

ADC Board Charter

Duties, Responsibilities and Code of conduct

Introduction

A director holds a position or office pursuant to the Constitution of the Australian Dental Council (the Company) and the *Corporations Act 2001* (Commonwealth) (the Act). This position or office is one of trust and confidence in the director's ability to perform the duties of overseeing the company to ensure that it meets its purpose and objects without compromising its financial and legal responsibilities.

The directors are responsible for two main broad areas:

- The overall business performance (internal role) – ensuring the company develops and implements strategies and supporting policies to enable it to operate sustainably and achieve its objects and strategies.
- Overall compliance performance (external role) – ensuring the company complies with its legal and policy obligations.

An individual when consenting to become a director of the Company effectively entered into contractual arrangements with the ADC¹. The fiduciary obligations imposed on a director under statutes such as the Act are basically the same at Common Law (judge made law).

Fundamental to being a director is the duty to act at all times honestly, in the interest of the Company, in good faith, and with all care and due diligence at all times.

1. Duties and Responsibilities

a) Fiduciary Duty

Business Judgment Rule

A director who makes a business judgment is taken to meet the requirements of care and diligence in respect of the judgment if he or she:

- a) makes the judgement in good faith for a proper purpose, and
- b) does not have a material personal interest in the subject matter of judgement, and
- c) informs himself or herself about the subject matter of the judgement to the extent they reasonably believe to be appropriate, and
- d) rationally believes that the judgement is in the best interests of the Company²

¹ Section 140, *Corporations Act 2001* (Cth)

² *ibid.*, Section 180(2)

The Courts have made clear that ignorance and blind faith in other's opinions will not excuse a director of a company from negligence in the performance of their duties.

General Duties

The fiduciary duties and responsibilities placed on a director by the Act are as follows:

- Duty to act with care and diligence³
- Duty to act in good faith, in the best interest of the company and for a proper purpose⁴, without abuse or misuse
- Duty to not improperly use their position to gain an advantage for themselves or someone else or cause detriment to the Company⁵
- Duty to not improperly use information to gain an advantage for themselves or someone else or cause detriment to the Company⁶
- Duty to disclose or notify other directors of *material personal interest* when conflict arises (disclose a conflict of interest)⁷
- Directors must not use assets for personal benefit
- Duty to not trade whilst insolvent⁸.

Directors owe a fiduciary duty to exercise the powers entrusted to them by the Company and to exercise those powers for the benefit of the Company. It may be seen as a criminal offence should a director breach the above duties⁹.

b) Conflict of Interest

A director has the responsibility to make decisions which are fair and unbiased.

A conflict of interest arises whenever a Director's personal, financial interest and/or duties for another organisation conflict, either perceived or real, with their fiduciary duties to the company.

A director owes a duty to other directors in notify them of all information relating to personal interest when a conflict of interests arises and/or may be relevant to a matter under consideration by the Company⁶.

A director must disclose a conflict of interest and must give details of the nature, extent of the interest and the relation of the interest to the affairs of the company as

3 *ibid.*, Section 180

4 *ibid.*, Section 181

5 *ibid.*, Section 182

6 *ibid.*, Section 183

7 *ibid.*, Section 191

8 *ibid.*, Section 588G

9 *ibid.*, Section 184

soon as practicable after the director becomes aware of their interest in the matter^{10 11}.

There is nothing improper or unlawful in the existence of a conflict of interest. An issue arises however when private or other interests overrides the duty to the Company. It is likely that if a conflict of interest arises and is not declared, the Courts will generally presume that the private or other interest has been preferred.

It is important to note though, that a director who merely declares a conflict of interest and does not participate in a decision or simply leaves the room may not be seen to have fulfilled their fiduciary duty as a director.

c) Meeting Procedure

Declaring a conflict at a meeting

Directors will complete a 'Register of Interests' and ensure it is updated as required when attending meetings of the Governing Board. At the commencement of each meeting of the Governing Board, the President will invite directors present to declare any conflict of interest with the agenda.

The absence or declaration of a conflict will be recorded in the minutes of the meeting¹⁰.

Should a conflict of interest be declared by a director then the President will ascertain the nature of the conflict and propose to the meeting that one of the following to be carried out when that item is reached on the agenda:

- the director will contribute in full to discussion of the item and participate in any vote that may arise; OR
- the director will contribute in full to discussion of the item but refrain from any vote that may arise; OR
- the director will refrain from discussion of the item and from any vote that may arise; OR
- the director will leave the room for the duration of the agenda item; OR
- any of the above actions are considered so that the Board's quorum remains to make a decision.

Should the other directors accept a recommendation from the President that a director with a *material personal interest* be able to vote and be present for the discussion, then a resolution must be made to that effect¹².

The President has final approval of the action to be undertaken and this will be recorded in the minutes of the meeting.

Where the President declares a conflict, the Vice President will manage the process. If both the President and Vice President declare a conflict, directors will nominate from the Governing Board a suitable delegate.

¹⁰ *ibid.*, Section 191(3)

¹¹ *ibid.*, Section 192

¹² *ibid.*, Section 195

Maintenance of Records

The proceedings of each and every Governing Board meeting will be recorded in the Minutes and confirmed as a true and correct record at the subsequent meeting of that Governing Board or Committee. The confirmed minutes will be signed off by the President for the Governing Board and the Committee Chair for all Committees of the Board. Committee minutes will be included in the agenda of the Governing Board as unconfirmed or confirmed depending on timing of meetings.

