

Guide for Board of Directors – Rights and Responsibilities

1. Introduction

This guide is intended to inform members of the Board of their responsibilities and to provide a clear set of principles for standards of conduct to which directors can refer.

2. The Nature of the Corporate Entity

The Institute of Quarrying Australia ('IQA') is a limited liability company, limited by guarantee. The IQA is registered as a non-profit organisation and has been granted a charity status by the Australian Commission for not-for profit Commission ('ACNC'). The company does not have share capital and the liability of members is limited to ten dollars (\$10). The requirements of the Corporations Act and the ACNC regulations apply generally, particularly in relation to the lodgement of returns and corporate governance matters, although the financial recording requirements for an association are less rigorous.

3. The Objects of the IQA

The objectives of the IQA are set out in Clause 3 of the IQA's constitution ('Constitution'). The objects for which the company is established are:-

- to advance the science of quarrying ("the Science") in Australia in the interest of the public at large and also assist the advancement of the Science overseas by working co-operatively with the other international institutes;
- to participate in an international association of companies and organisations with similar aims, under the auspices of The Institute of Quarrying incorporated in the United Kingdom;
- to institute or subscribe towards or otherwise help and forward any research work which may be necessary for the advancement of the Science;
- to promote and foster area organisations of persons engaged in the practice of the Science to deal with area problems and to act or co-operate with such organisations on matters arising from their proceedings which may be the concern of the Institute in relation to the advancement of the Science;
- to promote or encourage and to take all necessary steps to establish and maintain standards of quality and workmanship in the quarrying industry and to act in an advisory capacity concerning problems and matters of any nature arising in connection with the Industry;
- to collaborate or exchange views with any persons and organisations on education, technical, and safety problems connected with the Industry and to co-operate with any persons and organisations with a view to the promotion and advancement of movements for the improvement of working and other conditions in the Industry as a whole;
- to maintain a public relations and publicity organisation;
- to prepare, edit, print, publish, issue, acquire, circulate and sell books, papers, periodicals, gazettes, circulars and other like publications including but not limited to the magazine "Quarry", and to establish, form and maintain museums, collections, libraries and collections of information relating to the Science or The Industry and to translate, compile, collect, publish, lend and sell and endeavour to secure or contribute to the translation, compilation, collection and publication by parliament, government departments and other bodies of persons of any such literature or information and to disseminate the same by means of the reading of papers, the delivery of lectures, the giving of advice, the appointment of advisory officers or otherwise;
- to hold or participate in exhibitions, show displays, conferences, seminars, congresses, meetings and other gatherings; and
- to retain or employ skilled professional or technical advisors or workers in connection with the objects and to found, aid, maintain and endow scholarships and bursaries for the remuneration, instruction and support of students engaged in studying the principles involved in the Science



whether in laboratories, workshops, quarries or mines of the Company or its members and to employ and remunerate as may be considered expedient, inspectors and supervisors of such students.

4. Statute and Common Law

The IQA is subject to common law and to statute law. Statute law comprises legislation enacted by state and local governments and typically involves areas such as taxation, privacy, occupational health and safety, the environment, freedom of information, etc.

The IQA can be vicariously liable for the actions of its employees or agents. This means that the IQA can be sued or found responsible in certain circumstances, for example commercial transactions, wrongful acts, etc, for the actions of these individuals.

5. Duties of a Board Member

The duties of a board member arise from a variety of sources, some from the IQA Constitution and some from general law.

5.1 Duties under the IQA Constitution

Clause 29 of the Constitution provides that the powers and duties of the Institute shall vest with the Board other than those reserved for the Annual General Meeting. The Constitution provides that:

- The Board must meet at least six (6) times a year;
- Minutes must be kept of Board and Committee meetings;
- The IQA's accounts must be audited annually.

5.2 Fiduciary Duties

Board members are fiduciaries, i.e. persons responsible for acting for the benefit of others. As such, the following broad duties apply;

- The duty to act honestly;
- The duty to avoid actual or potential conflicts of interest;
- The duty to decide where the IQA's interests lie and how they are best served.

