

Take on Board Podcast – Episode 230



# Transcript – Michelle Cutler knows how to navigate conflicts of interest

Helga Svendsen 0:00

Today on the take on board podcast, I'm speaking with Michelle Cutler about conflicts of interest. Before we start that discussion, I'd like to acknowledge the traditional custodians of the land on which we record today. For me, I am on the unseeded lands of the Wurundjeri people of the Kulin Nation and I pay my respects to Elder's past and present and any First Nations people that might be listening today. I acknowledge their continuing connection to land waters, sky and culture. I support the other statement from the heart despite the referendum and I encourage others in the take onboard community to do the same.

Now let me introduce Michelle. Michelle is on the board of Shaun Parker and Company, a small modern dance company known for its diversity and social commentary works. She has previously been on the boards of Address Housing, and Give a Smile. Michelle started her working life as a lawyer in Asia before moving to London to work in business advisory across Europe in the US. She has been back in Australia for the past 10 years working as the CEO in the not for profit and membership association sector. Her last role was the CEO of Community Legal Centres Australia. At the moment, she's working with a small number of clients focusing on strategic planning and governance a woman after my own heart, welcome to the take on board podcast, Michele,

Michelle Cutler 1:15

Thank you so much. Thank you for having me.

Helga Svendsen 1:18

So Michelle, before we dig into conflicts of interest, which is oh my God, such a, I think it's such an interesting conversation. Not everybody gets excited by conflicts of interest, but I think they should be. Michelle, so before we dig into conflicts of interest, let's dig a little bit deeper about you. Tell me about your upbringing. What lessons did you learn? What did you get up to? What were the leading influences on how you thought and what you did?

Michelle Cutler 1:44

Yeah, I mean, I grew up in Australia, and I had what I would say it was a pretty nice upbringing. But I guess one of the things that I think really did end up shaping me to end up becoming who I am, and living and working, I guess, around the world, and being what I'm interested in is I have just a memory of when we were probably in primary school of sitting around the kitchen table, and all the walls were covered in maps. And so we always had these discussions around about the world. And some of it was, you know, questioning what's the capital of France, and you know, testing your knowledge in a nice way, not in a horrible way. But it was always this conversation around the world. And that's how I grew up, I guess, being really conscious that there was a whole world outside of Australia. And I think that my parents, in some ways sort of came to regret that because I left Australia for so long, because I was always curious what was out there, and you're not going to go and see it if you don't actually go and see it. And so I've always, I guess grown up with this really keen awareness that there is a whole world out there. I've got a lot of family around the world. And I always have, so there was always people to go on visit, which was very lucky to go and stay with, but it was always this awareness that there was always another world out there. And I guess, when I kind of look back at the roles I've done and where I've done them. And then I guess, in some ways, also, my smile about a management style or my leadership style, it is always coming from a place of I acknowledge that there are is another way or many other ways are seeing or doing or thinking about issues. And I think that's been quite key to me. And obviously, you can be in situations where you have a discussion with someone you think, well, I almost disagree with you. And that's fine. But I do think it's something that has helped me to maybe just take on that there are always other ways of doing things. And people have come from a very different upbringing or place or understanding. And I guess the opposite, they may not have either. So they may also not have come from this place of thinking that there possibly are so many different views or ways of doing things. And so yeah, I have spent a lot of time overseas and in many different capacities. You know, I worked as a lawyer overseas, I spent months and months throughout my life backpacking overseas. So I guess I think that just shapes your view and your worldview. And when you go into even a negotiation, or you go into a boardroom, you'd sit down and I don't assume everyone around the table is just like me, the world is a big an exciting place. Yes. And I think now people are so keen to get back out there as well. Like, we feel like we've spent the past few years being so preciously and acutely aware of how important that has been to travel and to sort of not being able to do it, whether it's nationally or internationally with now, it's just reminded us that we need to get out there and see other things, meet other people.

Helga Svendsen 4:38

There's loads I want to dig into there, you know about where family isn't meeting family, traveling and experiences. We could spend the whole time talking about travel. However, I'm going to stop myself. As much as I love that topic of conversation because conflicts of interest. I'd love to have a chat about that. I think this topic came up. Someone had posted something in a Facebook group about it and that's how we ended up having this conversation. So conflicts of interest, it's the sort of thing you know, it's on the agenda, often at the start of every board meetings, and I've got no conflicts, no, you know, move on. Well, I think it's a really interesting topic to play within explore. So

tell me, where should we start this conversation about conflicts of interest? In fact, what is a conflict of interest? Let's start there.

