

Institute of Quarrying Australia

 		IQA Policy P10	
National Secretariat		Directors' Duties & Responsibilities	
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Board Approved:	16 February 2016	Contact:	Company Secretary

Purpose

The Directors' duties & responsibilities policy outlines the key duties that are required of the IQA's Directors and the principle responsibilities placed upon them.

1. Duties of a Board Member

The duties of a board member arise from a variety of sources, some from the IQA Constitution, Australian Securities and Investment Commission ('ASIC'), Australian Charities and Not-For-Profit Commission ('ACNC') and and some from general law.

1.1 Duties under the IQA Constitution

Clauses 25, 26 and 27 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. Some of the key duties prescribed in the constitution include the following:

- The Board must meet at least six (6) times a year;
- Minutes must be kept of Board and Committee meetings;
- Appoint and remove key personnel, legal representatives, bankers and auditors;
- Invest and manage the finances of the Institute; and
- Set and approve the strategic direction of the Institute.

1.2 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.

1.3 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.

1.4 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.

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2.1 Principles of Conduct: Responsibilities of Board Members as required by legislation.

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. (refer to Board Policy Framework & Organisation Policy P16-12 and Matters Reserved for the Board Policy P16-24);
- 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.

2.2 What does the law expect of a director personally?

Directors must:

- be honest and careful in your dealings at all times;
- know what the Institute is doing;
- take extra care if the Institute is operating a business because you may be handling other people's money;
- make sure that the Institute can pay its debts on time;
- see that the Institute keeps proper financial records;
- act in the Institute's best interests, even if this may not be in your own interests, and
- use any information you get through your position properly and in the best interests of the Institute. Using that information to gain, directly or indirectly, an advantage for yourself or for any other person, or to harm the Institute may be a crime or may expose you to other claims. This information need not be confidential; if you use it the wrong way and dishonestly, it may still be a crime.

If you have personal interests that might conflict with your duty as a director, you must generally disclose these at a directors' meeting.

2.3 What work must a director do?

Directors will control the Institute's business, as such they must be fully up-to-date on what the Institute is doing:

- Find out and assess how any proposed action will affect the Institute's business performance, especially if it involves a lot of the institute's money.
- Get outside professional advice when more detail is needed to make an informed decision.
- Question the Chief Executive Officer about how the institute is going.
- Take an active part in directors' meetings.

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Directors must be willing, able and have enough time to put in the effort.

Avoid any company where someone offers to make you a director on the promise that 'you won't have to do anything' and 'just sign here'. You could be exposing yourself to many legal liabilities.

2.4 Can anyone be a director?

An individual must not act as a director (or manage a company) without court consent if they:

- are an undischarged bankrupt.
- are subject to a personal insolvency agreement or an arrangement under Part X of the *Bankruptcy Act 1966* (Bankruptcy Act) that has not been fully complied with.
- are subject to a composition under Part X of the Bankruptcy Act and final payment has not been made, or
- have been convicted of various offences such as fraud or offences under company law, such as a breach of your duties as a director or insolvent trading. If you have been convicted of one of these offences you must not manage a company within five years of your conviction. If imprisoned for one of these offences, you must not manage a company within five years after your release from prison.

If a Director becomes bankrupt, they've entered into a personal insolvency agreement or is convicted of a relevant offence at a time when they're a director then you automatically lose that office. The company must then notify ASIC / ACNC that they've no longer a director of the company.

ASIC / ACNC can also ban them from being a company director in certain situations.

Any individual not allowed to be a company director, is not allowed to manage a company. It is a serious offence to set up dummy directors while ineligible individuals really manage the company.

Directors must also be 18 years or older.

2.5 What happens to dishonest directors?

Every year, the courts sentence dishonest and reckless company officers to prison, and impose heavy fines and award damages against individual directors and company officers.

As the company watchdog, ASIC investigate corporate crime. **Anyone can report dishonest company directors to ASIC / ACNC.** ASIC may take a number of steps against directors who fail in their duties.

2.6 What company records must the Institute keep?

The law makes Directors personally responsible for keeping proper company records.

They must see that the Institute keeps up-to-date financial records that:

- correctly record and explain its transactions (including any transactions as a trustee), and
- explain the company's financial position and performance.

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All companies must have financial records so that:

- true and fair financial statements of the company can be prepared if needed;
- financial statements can be conveniently and properly audited if necessary; and
- the company can obey the tax laws.

2.7 What are financial records?

Some of the basic financial records that the law may require a company to keep are:

- general ledger, recording all the company's transactions and balances (e.g. revenue, expenses, assets, liabilities) or summarising transactions and balances detailed in other records;
- cash records (e.g. bank statements, deposit books, cheque butts, petty cash records);
- debtor and sales records (e.g. a list of debtors and their balances, delivery dockets, invoices and statements issued, a list of all sales transactions);
- creditor and purchases records (e.g. purchase orders, invoices and statements received and paid, unpaid invoices, a list of all purchases, a list of all creditors and their balances);
- wage and superannuation records;
- a register of property, plant and equipment showing transactions and balances in relation to individual items;
- inventory records;
- investment records (e.g. contract notes, dividend or interest notices, certificates);
- tax returns and calculations (e.g. income tax, group tax, fringe benefits tax and GST returns and statements); and
- deeds, contracts and agreements.

A company would also normally prepare the following statements regularly (e.g. monthly) to manage its business performance and provide to lenders:

- *Statement of Comprehensive Income*: a statement showing the company's revenue and expenses and the profit or loss that results from these items;
- *Statement of Financial Position*: a statement showing the things of value the company owns and the debts the company owes; and
- *Statement of Cash Flows*: a statement summarising cash inflows and outflows.

2.8 Responsibility

The Company Secretary is responsible for the review of this policy.