

Duties and Obligations Relating to Conflict of Interest

Duty to Avoid Conflict and to Disclose Interests

Neither a director nor responsible officer should allow a conflict of interest to compromise their position in the entity.

A Director's **material personal** interests (for example, a shareholding in another company or membership of another Club) or other duties (for example, being a committee member of a related entity) and their duty to the entity 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:

a) Directors or officers taking advantage of opportunity.

The general rule is that a director must not use their position to make a profit. If they do, then they must account to the entity for the profit made. The *Associations Incorporation Act 2009 (Act)* provides for a similar rule.

b) Directors taking advantage of an opportunity where the entity is unable.

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

A Director is disqualified from usurping for their own benefit or for the benefit of others, a maturing business opportunity which the entity is actively pursuing.

A Director's liability to account to the entity 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 entity.

c) Directors' contracts with the entity

The general rule is that contracts made by a director with the entity are voidable at the option of the entity. 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.

A Director should declare the nature of any direct or indirect interest they have in a matter that relates to the affairs of the entity.

d) Conflict of external duties with Directors' duties

Where a director holds an office or property, which creates duties in conflict with their duties as a director of the entity, 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:

- a) 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
- b) 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 the entity information and a duty not to disclose or exploit personal information 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 the entity. In the context of the entity, this would involve any information that is of value to the entity in the sense that its disclosure might cause damage to the entity’s reputation or disclose plans which the entity 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 considered. 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 the entity, 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 the entity 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. **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 the entity, 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 the entity. The Directors duties to the entity must always be upheld despite the relationship which may exist between the Director and the member.

The Act also imposes a statutory duty on a director not to make improper use of the information acquired by virtue of their office to gain, directly or indirectly, an advantage for herself or for any other person or to cause detriment to the entity.



Duty not to Divert Corporate Opportunities

Misuse by a Director of the entity's property 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 the entity is a clear breach of a director's fiduciary obligation. A Director must exploit corporate opportunities for the benefit of the entity. 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 their position (as a director) to gain, directly or indirectly, an advantage for herself or any other person or to cause detriment to the entity.

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 they have 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 the entity.

A Director must disclose the nature and extent of their interest where they:

- a) hold any other office (whether voluntary or otherwise) or place of profit in the entity.
- b) hold any other office (whether voluntary or otherwise) or place of profit in any company in which the entity is a shareholder or otherwise interested; or
- c) seek to contract with the entity either as vendor, purchaser or otherwise,
- d) Where such an interest is not disclosed, any contract or arrangement entered by the entity 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 A 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

Any declaration of a conflict of interest made by a director or any general notice provided to the Board must be record in the Board minutes.



A register of all conflicts of interest should be maintained in the form set out in **Annexure B**.

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 the entity is fixed where the Director is interested in the contract or arrangement to which the document relates.

DISCLAIMER:

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ANNEXURE A - DIRECTORS DECLARATION AND CODE OF CONDUCT

Under the leadership of the Chair and the CEO, the Board is to be proactive in implementing the entity's objects having regard to the requirements outlined in the Constitution and powers vested in the Board to determine and articulate the entity's values, vision, and strategic direction.

1. The entity's Directors are expected to.

- Meet fiduciary responsibilities as required under all relevant commonwealth and state legislation and under common law.
- Comply with the entity's constitution, rules, regulations, and policies.
- Act honestly in the best interests of the entity as a whole and not of those individual constituents
- Avoid conflict of interest and to disclose immediately any actual or potential conflict.
- Develop strategic planning and direction of the entity including approving the business plan and budget, monitoring organisational performance, and evaluating strategic results, and approving expenditure outside the approved budget and delegations.
- Devote the necessary time to the performance of their duties including to review board papers prior to board meetings.
- Interact with key stakeholders and members to inform them of achievements and to ensure that they have input into determination of strategic goals and direction.
- Report back to the stakeholders at relevant forums through the Chair and the CEO
- Monitor the CEO and organisational compliance with the relevant commonwealth and state legislation and with the entity's own policies.
- Maintain the confidentiality of information they receive by virtue of being a director of the entity.
- Evaluate their collective effectiveness as a Board.
- Not improperly use their position or misuse information of the entity.
- Commit the time necessary to effectively discharge their role as a director.
- Understand the complexities of the sectors in which the entity operates together with those sectors' structure, operations, controls, regulatory obligations, current technology, types of transactions and political/economic environment to adequately assess the risks faced by the entity.

2. Directors Limitations

- The Directors report to the Chair and are accountable for the performance of their duties as a director.
- The Directors are to work cooperatively with the CEO.
- No Director is authorised to incur expenses or debts on behalf of the entity.
- All Directors are expected to abide by the entity's policies, regulations, and directives.

3. Deed of Indemnity and Access

The entity Constitution indemnifies each Director to the fullest extent permitted by law. Each Director is entitled to a deed of indemnity, which shall include provisions relating to:

- access to Board papers.
- confidentiality.
- indemnity by the organisation; and
- the provision of Directors and Officers insurance.



4. Director's Declaration

If I am found by my fellow Directors acting reasonably and in good faith that:

- I have not upheld my duties and legal responsibilities as a director.
- I have not acted in the best interests of the entity or of (name of the sport.....),
- I have failed to follow a Board directive.
- I have breached the Constitution or other rules, regulation, or policies of the entity.
- I have at any time committed an anti-doping rule violation or otherwise contravened any anti-doping policy whether the entities or any other sporting body.
- I have been charged with or convicted of a crime.
- I have breached confidentiality.
- I have brought myself, (name of the sport.....), or the entity into disrepute as a result of my action or omission including any statement I may make.
- I have made disparaging comments about other directors, the Board, or the entity.
- I have acted in a manner prejudicial to the interests of the entity or (name of the sport.....), or unbecoming a director of the entity.

I hereby agree that my position on the Board is no longer tenable and that I will submit my written resignation immediately.

Signed:

Witness:

Print Director Name: _____

Print Witness Name: _____

Date: _____

Date: _____



ANNEXURE B - DECLARATION OF INTERESTS BY BOARD

NAME: _____ **QUALIFICATIONS:** _____

DATE: _____ **BUSINESS OCCUPATION:** _____

Name Of Corporation (ACN)	Place of Incorporation	Office Held	Beneficial Interest	Date of Appointment	Insurance Office Bearers
ORGANISATIONS:					
PUBLIC/PRIVATE COMPANIES:					
RELEVANT PROPERTY/TRUSTS/ SHARES					

Signature: _____

ANNEXURE C - CONFLICTS OF INTEREST REGISTER

NAME OF DIRECTOR	NATURE OF INTEREST	BOARD MEETING REFERENCE (DATE AND ITEM IN MINUTES)

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