



# **BOARD CODE OF CONDUCT**

**March 2020**

## CONTENTS

1. Introduction .....	3
2. Role of the Board .....	3
3. Duties of Board Members .....	4
4. Needs of Board Members .....	5
5. Confidentiality of Information.....	6
6. Conflicts of interest .....	6
7. Pecuniary Interests.....	8
8. Notification of Suspected Corrupt Behaviour .....	9
9. Improper or Undue Influence.....	10
10. Dissent.....	10
11. Summary .....	12

## 1. Introduction

<i>Background</i>	1.1	The Board of HRNSW is created by law through the passage of the <i>Harness Racing Act 2009</i> (“the Act”). Under the terms of the Act, the Board of HRNSW is not subject to direction by Government in the exercise of its duties and powers.
<i>Requirements</i>	1.2	<p>In the exercise of its powers, the Board is expected to represent the interests of the harness racing industry and the public. As a governing Board independent of Government oversight, best practice and the Act specifies that:</p> <ul style="list-style-type: none"><li>■ The Board must develop a formal code of conduct defining the standards of personal behaviour to which individual Board Members should be requested to subscribe;</li><li>■ Directors must act in the public interest and in the interests of the harness racing industry as a whole in the State; and</li><li>■ Directors must make full disclosure of a conflict or potential conflict of interest to the board.</li></ul>
<i>Purpose</i>	1.3	The purpose of this document is to address the requirements of the Act by defining the standards of behaviour expected of individual Board Members. This Code is a document adopted by HRNSW under Clause 16, Schedule One of the <i>Harness Racing Act</i> and should be read in conjunction with HRNSW’s Code of Conduct for Staff and Members, which also applies to Board Members.

## 2. Role of the Board

<i>Stewardship</i>	2.1	The role of the Board of HRNSW is to provide stewardship to the organisation. It undertakes this role by meeting regularly to consider alternatives and decide how best it can achieve its functions which are set out in the <i>Harness Racing Act 2009</i> .
<i>Relationship with management</i>	2.2	The Board’s relationship with management on day-to-day operational Issues is to establish the organisation’s broad objectives, approve policy and, review and monitor the achievement of objectives. Management has responsibility to carry out the policies approved by the Board.
<i>Define Roles</i>	2.3	The Board of HRNSW has defined its role in each of the following five areas in a way that reflects its primary responsibility for setting goals, maintaining achievement of those goals, monitoring their implementation and ensuring managerial accountability, while recognising management’s role in formulating proposals for consideration of the Board:

### 1. Appointment of the CEO

The primary responsibility for selection, removal and remuneration of the CEO rests with the Board. Endorsement of the selection and remuneration of managers, on the recommendation of the CEO, is also appropriate.

**2. Human resources issues**

In other human resources areas a broad policy involvement is appropriate.

**3. Strategy and Policy**

Strategies and major decisions for the benefit of achieving the functions of HRNSW can be initiated by either management or the Board of HRNSW. It is the responsibility of the management team to formulate and develop these initiatives.

Policies and strategies are then critically reviewed by the Board before their approval or rejection. Management then has the responsibility to implement those strategies and policies and the Board's role is to monitor their implementation.

**4. Budgeting and planning**

Preparation of annual financial budgets and corporate planning are management responsibilities that are undertaken according to parameters established by the Board of HRNSW.

Proposed budgets and corporate plans are subject to Board approval.

**5. Reporting and regulatory compliance**

The Board of HRNSW will comply with both the spirit and intent of regulations and adopt high standards of self-regulation.

**6. Ensuring effectiveness**

The Board of HRNSW will regularly review and assess its own performance and that of its Members, and ensure that its own composition, committee structures and support are appropriate.

## 3 Duties of Board Members

*Fiduciary Duty*

3.1

Board Members are subject to a range of duties owed to HRNSW. These are derived from the *Act* and common law. At the most fundamental level these duties are:

- The fiduciary duty of loyalty, which is usually expressed as a duty to act in good faith and in the interests of the body as a whole;

- The duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office.