Michelle Cutler 5:22

I think that you've just raised something which I think is really important, which is, at the beginning of every board meeting, there is that sort of item that line on the agenda, conflicts of interest, whichever one kind of goes no, or shuffles their feet, or we just pass over it, because it's just something standard, and no one actually kind of thinks about it. Now, obviously, some people do. And some people have wide ranging conversations about it. But I've been in plenty of boardrooms where it's almost just skipped over. And so I think it is something I think that people do need to pay attention to. So just the other thing I always like to bear in mind with conflicts of interest is, you know, I guess, along the lines of what I just said, lots of different people have lost different views about actually what a conflict of interest is, and then relatedly, how important that is, and whether it's material or not. And so I think one of the things as well as to start that conversation is, is actually it's not like there is there is legislation, there's guidelines around how you deal with it. But actually, what is one, what really should be a conversation around the boardroom as to whether or not it's a material conflict and how people deal with it. And I think for people who aren't lawyers, or don't have legal backgrounds, it can be this thing where Oh, my God, I'm really scared. What does the law say about it? Whereas I think if you kind of step back and say, Actually, it is a conversation, then I think that that enables the whole boardroom to then get involved with it. Because ultimately, I do think that it is the subject matter where it is common sense. And it is one of those things where you can have a pub test or a smell test about it, like does this feel right? Does this look right? How we think this is going to show up on our reputation? So yes, of course, there's lore around it. But it is also something that everyone, regardless of their background, or their particular qualifications, can have a conversation around whether it's a conflict of interest, I think that's kind of the first step to look at.

Helga Svendsen 7:17

Is there a time maybe in your experience where the board has done that? Well, actually, I was gonna say where the board's done that? Well, it might even be where the board's not done it well, well. Well, and in as much detail as you're able to share.

Michelle Cutler 7:32

Absolutely and I think, in particular, when you're in the not for profit space, it's pretty common for there to be conflicts of interest around the boardroom. And, for example, I've worked in federated associations and organizations. So quite often in a Federated Association, if you're on the national board. So for example, I been a national CEO twice, the board is made up of representatives from the States or from the state branches. And so they may be the state, President or chair, or it might just be someone from the state. But equally, it's not uncommon for a not for profit to have a board,

which is made up of representatives of different stakeholders. And I think that's where the potential conflict can arise. When you have a discussion which concerns a particular stakeholder or a particular state, then you've got a conflict, because you're asking someone to make a decision and contribute to a discussion where they actually do have two interests and those interests, quite possibly will be in conflict. And I think that's where people then get confused or uncomfortable. How do I tell this person across the table? Actually, I think that's a conflict of interest. And you should or should not be doing something about it right now. And I think that's where it can be quite tricky for people to have that really open, open conversation. For example, I was a CEO of a Federated Association, we had on the board representatives of all states. And so there are times when you're going to have a conversation. And the thing that you're talking about may impact one or more states differently, or completely differently from that. It might be that I've been in a situation where we're looking for supply of certain goods, and someone around the table will say, Oh, you know, my brother in law, or my nephew or my son or whatever works in that field, and they can either give us some advice, or they can supply or, and so it is the question of how do you deal with that and to turn it to a positive spin. It might be that, that ends up putting the organization in a really good position because they can get the cheapest price or whatever. But it's kind of not as simple as that. And I think that's where, I guess in my experience, my advice would be that we just kind of breathe and pause and think okay, so this is an option. It's not the answer, and how do we all the board feel about this relationship and where that might have also been in rooms where you, who knows there's very strong personalities on the board. And are they dominating that conversation? And, you know, should they be participating in some conversations? Because you know, that could inhibit sort of more open discussion around whether we use their nephews supply company or whatever. So, I think it is, I think the starting point is, it is quite likely in the not for profit space, that there will be conflicts. And so how do you set up your boardroom, that having this conversation is quite a normal conversation? And that you've got a process in place where there is a conflict, then what do you do about it? And as long as that's transparent, I think that makes the conversation a bit easier.

Helga Svendsen 10:42

One thing I often remind people about conflicts of interests is that it's a declaration of interests that you are making not a declaration of conflicts, yeah, that's such a good point. It's not for the individual to decide whether there is a conflict, you declare your interests, and then the group, the board in this instance, will decide collectively, whether there is a conflict. And if there is what to do about it.

