



## **Directors' Duties and Liabilities Protocol for Board Members**

### **1. Introduction**

- 1.1. The following Protocol has been developed to assist Board Members to understand and acknowledge their duties and obligations as directors of the Australian Orthopaedic Association (AOA). Directors are the 'natural' persons who govern a company (a separate legal entity) in accordance with the rules set out in its Constitution. Directors have obligations under the *Corporations Act*, the Constitution and the general law.
- 1.2. Having read and understood this Protocol Board Members agree to adopt and be bound by it. They acknowledge that a breach of it by a Board Member could, in the interests of AOA, warrant that Board Member's resignation. They agree that if a Board Member so breaches the Protocol that Board Member will offer his or her resignation.

### **2. Recognition of Responsibility**

- 2.1. Board Members understand and accept that AOA is incorporated as a company and that once elected to the Board they become directors of the Board of AOA and as such under the law, they have clear duties and responsibilities:
  - (a) to act in good faith in the best interests of AOA and for a proper purpose;
  - (b) to exercise their powers and discharge their duties with care and diligence; and
  - (c) to use information acquired by them while in office properly and for the benefit of AOA.

### **3. Acceptance of Solidarity**

- 3.1. Board Members recognise the need for solidarity. The members of AOA have delegated decision-making powers to the Board as a whole, to be exercised by it as a Board. They have not delegated any powers to any individual member. Decisions must be made collectively and Board Members accept that they are bound by the Board's decisions.

- 3.2. Board Members may disagree with a decision and register their dissent, so long as when in the public arena the Board's view is expressed.
- 3.3. Unless individual Board Members receive specific delegations from the Board, they must refrain from making representations or agreements on its behalf, or influencing management as individuals.
- 3.4. In the interests of the harmony and effectiveness of the Board, and AOA as a whole, the directors agree that they will conduct themselves with goodwill and in a harmonious manner. The importance of good teamwork is recognised and acknowledged.

#### **4. Directors' Duties**

##### **4.1. Owed to company as a whole**

- (a) Directors' duties are owed to AOA as a whole. No duty is owed to any individual member or group of members. It follows that Board Members owe their obligations to the members of AOA and not to any State or Territory Branch of AOA or other affiliated organisation from which they come as a nominee, or to any other individual or group.

##### **4.2. Fiduciary Duty**

- (a) Board Members understand and accept that they have a fiduciary duty not to allow a conflict of interest to compromise their own position. A director has a duty at common law to act honestly and to avoid a conflict in the position of a director and/or any interest that director may have. They must not use their position or information obtained through their position to gain advantage for themselves or someone else, or cause detriment to AOA. This means that a Board Member must not allow personal interests, or the interests of any associated person, to conflict with the interests of AOA.
- (b) Where a director is a 'nominee' director the person must act in the interests of AOA as a whole, not in the interests of his or her nominator group.

##### **4.3. Declaration of Interest**

- (a) Company Directors have a legal obligation to declare any actual or potential material conflict of interest as soon as he or she becomes aware of it, and to withdraw from the discussion and decision of any matter on which he or she has a material conflict, unless the directors who do not have a conflict have resolved that the director should stay.

- (b) Board Members agree to notify the Chair of the Board of any actual or potential conflict as soon as they become aware of it (if possible before the beginning of the meeting at which the issue is likely to be raised).
- (c) An example of a conflict of interest is when it is proposed to the Board that AOA enter into a commercial arrangement that a Board Member perceives would either enhance or provide competition with similar commercial arrangements entered into by AOA.

#### **4.4. Duty of care in handling potential conflict of interest**

- (a) Board Members understand that they should not necessarily withdraw from participating in debate because the group of AOA who nominated a Board Member hold a particular view in relation to any particular matter. Board Members bring a range of views to the table and in coming to a decision in the interest of AOA as a whole the Board must necessarily consider the interests of particular groups of its members.
- (b) Board Members understand that where a conflict arises between AOA as a whole, and the interests of a group of members to whom the 'nominee' Board Member owes a duty, the Board Member has a duty of care to the way in which the conflict is handled. The Board Member may be obliged to actively participate in discussion in order to properly discharge that duty.

#### **4.5. Confidentiality**

- (a) Company Directors have a legal duty not to use information obtained by them as a director for the benefit of themselves or any person or persons linked to them.
- (b) Confidential information received by a director in the course of the exercise of directorial duties remains the property of AOA and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by AOA or is required by law.
- (c) Board Members understand the importance of free and frank exchange of views expressed without prejudice in the course of debate at Board meetings. Board Members therefore agree that all discussions and opinions expressed in the course of Board meetings take place under the 'Chatham House Rule', unless the Chair of the Board indicates that the discussion is to be held 'on the record', or is subject to strict confidentiality.