Minutes, transactions and affairs of the company remain confidential to the Governing Board unless otherwise resolved by the directors or disclosure is required by Law as outlined in Rule 7.6 of the ADC constitution.

Reviews

The Governing Board will develop an approach to evaluation of its own performance and this will be reviewed from time to time.

Director remuneration will be established by the Governing Board and in compliance with the Act¹³.

d) Establishment of Committees

The Governing Board may establish committees, expert advisory groups and other working and project groups and delegate decision making under Rule 6 of the ADC constitution and the Act¹⁴.

In accordance with Rule 6.5 with the ADC Constitution, the Governing Board must establish an examining committee and an accreditation committee. These are operational committees and will report to the Governing Board through the CEO.

The Governing Board has appointed a Finance and Risk Monitoring (FARM) Committee which reports directly to the Governing Board via the Chair. The CEO (and any other staff) is not a member of the FARM Committee.

See 'Related Documents' for existing policies and procedures that have been approved by the Governing Board.

e) Disciplining Directors

The President is responsible for bringing a director's inappropriate behaviour to their attention and for seeking solutions or mediation to address the problem.

All directors must attend the majority of meetings in any one year unless leave is granted. Failure to do so may lead to disqualification from the Governing Board under Rule 3.8 (d) of the ADC constitution.

The process for removal of a director is in compliance with and outlined the Act¹⁵.

¹³ *ibid.*, Section 202A

¹⁴ *ibid.*, Section 198D

¹⁵ *ibid.*, Section 203D

2. Code of Conduct for Directors

The Code of Conduct aims to ensure that high standards of corporate and individual behaviour are observed by all directors. Directors are expected to adhere to the Code of Conduct.

Directors:

- will act honestly, in good faith and in the best interests of the ADC
- have a duty to use due care and diligence in fulfilling the functions of the office and exercising the powers attached to that office
- will use the powers of office for a proper purpose, in the best interests of the company as a whole
- will allocate appropriate time before each Governing Board meeting to read agenda and obtain further information if necessary
- will actively engage in strategic directions planning and governance workshops as organised by the ADC
- will undertake diligent analysis of all proposals placed before the Governing Board
- will demonstrate reasonableness in decision making and treat all other directors and ADC staff with courtesy and respect
- will sign the ADC Confidentiality Agreement and thereafter will keep confidential all information received in the course of the exercise of their duties and not seek to take unfair advantage of knowledge so gained, recognising that information so obtained remains the property of the company
- will not take advantage of the ADC property, or accumulate excessive expense for the ADC in travel cost or other
- will disclose any conflicts of interest within the agenda at each Governing Board meeting; and will not allow personal interests, or the interest of any associated person, to conflict with the interests of the ADC
- will make reasonable enquiries to ensure that the ADC is operating efficiently, effectively and legally (in particular in regard to the Act and the *Health Practitioner Regulation National Law Act 2009*), towards achieving its goals and objectives.
- behave in a way that upholds and promotes the good reputation of the ADC and complies with the spirit, as well as the letter, of the law and with the principles of this Code

3. Related ADC Documents

- Accreditation Appeals and Complaints Policy
- Accreditation Committee Appointment of Community Representatives Policy
- Accreditation Committee Charter
- Accreditation Committee Membership Criteria

- Accreditation Committee Skills and Experience Matrix
- ADC Guidelines for Second Specialist Assessors
- ADC Monitoring Framework
- Appointment of Examiners Policy
- Assessment Committee Charter
- Assessment Committee Membership Criteria
- Assessment Committee Skills and Experience Matrix
- Assessment Committee Nominations Panel Procedure
- Assessment/Examinations Appeals Policies
- Assessor Criteria & SETS Policy
- Confidentiality Agreement
- Decisions by Email Policy
- Delegation to Committees
- Director Nomination Panel Procedure
- Directorship Skills and Experience Matrix
- Examination Conduct Policy
- FARM Committee Charter
- Investment Policy
- Observers Policy
- Registers of Interests
- Remuneration Policy
- Stakeholder Engagement Strategy

4. Relevant Legal Documents

- Corporations Act 2001 (Commonwealth)
- Australian Securities and Investments Commission
- Health Practitioners Regulation National Law Act 2009
- Australian Charities and Not-for-profit Commission Act 2012
- Australian Charities and Not-for-profit Commission Regulation 2013
- Australian Accounting Standards
- Income Tax Assessment Act 1997 and Income Tax Assessment Act 1936 (*Note: the ADC is exempted from income and payroll tax*)
- Victorian Equal Opportunity and Human Rights Commission: Equal Opportunity Act 2010 (*Note: each Act in each State/Territory must be observed*)
- Consumer and Competition Act 2010 Copyright Act 1968

- Privacy Act 1988
- Occupational Health and Safety Act 2004
- Accident Compensation Act 1985
- Workplace Injury Rehabilitation and Compensation Act 2013 (*Regulations in each State/Territory*)

5. References

- ADC *Constitution* 2013
- Australian Security Exchange, *Code of Conduct and Ethics*, 2006
- Australian Institute of Company Directors, *Code of Conduct*, Sydney, 2009
- Australian Institute of Company Directors, *Duties and Responsibilities of Directors and Officers*, 2009
- Carver J., *Boards That Make a Difference*, 2006
- Carver J., *Reinventing Your Board*, 2006
- Commonwealth Government, *Corporations Act*, 2001
- Kiel G., Nicholson G., Tunny J., Beck J., *Directors at Work: A Practical Guide for Boards*, 2012
- Tricker R., *Corporate Governance: Principles, Policies and Practice*, 2012

Approved by: Governing Board

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