

**Conflict of Interest Template**

**April 2018**

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PURPOSE OF THIS TEMPLATE

This document has been prepared by the NSW Office of Sport as a guide for New South Wales State Sporting Organisations (**SSOs**) to assist with an SSO’s governance. IT IS A TEMPLATE ONLY. This document should be read in context with the NSW Office of Sport’s Sports Governance Capability Framework and in particular paragraph 4.6.

INSTRUCTIONS

The document has been designed specifically for sport and seeks to take into account the issues which an SSO might need to consider; for example, Sport must deal with the impact of drugs; Sport is affected by child protection legislation; and Sport operates under a national system where the national body can make rulings and set policy that will flow through the Sport and affect those playing at Club level.

All levels of an SSO and all persons within a Sport should work together for the advancement of the Sport and the SSO through sharing common purposes, structures, policies and procedures. This will hopefully improve the governance and delivery of a Sport and hopefully make it easier to address issues of joint concern, to share information and to maximise the sport’s marketability.

Finally, with the increasing amount of legislation affecting sport, Sports must enact consistent and complementary policies and strategies that address areas of governance and common risk that flow through the organisation.

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# Duty to Avoid Conflict and to Disclose Interests

Neither a director nor responsible officer should allow a conflict of interest to compromise their position as a director or office in the organisation. A director’s “personal” interests (for example, a shareholding in another company) or other duties (for example, being a committee member of a related entity) and their duty to the organisation (of which they are a director) must not be brought into conflict.

This overlaps with the duty to act in good faith and for a proper purpose. Categories of situations which give rise to conflicts of interest are:

### Directors or officers taking advantage of opportunity

The general rule is that a director must not use his position to make a profit. If he does, then he must account to the organisation for the profit made. Some legislation provides for a similar rule.

### Directors taking advantage of an opportunity where the organisation is unable

A director has an obligation not to profit personally from his position as a director, and not to allow a conflict to arise between his duty as a director and his own self-interest.

A director is disqualified from usurping for his own benefit or for the benefit of others, a maturing business opportunity which the organisation is actively pursuing.

A director’s liability to account to the organisation is not unlimited and depends upon the facts of the case. It is a defence that the profits or advantage were made with the informed consent of the organisation.

### Directors' contracts with State Sporting Organisation (**SSO**)

The general rule is that contracts made by a director with the organisation are voidable at the option of the organisation. This includes contracts in which Directors have an indirect interest. The fairness of the contract is irrelevant, and this is applied as a strict rule.

The contract may be validated by ratification at a general meeting, provided there is full disclosure.

In addition, the Act requires a Director to declare the nature of any direct or indirect interest he has in a matter that relates to the affairs of SSO.

### Conflict of external duties with Directors’ duties

Where a Director holds an office or property, which creates duties in conflict with his duties as a Director of SSO, they should declare the interest at the next meeting of the Board after they become aware of the conflict.

# Confidential Information

Directors need to acknowledge that from time to time, information will be provided to them which will be considered to be “confidential”. “Confidential information” is any information:

### determined by the Board or the CEO, and so declared by marking “confidential” or by statement agreed by the Board at the time of declaration; or

### which may be reasonably considered by the Board to be commercially or otherwise sensitive or likely to be so to the Board.

Directors have a duty not to make unauthorised disclosure or use of SSO information and a duty not to disclose or exploit confidential information, such as commercially or price sensitive information or information which is confidential by virtue of a contractual arrangement.

Information is commercially sensitive where it is of specific value to the group concerned, particularly where its disclosure would allow others to “reap without sowing” or would otherwise be detrimental to SSO. In the context of SSO, this would involve any information that is of value to SSO in the sense that its disclosure might cause damage to SSO’s reputation, or disclose plans which SSO would not want revealed to its competitors or third parties.

Directors should not reveal any discussions or meetings or documents relating to policies or plans in their initial stages without the consent of the other members of the Board.

Practicality and convenience must be taken into account. The Board should at the very least be informing its members of the major decisions, which it has made and report on the reasons for these decisions. The Board is justified in not disclosing all its activities on the basis that in doing so it is acting in the interests of SSO, by preventing information which may be detrimental to it from being revealed and potentially distorted.

Directors must remember that they have a duty to act in the interests of SSO as a whole, which includes the interests of all members.

Directors should support all determinations of the Board regardless of their support or dissent during the Board meeting. It is essential that discussions of the Board are freely entered into. However, it is imperative that beyond the meetings of the Board all Directors are united in the determination of the Board.

Directors must always be sure that their actions are in the best interests of SSO, rather than for political expediency. This may from time to time place a Director in a difficult position, for example if asked to comment by a member, on a matter confidential to SSO. The Directors duties to SSO must always be upheld despite the relationship which may exist between the Director and the member.

The Act also impose a statutory duty on a Director not to make improper use of the information acquired by virtue of his office to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to SSO.

# Duty not to Divert Corporate Opportunities

Misuse by a Director of SSO’s property so as to make a personal gain or gain for any other person (for example, a company in which the Director is interested) without the authority of SSO is a clear breach of a Director’s fiduciary obligation. In particular, a Director must exploit corporate opportunities for the benefit of SSO. A Director who breaches this duty may be liable to account for any gain or profit made.

This duty is also reflected in the Act which requires a Director not to make improper use of his position (as a Director) to gain, directly or indirectly, an advantage for himself or any other person or to cause detriment to SSO.

Breach of this duty may also involve a breach of a Director’s duty of honesty imposed by the common law and by the Act.

# Declaration of Director’s Interests

## Directors’ Interests

Unless he has complied with the Act, the Constitution and has received prior written approval from the Board, a Director must not hold any other office or place of profit in SSO.

A Director must disclose the nature and extent of his interest where he/she:

### holds any other office (whether voluntary or otherwise) or place of profit in SSO;

### holds any other office (whether voluntary or otherwise) or place of profit in any company in which SSO is a shareholder or otherwise interested; or

### seeks to contract with SSO either as vendor, purchaser or otherwise,

Where such an interest is not disclosed, any contract or arrangement entered into by SSO in which any Director is in any way interested will be voided.

## Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or arrangement is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or arrangement after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.

General Disclosure A Director may make a declaration in the form set out in **Annexure F** that the Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

## Recording Disclosures

The CEO must record in the Board minutes any declaration of a conflict of interest made by a Director or any general notice provided to the Board.

The CEO must also maintain a register of all conflicts of interest in the form set out in **Annexure G**.

# Conflicts - voting at board meetings

A Director, notwithstanding their interest, may be counted in the quorum present at any meeting but cannot vote in respect of any contract or arrangement in which the Director is interested. If the Director votes, the vote should not be counted.

# Execution by Seal

A Director may not sign a document to which the seal of SSO is fixed where the Director is interested in the contract or arrangement to which the document relates.