5.3 General Duty of Care

Directors are subject to a general duty of care. This encompasses the duty to act with reasonable care, skill and diligence, to ensure they have a general understanding of the IQA's activities and to place themselves in a position to guide and monitor the management of the organisation.

5.4 Duty of Confidentiality

Members of the Board must not disclose confidential information obtained in their role as director, nor use this to gain advantage for themselves or someone else. Confidential information is any fact or knowledge not in the public domain.

6. Principles of Conduct: Responsibilities of Board Members



The following list summarises principles of conduct by legislation and the courts:

- Always act honestly;
- Always act in the best interest of the IQA;
- Attend board meetings regularly;
- Read board papers, be attentive at meetings and take an active part in the business of the Board;
- Be prepared to hear and consider all relevant information before making a final decision; members cannot bring a closed mind to the decision-making process;
- Do not vote at the direction of another person, either an outside group or another board member;
- Do not promote one's own personal interests, divert or make improper use of IQA's commercial opportunities or compete with the IQA;
- Always act to avoid actual or potential conflict of interest. A conflict of interest can arise when there is an expectation that either you personally or a person with whom you are closely associated, may benefit financially;
- Always declare any direct or indirect interests and do not vote on the matter. For example, contracts, awards, people appointments, etc;
- Ensure that there are in place policies and procedures for the administration of the IQA's day-to-day affairs including clear authorities and a system of Board supervision; and
- Whilst the IQA can be liable for the actions of its members and employees, a director who adopts the above guidelines as a standard of conduct will not normally be personally liable for any damages or fines of the Board.

6.1 Directors' General Roles

Directors have ultimate responsibility for the overall successful operations of the Institute. Their duties relate to:-

- Financial operations and solvency;
- All matters as prescribed by law including, but not limited to, safety and the environment;
- All major policy issues including, but not limited to, industrial relations and quality assurance; and
- The strategic direction and goals of the Company.

In particular, s181(1) of the Corporation Law states that Directors must act in the "best interests of the corporation". As such, action that favours some members or external interests above others will generally breach this duty, even if the disadvantaged members are a minority.

Individual directors on the Board may hold different positions. These include ordinary members and office bearers including Chairman / President, Vice Presidents and Company Secretary

6.2 The role of the Chairman / President

The chairman is critical in creating the right environment for board and individual director effectiveness, not only at board meetings but also outside the boardroom. Accordingly, a successful chairman must have the ability to inspire and motivate members of the board and senior management.

- Ensuring the board's business is conducted efficiently and setting the agenda. Where possible the agenda needs to be strategic in nature and take into account the views of all members of the board.
- Acting as the official representative of the organisation, ensuring effective two-way communication with members and encouraging board members to appreciate the opinions of major stakeholders;



- Encouraging interactive participation by all board members in the organisation's affairs, ensuring that all directors are heard and that discussions are not dominated by a minority of the board
- Clarifying matters which refer to the rules, policies and procedures of the organisation;
- Ensuring that sufficient time is allowed for discussion of complex, controversial and important items. Where appropriate, the chairman may arrange for briefings outside the main board;
- Promoting strong working relationships and open communication, inside the boardroom and outside, between directors and senior management;
- Establishing a good working relationship with senior management, supporting and providing advice without interfering in their area of responsibility;
- Building an effective board, in terms of skills and capabilities, initiating change where necessary and ensuring that regular succession planning is undertaken;
- Setting the tone and style of board discussions to improve the effectiveness of decision-making and constructive debate;
- Managing the evaluation process of senior management and the board itself.

6.3 Company Secretary

Under the direction of the chairman, the company secretary's duties may include facilitating board performance reviews, induction and professional development programs for directors, and ensuring effective information flows within the board, to and from committees and between directors and management.