Michelle Cutler 11:05

I think that's really important. And it also gives it a more positive spin. So that you're just saying, Look, I and often you'll be on a board, because you throughout your career, you've done things, you've joined organizations, you know, you're someone who's active in that particular sector. And so of course, people want you on the board. But obviously, a path that you've taken to get there hasn't been you've been involved. And so, of course, you're gonna have, and I think that's right, that it is this, you have interests. And that's not a problem, having the interest is not the problem. It's the

managing of them. And so it might be that you're on a peak body, and there's more than one peak body in that particular sector, or you're on the board of one of the stakeholders of the organization. And so the conversation around that particular stakeholder, and I've been in a situation exactly like this, you can contribute and really add value and give some information. And so I think that's all value, your interest is actually providing valuable information to the organization. But if there's a decision whether or not you, for example, use them or their supply or something, then you probably aren't the best person to be voting on that particular one. But again, I just to follow up on what you said, I think that's right, you say this is my interest, I've got this particular interest. And then it's up to the board to say, well, we're happy that you can either stay in the room, contribute to the discussion vote on the particular issue, it's not just your call, you can't just say, Oh, no, no, I'm really comfortable, I don't have a conflict, it's not just up to you, it is up to the whole board. mean, ultimately, the whole board is responsible for the decisions of the board. So I think that's where I think people also get confused that it's not just up to them that like it is a group decision, the board has to make that decision of how they're going to treat your various interests. So it's not just all up on one person, which I think sometimes gives people comfort as well to know that it's not only on them to know how they have to do, how they resolve that that conflict.

Helga Svendsen 13:09

So it's interesting, then, like the example you gave before about the federated model is a very common one for Federated Organizations. And there are lots of Australia is a federated country. So there are lots of federated models in all sorts of different areas. In that instance, what have you seen, because often the person, you're not declaring it's like on the Victorian rep, or on the WA rep, or whatever it may be, it's completely known. And that's why you've got that spot in the boardroom. So what works well, what have you seen that works well, in terms of managing those conflicts that come up? What are some of the things that you've seen?

Michelle Cutler 13:47

Yeah so I've seen a number of different things that I guess work well, and we don't work well. And I think when you specifically, if you're talking about a board that's got representatives on it, so it might be that they're state representatives, or it might be stakeholder representative. So I agree, yes, everyone, for example, might know, you're the Victorian rep. I like it when there's a separate document, which has your interests rather than your conflicts because you don't know if the conflict can do in a topic or particular decision that interests and so it might be that you're a member of the Victorian branch, but it also might be that you have other interests in the sector or in or other related bodies. And I just think you have one document that is updated as it needs to be updated. Works well, because some people, for example, just put it in the minute so we have this discussion. And this particular board member noted that they were XYZ, but that's fine for that particular discussion. But three months later, six months later, 12 months later, people can't remember maybe someone new is on the board, you've got to have a document that that actually is there and is updated with people's with people's interest. And I think I've seen this work in terms of like coming to a discussion point in in particularly in a federated model, I don't have a problem with, say, for

example, you're the Bitcoin rep, and there's a subject matter that's quite deep and really Victorian branches board member from Victoria, saying, in Victoria, this is how we think about this issue, or these are the issues that this particular decision we're making is going to help, it's going to impact on Victoria, that's fine. And I think that, you know, all states could then have that discussion as well. But if it's a particular decision, that the person who's coming from Victoria really is conflicted in their head, or there's competing interest, then I do think it's incumbent on that board to say, we've heard what you've had to say. But now, you either need to leave the room while we have a discussion without you minute. And it depends on the organization like it might be that that is it necessary that that person is quite comfortable to sit or not then contribute to the next bit of the discussion, or that other directors might think I'll be faking leave, then we can we perceive we can have a polar frank discussion without them, which is the Victorian person, for example, has to leave without thinking bad things about everyone talking about them. And then if there needs to be a vote, then in my view that the person from Victoria on the board cannot vote. And it should be noted in the minutes as well that they didn't vote. So note that they left the room if they left the room. And know, when the decision was made, the resolution was had passed, for example, and then that they came back into the board. And that's I guess, the sort of the gold standard of what you need to do. And you don't have to do that all the time. But I also think it's that this is where I think, you know, you come back to the podcast, if you say to someone, oh, we made this decision. And you just think an ordinary normal person, you know, sitting there and having a glass of wine goes, Oh, that sounds a bit awkward. Well, that's probably the right reaction, if you didn't know if you didn't do the right or the wrong thing, because I just think it is not that complicated, or you made a decision with them in the room, or they participated to the decision, I think we all kind of get the feeling is it's not really the appropriate way of doing it.

Helga Svendsen 17:03

Because that's part of the challenge of conflicts, there is potentially reputational, there's all sorts of potential damage, but reputational damage, if people have been involved in decisions that they shouldn't have been involved in that don't look right, when you're having a conversation down the pub.

Michelle Cutler 17:17

Yeah and so I mean, that's, I think that, and there also are legal implications, obviously, in terms of, if you're a director, then you might have breached your director duties in terms of your obligations to the organization. It's not hard to sort of Google the legal position. And there's plenty of examples of good policies and things that you can use and start to have that conversation around. So I think it is a reputational issue. And I think that's a really key one, especially in the nonprofit space, or the membership association space, if your stakeholders or your members have come to know that a decision was made in a way that just kind of doesn't count that great notch really hard to come back from it's really hard to explain away. And reputation is key. It's everything if you've lost that it's really hard to get back.

