



**SKATE AUSTRALIA INC.**

**DIRECTORS CODE OF CONDUCT  
BYLAW 5**

*Effective from June 2002  
Revised October 2003  
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## **PREFACE**

The purpose of this Code of Conduct is to outline the key legal duties and obligations of Skate Australia ("SA") Board members.

Board members owe certain duties to SA and its members. These duties require Board members to act competently, honestly, in good faith and in what they consider to be the best interests of SA. If Board members fail to satisfy any of these duties, they may be liable and required to compensate members of SA or third parties who suffer loss as a result of that failure.

This duty statement covers both common law duties (those duties imposed by the courts) and the duties imposed on Board members under the Associations Incorporation Act. It is not an exhaustive summary of a Board members' legal obligations, but it does summarise some of the key obligations imposed on directors.

**1. The Role of Board**

The primary function of the Board of SA, in accordance with its Constitution, is to manage the broad strategic direction of SA.

In addition to this are the general key functions of all Boards, which are to monitor the performance of the management of the organisation and adopt an annual budget, ensure that an effective system of internal controls and policies exist, monitor the progress and results associated with these functions.

The role of a Board and its members is to give direction to the organisation and to accept initial responsibility for its management. It is not the Board members' role to take part in the day to day management of the organisation.

**2. Appointment of Board members**

The composition of the Board of SA is prescribed in its Constitution. In order for the Board to be effective, it is necessary for its members to have the necessary skills, experience and attributes of Board members.

Representation of a full range of skills and experience is a prerequisite for ensuring the Board can discharge its overall obligations to improve performance and protect the long-term viability of the organisation.

**3. The President and the Board**

The President should identify the issues of significance to the Board, provide the right environment for consideration of those issues, and ensure that all members have the opportunity to put their views and have them considered. A carefully structured Board meeting must deal with routine matters quickly and efficiently, allowing time for attention to key areas of responsibility such as accountability, strategic planning, monitoring and policy issues.

**4. The President and the National Board member**

The President represents the most critical link to the organisation through his/her relationship with the Chief Executive Officer ('CEO'). The President must be able to strike the right balance in supporting and trusting the CEO while retaining an objective view of the management of the organisation. Individual Board members should wherever possible use the President as the appropriate link between the Board and the CEO. Where the President is unavailable, the Board members may approach the CEO directly provided that this is done without causing undue interference with the day to day workload of SA Administration.

**5. The Board and the Administration**

The Board through the President will communicate to the CEO as required in relation to the administration of the organisation. As mentioned, where the President is unavailable, the members may approach the CEO directly. Individual Board members should not contact employees of the organisation, and any contact required must be through the CEO. Any Board member is entitled to request and receive specific information at any time. The request must be made to through the President or CEO. Board members must make a prior appointment and report to the CEO when entering SA National Administration.

**6. Role of Board members**

The Board members are required to understand the needs of the organisation and their legal responsibilities as Board members. If appointed because of special skills (for example financial, legal), Board members are expected to contribute those skills to the Board and the organisation.

All public statements are made by either the President or the CEO and Board members must direct all inquiries as to the affairs of SA to the CEO.

**7. Confidential Information**

In terms of the Board and the obligation of members of the Board not to disclose "commercially sensitive information", the information that is likely to be protected may not fall within one of the traditional categories of confidential information.

Information is commercially sensitive where it is of specific value to the group concerned, particularly where its disclosure would allow others to “reap without sowing” or would otherwise be detrimental. In the context of SA, this would involve any information that is of value to SA in the sense that its disclosure may or could cause damage to SA’s reputation, or disclose plans which SA would not want revealed to its competitors and/or other interested parties.

The Board of SA should not reveal outside the Board meeting, any discussions or meetings or documents relating to policies of plans in their “fleshing out” stages.