The fiduciary duty of loyalty is owed to HRNSW. A Board Member's duty of loyalty to HRNSW is "fiduciary", that is to say, it imposes the highest standard of fidelity, because the Board Member occupies a position of trust vis-a-vis HRNSW.

The nature of the duty is similar to that of the trustee towards the beneficiaries of a trust.

The principal manifestations of this duty of a member are:

- To act bona fide in the best interests of HRNSW as a whole;
- To exercise the powers conferred by the *Act* for the proper purposes of HRNSW and not for any extraneous purpose; and
- Seeking to avoid being placed in a position where his/her duty to HRNSW conflicts or may conflict with personal interest, and if such a possibility arises disclosing the matter and handling it in the interests of HRNSW.

#### *Other Duties*

3.2

Board Members should not exceed the powers conferred by the *Act*. Board Members acting under the direction of HRNSW can do so without fear of prosecution provided their actions are done bona fide for the purposes of executing the *Harness Racing Act 2009*.

Loyalty to HRNSW requires a Board Member to support policy decided by HRNSW at properly constituted meetings, even if the Board Member did not (and perhaps still does not) personally support the policy.

Board Members are expected to be frank and honest in their official dealings with each other.

## 4. Needs of Board Members

#### *Access to information*

4.1

To enable Board Members to be effective they need access to sufficient, reliable information. Board Members can reasonably expect that sufficient detail will be made available to them within reasonable time to allow due consideration before board meetings.

#### *Obtaining Information*

4.2

A Board Member who is not satisfied that sufficient information is being brought forward to enable his/her duty of care to be exercised must take positive action to persuade a majority of the Board to require additional information to be provided.

What is required should be specified. If he/she cannot persuade his/her fellow Board Members that further information is required, then the steps set out in section 10 (Dissent) apply.

If the Board agrees that further information is required, then it may request that information from the Chairman.

*Provision of expert advice*

4.3

To Enable Board Members to discharge their fiduciary duties properly it may be necessary for them to be provided with expert advice. Such advice should be as objective and independent as possible.

## 5. Confidentiality of Information

*Obligations*

5.1

Board Members have an obligation to maintain the confidentiality of information provided to them which is the property of HRNSW. Information both written and verbal that is not known to other parties should not be released by an individual Board Member except with the permission of a meeting.

Confidential information available to Board Members must be used only in ways which are consistent with the obligations of Board Members to act impartially, with integrity and in the interest of the harness racing industry in NSW.

*Exceptions*

5.2

There are several specific exceptions (required by law) to this principle such as requirements under the *Government Information (Public Access) Act 2009* or when called on to give evidence in Court.

*Duty of Care*

5.3

Where confidential information is provided to a Board Member, care must be taken to ensure that the information is kept secure. If such information is to be disposed of by a Board Member, it must be destroyed.

*Cessation of Appointment*

5.4

A Board Member whose appointment to the Board terminates, must return to HRNSW any documents, items or things gained at any time as a result, direct or indirect, of membership of the Board.

*Media Comment*

5.5

Formal media comment is restricted to the Chairman and CEO or, with the prior agreement of the Board, any Board Member or officer delegated by the CEO. This does not include informal interview opportunities that may present themselves from time-to-time although all comments must be aligned to current HRNSW resolutions and policies.

## 6. Conflicts of interest

*Duties to HRNSW: Avoiding*

### *Bias and Improper Influence*

A Board Member has an overriding duty to act in the interests of HRNSW and to avoid or declare any matter that could affect, or give the appearance of affecting, the Board Member's ability to properly discharge this overriding duty. Such matters generally fall into two categories:

- a) Pecuniary interests, which are subject to the procedure set out in the Act and described in section 7 of this Code.
- b) Other forms of non-pecuniary association that could affect, or give the appearance of affecting, the Member's discharge of their overriding duty to HRNSW.

This section addresses the non-pecuniary associations described in paragraph (b). These associations can result in actual or perceived bias or improper influence in the Board's decision-making processes and must be avoided.