Helga Svendsen 18:10

Yes. What are some other ways like the federated model is, as I say, it's a pretty common one, particularly in Australia, which is a federated country. What are some other ways or some other examples of where this might come up just to prompt people's thinking about this? What are some other ways that a conflict might come up?

Michelle Cutler 18:26

So I mean, there's lots of the obvious ones in terms of where you might be representative body, but yes, you might be in terms of supplying, and often you get the directors that will give advice to the company with their professional, and that can be also so fraught with danger. But there's other instances. So for example, if you're recruiting directors, and you're looking for directors and thinking and not for profit space, this one will come up is, in particular, if you're looking for Director with fundraising skills, you really want that expertise, and you really need that expertise. But I guess the question is, what's that target market? If you're fundraising? And is there a conflict or a crossover? And how do you as a board feel about that? Like, I personally, I would feel very awkward if I was the director in question that I'm supposed to be giving advice with respect to particular expertise that I had. I was doing it for two organizations at the same time. And whilst particular expertise, for example, like fundraising or stakeholder management, donor engagement, that might be really key. And you might go, oh, no, no, there'll be great. They can teach us so much are we really need that expertise? I think there's a real danger of then not actually being able to use that expertise. Because if you're planning an event or a fundraising drive or something and they're talking to the same people, then that person, I don't know, do they need to leave the room? Can they contribute, you kind of waste the director spot on that as well. So I think that can be really hard as well. And so it's that thing of well, who we're looking at being on our board and why I who we engaging with as our stakeholders. And so I think that can also it'll can also come up there. I mean, I've seen, for example, different constitutions where people will say that directors obviously, give services to the organization, but they're not allowed to be paid for it. So it doesn't matter that they, even if they go to a tender process, and they're the cheapest, it doesn't matter, you actually just can't take any safer services at all, which I think that's obviously a decision for each particular board. But I think that then makes it quite clear. So I guess it's that conversation that they people need to have. And you know, there's plenty of complex policies online to download and start as a conversation from I think that's it where you've got an agreed set, process and policy that everyone knows they have to follow.

Helga Svendsen 20:48

From the conversation that we've had today, what are the key things you want people to take away from what we've spoken about?

Michelle Cutler 20:54

I think that it is a real topic, that shouldn't just be something that is flipped over at the top of a board meeting, but it actually is there for a reason that it is inherent in being a director that, you know, one of your duties as a director is to manage the conflicts of interest. And that actually, it's not up to you, you can declare your interest. But there has to be a discussion among all members of the board as to what your processes for managing that. And I think that when you get it into being a group discussion, and apart from Oh, it's only my obligation or responsibility, I think that does make it a bit easier, because you're then more likely to say, Okay, we need a process, because obviously not going to just happen to one person, that's going to be something which could happen to anyone around the table, therefore, we need to have a process. I think that's, that's it, but it is a discussion. And I guess lastly, as we've touched on that, if you get it, if you ignore it, the reputational damage is something that I think is really going to be quite significant. And that's quite hard to come back from,

Helga Svendsen 21:57

You've said a couple of times that you can Google and find resources. So I'm wondering, (a) if you've got a favorite spot where people might find some of these policies? Or is there another resource? Or maybe its and/or? Or is there another resource you would like to share with the take on board community?

Michelle Cutler 22:13

So I mean, I guess in terms of like, conflicts, I know that know AICD obviously has some stuff on there, they have statements, the Institute of Community Directors normally has policies and like I looked at this before this, they do have a conflicts policy. And I would always say about anything you download, obviously read it. And it's going to have to be amended, like it has to be hailed and made suitable for your organization. But it is, is definitely there and available. In terms of then I guess, further reading around conflicts, what I like to do is where are you getting that information from, and mostly, lots of the law firms will put out two pages and things. So you know, you're getting it from a good credible source rather than just on a random website, which you don't really know who's written it. So it's definitely discussion. But there's lots there are lots of resources, credible, good resources out there as well to use.

Helga Svendsen 23:05

So we will make sure there is a link to the Australian Institute of company directors and the Institute of community directors Australia, in the show notes and I think the ACNC, the Australian Charities and not for profit Commission also has a standard around the conflict. So we'll make sure there's a link to that in the show notes as well.



Michelle Cutler 23:21

Yeah, their websites very good. Actually, the ACNC is very good with lots of good guidance and information on it as well.

Helga Svendsen 23:28

And examples and case studies as well that are relatable, which is very valuable. Um, Michelle, thank you so much for taking the call when we're like, oh, let's talk about conflicts of interest and you're like I can do that. Great. So thank you for taking the call. Thank you for taking the time and sharing your wisdom with the take on board community today.

Michelle Cutler 23:48

Lovely to speak with you. Thank you

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