



# **BOARD CODE OF CONDUCT**

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## 1. Introduction

- Background* 1.1 The Board of HRNSW is created by law through the passage of the *Harness Racing Act 2009* ("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.
- Requirements* 1.2 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:
- 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;
  - Directors must act in the public interests and in the interest of the harness racing industry of the organisation as a whole in the state; and
  - Directors must make full disclosure of a conflict or potential conflict of interest to the board.
- Purpose* 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.

## 2. Role of the Board

- Stewardship* 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 *Harness Racing Act 2009*.
- Relationship with management* 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.
- Defined Roles* 2.3 The Board of HRNSW has defined its role in each of the following five areas in a way that it hopes will reflect its prime responsibility for setting and maintaining achievement of goals and management's responsibility for formulating proposals and monitoring implementation in a way that enhances managerial accountability:
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.
  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 own 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 either from the Chief Executive Officer or, in certain cases, from an outside party.

*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.

<i>Exceptions</i>	5.2	There are only several minor specific exceptions (required by law) to this principle such as requirements under the <i>Freedom of Information Act</i> or when called on to give evidence in Court.
<i>Duty of Care</i>	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.
<i>Cessation of Appointment</i>	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.
<i>Media Comment</i>	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 comment must be aligned to current HRNSW resolutions and policies.

## **6. Conflicts of Interest**

<i>Assessment</i>	6.1	The <i>Act</i> and common law establish high standards for removing conflicts of interest. Conflicts of interest are assessed in terms of the likelihood that Board Members possessing a particular interest could be influenced <u>or might appear to be influenced</u> , in the performance of their duties or any matter.
<i>Personal Views</i>	6.2	When deciding or implementing HRNSW policy, Board Members personal views should not take precedence over HRNSW policy. Similarly, Board Members are expected to support the policies determined by the Board.
<i>Interests of HRNSW</i>	6.3	At all times a Board Member must be able to act in the interests of HRNSW. The interests of associates, affiliates, other racing interests and personal interests of the Board Member or the Board Member's family must not be allowed to prevail over those of HRNSW.
<i>Factional Interest</i>	6.4	The pursuit of self-interest or representation of a factional interest above the interests of HRNSW is a breach of a Board Member's fiduciary duties.
<i>Responsibilities where Conflicts of Interest Arise</i>	6.5	Where a conflict or perceived conflict does arise, the Board Member must consider whether to refrain from participating in the debate and/or voting on the matter, whether to arrange that the relevant Board Papers are not sent, or in an extreme case whether to resign from HRNSW. The Chairman is available to discuss potential conflicts of interest with Board Members.
<i>Disclosure</i>	6.6	In any event, full disclosure of conflicts or potential conflicts must be made at the HRNSW Board Meeting at which the conflicting matter arises. The existence of a Board Member's declaration does not reduce the requirement for the Member to identify conflicts and possible conflicts of interest and to deal with them as set out above. This standard is a self-imposed requirement of HRNSW.

## 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, a return setting out interests in corporations, partnerships and other businesses relevant to the activities of the Board. The returns should be tabled at a Board Meeting and kept current.
- Disclosure* 7.3 An interest which appears 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.
- Presence at Board Meetings* 7.3 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 that matter.

## 8. Notification of Suspected Corrupt Behaviour

- Definition of Corrupt Conduct* 8.1 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:
- A criminal offence
  - A disciplinary offence
  - Reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of a public official, or in the case of conduct of a Minister of the Crown or a Member of a House of Parliament, a substantial breach of an applicable code of conduct or conduct that brings the Parliament or the office of the Minister or Member into serious disrepute and involves a breach of the law
- Responsibilities* 8.2 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 could adversely affect, either directly or indirectly the honest and impartial exercise of their official functions.
- 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.
- Reporting Obligations* 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 offense it must be reported in writing to the CEO or Chairman.

*Gifts and Hospitality* 8.4 Board Members must avoid giving the indication 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.

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.

*Disclosure* 8.5 If any gift, gratuity or hospitality of other than a token kind is offered, full and prompt disclosure must be made to the Chairman or the full Board as appropriate.

## **9. Improper or Undue Influence**

*Dealing with Staff* 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**

*Resolution* 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.

*Actions when Dissent Occurs* 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 the 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.
- ▶ 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.