- (d) For the purpose of this Protocol Board proceedings that are held under the 'Chatham House Rule' means that Board members are free to convey the information obtained by them and opinions disclosed to them for the purpose of reporting to their nominee organisations or for other AOA purposes so long as neither the identity nor the affiliation of any of the speakers is revealed. Under this Rule information obtained at Board meetings can, where appropriate, properly be disseminated so long as no attribution is made to any particular Board Member of any view expressed.

## **5. General duties of Board Members**

- 5.1. Board Members recognise their duty of loyalty to AOA and to the Board, and agree that outside the Boardroom they will support the letter and the spirit of Board decisions when in contact with other parties.
- 5.2. No Board Member is to act in a way likely to bring discredit on AOA.
- 5.3. Board Members have a right and a duty to consider properly all matters brought to the Board. It follows that their attendance at Board meetings is important and that apologies should be tendered only in unavoidable circumstances. They should give proper consideration to Board papers and other relevant information before each meeting.
- 5.4. Board Members have a right and a duty to raise matters of serious concern at Board meetings. In order that such matters can be discussed properly it is important that other Board Members be given time to consider them, and it is good practice for a Board Member with a serious concern to mention it to the Chair in time for the matter to be added to the agenda.
- 5.5. Board Members are expected to be frank and open in Board meetings and to question, request information and raise issues. They recognise that where disagreements occur every effort should be made to resolve the issue and to avoid dissension. Board Members have a right to resign, but if they choose to remain on the Board they are bound by the collective decisions of the Board and may be legally liable for them.
- 5.6. All Board Members are expected to keep themselves up to date with the affairs of AOA and the Board.
- 5.7. The effectiveness of the Board depends in part on the operation of its committees. Board Members understand that committee work can impose a considerable burden and agree to share it as equitably as possible.

- 5.8. Board Members recognise that the effectiveness of the Board will be enhanced if contributions to Board discussions are kept brief and relevant, and if each builds on the previous contributions of others. The Chair is responsible for the conduct of the Board meetings and the Board Members must support the Chair in maintaining order and making Board discussions effective.

## **6. Board Members' Rights**

- 6.1. In order to discharge their duties properly, Board Members must have a right to identify the information which they need and to receive it in a timely way.
- 6.2. Individual Board Members have a right to obtain from senior management employed by AOA any information or assistance which is necessary for them to discharge their duties. Board Members will normally discuss their request for such information with the Chief Executive Officer prior to approaching another member of senior management. It is recognised that such questions and requests may involve a substantial amount of work and impact on management's regular duties. Accordingly, Board Members agree that if a question of senior management cannot be answered without special work it will be put in writing and a copy sent to the President and the Chief Executive Officer.
- 6.3. Outside specialist advice at AOA's expense is advice to the Board as a whole and should normally be arranged by the CEO at the request of the Board. In exceptional circumstances, if one or more Board Members wish to obtain special advice the matter should be raised with the President who may exercise a discretion to arrange for the advice to be obtained, or may refer the matter to the Board. If such advice is obtained it should be made available to the Board as a whole.

## **7. Board Members' Benefits**

- 7.1. Board Members are entitled to remuneration as determined in accordance with the Constitution, reasonable business expenses and reasonable insurance cover. In seeking reimbursement of business related expenses, Board Members should adhere to protocols as specified by the Board. Board Members will be provided with details of applicable current insurance policies held by AOA

## **8. Becoming a Director**

- 8.1. A person must provide written consent to being appointed a Board Member. Personal details of Board Members including:

*Title, full name, former names (if any), date of birth, residential address, telephone number, email address, position held, and date of appointment and other directorships held*

must be forwarded by the Company Secretary to the Australian Charities and Not-for-Profits Commission (ACNC), the body regulating not-for-profit companies such as AOA

8.2. By law, a director must NOT:

- (a) be under the age of 18;
- (b) be an undischarged or executed a personal insolvency agreement in Australia or a foreign country;
- (c) have been convicted of certain offences within 5 years prior to appointment as director;
- (d) have been ordered by the Court or ASIC not to manage a company; or
- (e) have been disqualified from managing corporations in a foreign jurisdiction.

8.3. Directors are required to disclose certain interests, such as an interest in AOA or a contract AOA has or is proposing to enter into.

8.4 The Company Secretary has an important role in facilitating the proper and effective functioning of the board and in ensuring that board procedures are followed. The Chair and the board will look to the Secretary for guidance in fulfilling their responsibilities under the rules and regulations to which they are subject and on how those responsibilities should be discharged. All directors should have access to the advice and services of the Company Secretary and the independence of the office should be recognised and supported.

I acknowledge that I have received and read the above Protocols, which have been approved by the Board.

I acknowledge and agree to be bound by the terms of the Protocols.

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Name  
Position

Date:.....