Under the Corporations Act, the appointment (and if necessary, the removal) of the company secretary is a matter for the board as a whole. The company secretary is accountable to the board, through the Chairman, on all corporate governance matters regardless of other positions the company secretary may hold in the organisation, which may have a different reporting line.

The role of the company secretary is one of the few roles that is prescribed by legislation.

The core duties are:-

- providing advice to the directors and officers in relation to the requirements of the Corporations Act, ACNC regulations and other corporate law regulations, and the organisation's constitution;
- advising the board, and individual directors, on corporate governance principles and plans;
- acting as the chief administrative officer of the organisation;
- communicating the instructions of the board, assisting in the implementation of corporate strategies and giving practical effect to the board's decisions; and
- communicating with the organisation's members and the public at large, as appropriate.

6.4 Relationship with Senior Management

The primary relationship for the board with staff of the organisation is carried out through the General Manager. The relationship with the General Manager is managed on behalf of the board by the chair although it is the board's responsibility as a whole to direct the performance of the General Manager.

The relationship between the board and the General Manager should be one of mutual respect and a clear understanding of each other's roles with a constructive process of resolving those areas where roles might overlap. The General Manager and chair must agree to raise any issues where it is not clear whether it is a governance or management issue.

The relationship between the board and the General Manager should be open, productive and collaborative. Effective governance arrangements for the General Manager include:-

- Support and respect for their role;



- Supervision and guidance;
- Reasonable performance targets and appraisal process; and
- Clear delegations

The General Manager also has an important role in assisting the board to develop its competency and leadership.

It is good practice for the board to determine the boundaries between the responsibilities of the board and senior management. Examples of matters reserved for the board:-

- Approval of strategy, business plans and objectives, and monitoring of performance against them;
- Approval of financial statements;
- Approval of substantial acquisitions / disposals over an agreed limit;
- Board membership and appointments, review of board, committees and General Manager's performance; appointment / removal of senior management and company secretary;
- Appointment and terms of reference of board committees;
- Delegation of authority to General Manager and Company Secretary;
- Remuneration policy for General Manager and Company Secretary;
- Corporate governance principles and practice, codes of ethics or conduct;
- Appointment of auditors and principal professional advisors; and
- Approval of policies.

6.5 Relationship with Other Staff / Contractors

The board or individual board members do not have a formal reporting relationship with other members of staff or contractors. Board members cannot direct staff or ask them to carry out tasks. Staff and contractors report to the General Manager who reports to the board.

However, staff must know about the board and the decisions being made. The General Manager acts as a communication channel to staff, informing them of board decisions and consulting them in the development of board reports. Staff should have access to board minutes and be aware of the legal responsibilities of the board.

7. Directors' Code of Conduct

In accordance with legal requirements and agreed ethical standards, Directors will:-

- Owe a fiduciary duty to the Institute as a whole;
- Use the powers of the office for a proper purpose;
- Discharge their duties in good faith and honestly;
- Act with the level of skill, care and diligence expected of a Director of a major company;
- Demonstrate commercial reasonableness in their decisions;
- Act for the benefit of the Institute;
- Not make improper use of information gained through their position as a Director;
- Not take improper advantage of the position of Director;
- Not allow personal interests, or the interest of any associated person, to conflict with the interest of the Institute;
- Make reasonable enquiries to ensure that the Institute is operating efficiently, effectively and legally towards achieving its goals';
- Undertake diligent analysis of all proposals placed before the Board;
- Not engage in conduct likely to bring discredit upon the Institute;
- Give of their specific expertise generously to the Institute; and
- Comply with the spirit, as well as the letter, of the law and with the principles of this Charter.



7.1 Expectations of Directors in Board Process

A Director shall, in good faith, behave in a manner that is consistent with generally accepted procedures for the conduct of meetings, at all meetings of the Board. This will include, but not be limited to:-

- Acting in a business-like manner;
- Acting in accordance with the Constitution;
- Addressing issues in a confident and firm, yet friendly manner;
- Using judgement, common sense and tact when discussing issues;
- Minimising chatter and irrelevant remarks;
- Ensuring that others are given a reasonable opportunity to put forward their views (i.e. refraining from interruption or interjection when a speaker has the floor); and
- Being particularly sensitive in interpreting any request or indication from the Chairman that aims to ensure the orderly and good-spirited conduct of the meeting.