Such interests can include, for example, memberships or other associations with sections of the industry, clubs or individuals that could be affected by decisions of HRNSW. HRNSW requires all Board Members to disclose these relationships on an annual basis and then continuously, as they arise between annual disclosures. The associations requiring disclosure include:

- a) All memberships of clubs and affiliate organisations, in each of the harness racing, greyhound racing and thoroughbred racing sectors;
- b) All sponsorships and endorsements of organisations, licensees and individuals within the harness racing sector, including arrangements involving non-financial support (such as the free use of goods or services);
- c) All connections to wagering operators; and
- d) Any business or close personal relationship with a third party outside the harness racing sector, where that third party is subject to a decision by HRNSW.

An example of an association falling within paragraph (d) would be a Board Member who jointly holds property interests with a third party that are completely unrelated to the harness racing sector. In the normal course, those interests will be irrelevant to the discharge of duties to HRNSW, but they would become relevant if HRNSW was making a decision that could affect the third party.

The type of association to be declared is subject to a test of remoteness. An association need not be declared if it is so remote or insignificant that a reasonable person would regard it as very unlikely to influence the Board Member. Board Members are encouraged to

discuss any possible association with the Chair, if they are in doubt as to whether it is sufficiently remote.

If a Board Member has a non-pecuniary interest of the type described in this section, it is important that the Board Member:

- a) Not participate in debate or any decision, unless the Board has agreed.
- b) Exercise care not to discuss any Board information or deliberations with any interested party (noting that Board Members have general duties of confidentiality to HRNSW);
- c) Make clear to any interested party who approaches the Board Member, that the matter cannot be discussed; and
- d) Comply with their duty to support decisions of the Board.

Whilst a Board Member will annually list all registered harness racing horses bred or owned outright or in partnership, where a Board Member is the breeder or owner, if a matter arises which is specific to a horse (either bred or owned by the Board Member) the Board Member must report this connection at the time any discussion is to be undertaken.

## 7. Pecuniary Interests

### *Register of*

#### *Pecuniary interests*

7.1

The *Act* requires Board Members who have a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered at a meeting of HRNSW, as soon as possible after the relevant facts have come to the Board Member's knowledge, to disclose the nature of the interest at a meeting of HRNSW. HRNSW is required to keep a register to record any disclosures made under this Section and the register is to be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by HRNSW.

### *Declaration*

7.2

Each Board Member, including the Chairman, shall supply at least annually (in February), a return setting out interests in corporations, partnerships and other businesses relevant to the activities of the Board.

Any changes to the annual return should be tabled at a subsequent Board Meeting and thus be kept current.

Each Board Member, including the Chairman, will annually (in February) list all registered harness racing horses bred or owned outright or in partnership.



<i>Disclosure</i>	7.3	An interest which <u>appears</u> to raise a conflict with the performance of the Board Member's duties shall be sufficient to require disclosure. If in doubt, a Board Member should consult the Chairman.
<i>Presence at Board Meetings</i>	7.4	After a Board Member has disclosed an interest, as set out above, the Board Member shall not, unless the Board otherwise determines, be present during any deliberation of HRNSW or take part in any decision of HRNSW, with respect to the matter.

