board member, subcommittee member, or engaged contractor has a personal, professional, or financial interest that could compromise—or reasonably appear to compromise—their objectivity, professional judgment, and loyalty to BSO.

Conflicts of interest within BSO may be actual, potential, or perceived, and generally fall into the following categories:

1. **Financial Conflicts:** Direct or indirect financial gain. Examples include a conductor recommending sheet music or arrangements where they receive royalties, a contractor hiring their own private company for sound engineering or venue hire, or a board member purchasing equipment from a business they own.

2. **Personal or Familial Conflicts:** Using an official position to give unfair advantage which 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).

3. **External Commitments:** Holding roles in competing musical ensembles or organisations that conflict with the time, resources, or artistic priorities of BSO.

4. **Use of Assets:** Utilising BSO's library, instruments, venues, or membership database to promote private teaching studios, commercial concerts, or personal business ventures without explicit board approval.

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 BSO.

Therefore, these situations must be managed accordingly.

5. Policy

This policy has been developed to address conflicts of interest affecting BSO.

Conflicts of interest are common, and they do not need to present a problem to the BSO as long as they are openly and effectively managed.

It is the policy of BSO, 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 BSO.

BSO 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 BSO
- monitoring compliance with this policy, and
- reviewing this policy on an annual basis to ensure that the policy is operating effectively.

The BSO 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. The standards are available to view here: https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards

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 BSO's register of interests, as well as being raised with the board.

If all board members have the same conflict of interest, BSO must consider whether it is still able to comply with the ACNC Governance Standards, especially Governance Standard 5, while taking reasonable steps to ensure that its board members are subject to, and comply with, the relevant duties.

BSO may:

- obtain professional advice,
- consider whether there are any relevant exceptions in its governing document or legislation,
- consider whether it is appropriate for members to pass a resolution in a general meeting,
- consider appointing new board members; and
- note that its board members may consider whether they can continue in the role.

Where every other board member shares a conflict, the board should refer to ACNC Governance Standard 5 to ensure that proper disclosure occurs.

The register of interests must be maintained by our appointed committee member. The register must 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).

5.3 Confidentiality of disclosures

Restricted Access: All disclosures of conflicts of interest, including written disclosure forms, meeting minutes, and subsequent correspondence, will be treated as strictly confidential. Access to this information is limited to current members of the BSO Board and, where absolutely necessary, relevant subcommittee members directly responsible for managing the conflict.

Purpose of Use: Information disclosed under this policy will be used solely for the purpose of assessing, managing, and recording the conflict of interest in the best interests of BSO.

Permitted Exceptions to Confidentiality: Confidential information regarding a disclosure may only be shared with external parties under the following circumstances:

- With the express written consent of the disclosing individual.
- Where disclosure is required by law, external auditors, or regulatory authorities.
- To the minimum extent necessary to implement an approved conflict management plan (e.g., informing an audition panel that a specific panelist has recused themselves due to a declared conflict, without necessarily revealing deep personal details).

Secure Storage: The BSO Secretary is responsible for maintaining a central, secure Register of Interests. All physical documents must be filed securely, and electronic records must be password-protected or restricted to authorized Board folders.

Strict Privacy in the Minutes: Meeting minutes referring to a declared and discussed conflict of interest shall contain the following statement *"A conflict was declared by [Name] regarding [the relevant item] and they recused themselves,"* with the details kept in a private Register of Interests.

Breach of Confidentiality: Unauthorized sharing or leaking of conflict disclosures by any Board member, subcommittee member, or contractor constitutes a serious breach of this policy and may result in disciplinary action, removal from the Board, or termination of engagement.

6. Action required to manage 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 who has made the disclosure, as well as 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 if 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 BSO's objects and resources, and
- the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the BSO.

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 BSO.

Sanctions for Non-Disclosure or Breach

Failure to declare an actual, potential, or perceived conflict of interest, or failing to comply with an agreed-upon conflict management plan, constitutes a breach of this policy. If the Board determines that a breach has occurred, it may apply one or more of the following sanctions based on the severity and intent of the breach:

1. Sanctions for Board and Subcommittee Members

- Formal Warning: A written warning placed on the individual's internal governance record, requiring mandatory retraining on this policy.
- Suspension: Temporary suspension of voting rights or suspension from the Board/subcommittee for a specified period.
- Removal: Immediate removal from the Board or subcommittee in accordance with BSO's constitution.
- Disqualification: A permanent or time-bound ban from standing for future Board or subcommittee positions within BSO.

2. Sanctions for Engaged Contractors (including Conductors and Artists)

- Formal Written Warning: A formal notification requiring immediate rectification of the conflict and compliance with a Board-directed management plan.
- Financial Rectification: Requirement to refund or forfeit payments, fees, or profits inappropriately gained through the undisclosed conflict.
- Suspension of Engagement: Temporary stand-down from duties (with or without pay, subject to contract terms) while a full investigation is conducted.
- Termination of Contract: Immediate termination of the contractor's engagement for cause, without notice or severance, due to a material breach of contract.
- Future Exclusion: A permanent ban from being hired, contracted, or commissioned by BSO for future projects or concert seasons.

3. Legal and Regulatory Escalation

Where a breach involves fraud, theft, misappropriation of BSO funds, or a severe violation of local charity/corporate regulations, the Board reserves the right to:

- Report the matter to relevant law enforcement authorities.
- Report the individual to relevant regulatory bodies (e.g., funding bodies or community registry boards).

- Pursue civil legal action to recover financial losses or damages incurred by BSO.

If a member, musician, volunteer, or contractor suspects that a board member has an undisclosed conflict of interest, they should follow this procedure:

Procedure for Reporting Suspected Non-Disclosure

1. **Submit a Formal Report:** The individual should report their concerns in writing to the Board Chair. The report should include any specific details, dates, or documentation supporting the suspicion.
2. **Alternative Reporting (Conflicts Involving Leadership):**
    - If the suspicion involves the Board Chair, the report must be submitted directly to the Board Secretary or Vice-Chair.
    - If the suspicion involves the entire Board or executive leadership, the individual may raise the matter at the next Annual General Meeting (AGM) or contact an independent external mediator.
3. **Avoid Gossip:** To preserve confidentiality and the integrity of the investigation, the reporting individual must not discuss their suspicions with other orchestra members, volunteers, or the public.

Contacts

For questions about this policy, contact the board secretary at bsovp19@gmail.com