Directors are expected to be forthright in Board meetings and have a duty to question, request information, raise any issue, fully canvas all aspects of any issue confronting the Institute and cast their vote on any resolution according to their own decision.

However, outside the Boardroom, Directors shall support the letter and spirit of Board decision in discussion with members and/or stakeholders. Directors will keep confidential all Board discussions and deliberations. Similarly, all confidential information received by a Director in the course of the exercise of the Director's duties, remains the property of the Institute.

It is improper to disclose information, or allow information to be disclosed, unless that disclosure has been authorised by the person from whom the information is provided, or is required by law.

7.2 Conflict of Interest and Related Party Transactions

Directors must:-

- Disclose to the Board actual or potential conflicts or interest which may exist or might reasonably be thought to exist between the interests of the Director and the interests of any other parties in carrying out the activities of the Institute; and
- At the request of the Board, within seven days or such further period as may be allowed, take such steps as are necessary and reasonable to remove any conflict of interest referred to above.

If a Director cannot or is unwilling to remove a conflict of interest as required, then the Director must absent himself/herself from the room when discussing matters about which the conflict relates. This entry and exit should be minuted.

However, where the Board passes a resolution that identifies the Director, the nature and extent of the Director's interest and clearly states that the remaining Board members are satisfied that the interest should not disqualify the Director, then that Director can take part in discussions and voting involving the conflicting interests.

Directors must indicate to the Chairman any potential conflict of interest situation as soon as it arises.

Further, under s192(1) of the Corporations Law, "A director of a company who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter" and that such notice "may be given at any time and whether or not the matter relates to the affairs of the Institute at the time the notice is given". Such notice shall be recorded in a Register of Ongoing conflicts of Interest.



The same requirement will exist for related party transactions. Related party transactions include any financial transaction between a Director and the Institute and will be reported in writing to each Board meeting.

These requirements will also apply to all senior officers of the Institute. The Company Secretary will maintain a Register of Related Party Transactions, and a Register of Ongoing Conflicts of Interest.

8. Board Training and Review

The board will undertake a review of its own performance each year to identify early warning indicators of under-performance in its corporate governance arrangements. This involves monitoring how the organisation is performing, how the board is operating and if its overall performance contributes to the organisation. Each board member and senior management will complete the self-assessment checklist annually. The outcome of the assessments will be aggregated and reported back to the board as the basis for developing strategies to address areas of weakness.

9. Protection against Liability

Clause 35 of the Constitution requires that the IQA indemnify its directors, officers and committee members against costs, expenses or liabilities incurred in exercising the Board's powers. The major areas for insurance obligation include:-

- Directors Liability Insurance;
- Public and Products Liability Insurance;
- Workers Compensation; and
- Events & Conference Insurance.

The Board has a responsibility to ensure that all insurance obligations are current and adequate. The board will need to periodically review policies and coverage offered

The IQA maintains **Directors Professional Indemnity / Association Liability Insurance** (which includes Public and Products liability insurance), workers compensation and Events & Conference insurance in conjunction with event management the respective event management organisers. Directors are indemnified against costs or losses which may be incurred as a result of any act or thing done by the director in good faith or in the discharge of his/her duties and approved by the Board. Copies of the current insurance policies are available on request.

Any insurance policy will be rendered void if directors or staff are found to be criminally negligent or to have committed fraud. Unintentional mistakes or decisions made in good faith will not render a policy void.

10. Emergency Contact Procedures

As there is the occasional need for urgent decisions, Directors should leave with the Company Secretary, any contact details, either for themselves or for a person who knows their location, so that all Directors can be contacted within 24 hours in cases of urgent business.

Related Documents:
IQA Board and Council Governance Policies
Section 16: Policies P1 – P25