## 8. Notification of Suspected Corrupt Behaviour

<i>Definition of corrupt Conduct</i>	8.1	<p>Corrupt conduct can be any conduct by any person (whether or not a public official) that adversely affects or could adversely affect the honest or impartial exercise of official functions. To be considered corrupt the conduct must also be serious. That is, it must, if proved, be of a type that could constitute or involve:</p> <ul style="list-style-type: none"><li>■ A criminal offence</li><li>■ A disciplinary offence</li><li>■ Reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of a public official.</li></ul>
<i>Responsibilities</i>	8.2	<p>Board Members of HRNSW must not allow themselves to be subject to conduct by persons in the industry or elsewhere that adversely affect or that <u>could</u> adversely affect, either directly or indirectly the honest and impartial exercise of their official functions.</p> <p>If Board Members are uncertain as to whether actions by others may constitute suspected corruption (as defined) they should contact the Chairman or the CEO. Note that if a Board Member is concerned about the consequences of making such a disclosure, they can avail themselves of HRNSW's Whistleblower Policy (see section 8.6 below).</p>
<i>Reporting Obligations</i>	8.3	All reasonably suspected cases of conduct that could directly or indirectly affect the honest or impartial exercise of their official functions as Board Members must be reported promptly in writing to the CEO or Chairman for recording. Additionally if the Chairman or Board Member is charged with a criminal offence it must be reported in writing to the CEO or Chairman.
<i>Gifts and Hospitality</i>	8.4	<p>Board Members must avoid giving the indication that gifts, gratuities or hospitality relating to their membership of the Board will be accepted, either for themselves or any other person or body; or that these may influence decisions.</p> <p>Board Members may accept only token gifts and modest hospitality and hospitality is modest when it is not more than the Board or other Boards with similar responsibilities would provide in return to that company or those individuals.</p>

<i>Disclosure</i>	8.5	If any gift, gratuity or hospitality other than a token kind is offered, full and prompt disclosure must be made to the Chairman or the full Board as appropriate. In any case such gifts should not be accepted.
<i>Whistleblower Policy</i>	8.6	HRNSW has a Whistleblower Policy under which HRNSW officers and Board Members can report misconduct, or an improper state of affairs or circumstances, on a confidential basis. Board Members are able to avail themselves of this policy, usually by making a disclosure to the Chairman or Chief Executive. Where Board Members are made aware of a confidential disclosure made by a HRNSW officer or another Board Member under the Whistleblower Policy, it is important that they maintain confidentiality of the disclosure in accordance with that policy.

## 9. Improper or Undue Influence

<i>Dealing with Staff</i>	9.1	Board Members must take care not to use their position on the Board to influence any other members or staff of HRNSW in the performance of their duties or functions for the purpose of obtaining any advantage for themselves or any other person, whether the advantage is direct or indirect.
---------------------------	-----	--

## 10. Dissent

<i>Resolution</i>	10.1	Board Members should recognise that their responsibilities to their colleagues and HRNSW as a whole require that where disagreement occurs every effort be made to resolve the issue and avoid dissension.
-------------------	------	--

<i>Actions when Dissent Occurs</i>	10.2	Nevertheless there may be times when a Board Member feels so strongly about a matter of principle that the Board Member is unable to acquiesce in a decision of the Board.
------------------------------------	------	--

In such cases the Board Member should consider taking some or all of the following steps:

- Making the extent of the dissent and its possible consequences clear to the Board as a means of seeking to influence the decision.
- Asking for additional legal, accounting or other professional advice.
- Asking that the decision be postponed to the next meeting to allow time for further consideration and informed discussion.
- Recording of dissent in the Minutes.

- Tabling a statement of dissent and asking that it be minuted.
- Writing to the Chairman, or all Members of HRNSW, and/or asking that the letter be filed with Minutes.

Board Members do not have the right to usurp decisions of HRNSW or to pursue a private agenda when they do not agree with the majority decision.

## 11. Summary

To meet the requirements of HRNSW, Board Members must:

- ▶ At all times act honestly
- ▶ At all times exercise due care in the performance of their duties
- ▶ Be diligent, attend Board Meetings and make themselves knowledgeable about the Rules and legal requirements, the operations of HRNSW and the harness racing industry and general social environment in which it operates.
- ▶ Ensure that systems are established within HRNSW to provide sufficient and accurate data on a regular and timely basis, to enable the Board Members to discharge their duty of care and diligence.
- ▶ Act at all times in the interests of HRNSW rather than any sectional interest.
- ▶ Avoid conflicts of interest and identify possible conflicts of interest. A Board member must also disclose relationships that could give rise to a conflict of interest and not participate in related Board deliberations.
- ▶ Be independent in their judgements and actions.
- ▶ Not disclose deliberations, voting outcomes, agreed positions and any sensitive information outside the Board Room.
- ▶ Report to the Chairman or CEO any actions which could adversely affect either directly or indirectly the honest and impartial exercise of their duties as a Board Member.