Guidelines as to how much information should be revealed to members can be taken, by analogy from association law principles. The SA Board should at the very least be informing its constituents of the major decisions which it has made and report on the reasons for these decisions. The Board is justified in not disclosing all its activities on the basis that in doing so it is acting in the interests of SA, by preventing information which may be detrimental to it from being revealed and potentially distorted.

Board members must remember that they have a duty to act in the interests of the Association, which includes the interests of all stakeholders and not select individuals or groups.

A Board member must always be sure that his actions are in the best interests of the Association, rather than for political expediency. This may from time to time place a Board member in a difficult position, for example if asked to comment on a matter which is confidential to his/her Discipline, however the Board member’s duties must always be upheld despite any pressures placed upon him/her by others.

Each Board member is required to enter into, complete and sign a "Confidentiality Agreement" with SA.

#### **8. Primary Duties of Board Members**

Certain duties apply to a Board member in every aspect of the Association’s business and to every transaction the Association enters into. Board members are regarded as owing a fiduciary duty to the Association. This means that a Board member has special obligations to the Association because he or she occupies a position of trust.

In very broad terms, the principle statutory and common law duties imposed upon a Board or Committee member of an Association may be summarised as follows:

- (a) to act honestly and in good faith in the interests of the Association as a whole;
- (b) exercise the degree of care and diligence that a reasonable person in a like position in an Association would exercise in the Association’s circumstances;
- (c) to exercise powers granted to the Board member honestly for the purposes for which they were conferred and not for collateral purposes;
- (d) to avoid any actual or potential conflict between the obligations owed by him or her to the Association and his or her personal interest or other duties to which he or she may be subject; and
- (e) to keep confidential information obtained, and to disclose an account for advantages or business opportunities acquired, in the course of the office of Board member.

## 9. **General Duties of Board Members**

### ➤ **Duty of Good Faith and Honesty**

Board members are almost without exception, given broad discretion to manage an Association's business under the Constitution of the Association. The duty of good faith applies to this discretion and decisions of the Board.

The duty of good faith and honesty of a Board member arises at common law partly (as with most of the other common law duties of Board members) because Board members are regarded as being in a position of trust with respect to the Association, although they are not strictly trustees.

This duty is also reflected in the Associations Incorporation Act, which requires that an officer of the Association at all times act honestly in the exercise of his/her powers and the discharge of his/her duties.

In this context, the duty of honesty is equivalent to the duty to act for a proper purpose. If a Board member's purpose is misguided or improper, the Board member will breach the duty even though there is no question of personal gain or dishonesty in the generally understood sense. Accordingly, a Board member can be dishonest without being fraudulent.

Principally, therefore, this duty requires Board members to consider the interests of the members of the Association. This may involve considering whether the short term or long term interest of members should be paramount.

### ➤ **Duty to Act for a Proper Purpose (and not for a collateral purpose)**

Since Board members of an Association are fiduciary agents, powers given to Board members may only be exercised for the purposes for which they are given. In particular, those powers may not be exercised in order for the Board members to obtain a private advantage and/or gain.

Whether a particular act by Board members as fiduciaries, is a bona fide exercise of their power for the benefit of the Association as a whole is generally determined by ascertaining the substantial motivating purpose for which the power is exercised and then by determining whether that purpose was proper or not.

### ➤ **Duty of Care and Diligence**

Proper performance of the duties of a Board member of a particular Association will be dictated by all the surrounding circumstances including the type of Association, the size and nature of its enterprise, the composition of its Board / Committee and the distribution of its work between the Board and other officers.

The following are some of the broad principles which are relevant in the determination of whether a Board member has fulfilled his or her duty of care and diligence to the Association.

Although the list is not exhaustive, the common law requires that Board members to at least:

- (a) take reasonable steps to place themselves in a position to guard and monitor the management of the Association;
- (b) acquire a working knowledge of the fundamentals of the business of the Association;
- (c) keep informed about the activities of the Association and assess the safety and properness of the business practices of management;
- (d) generally monitor corporate affairs and policies, although a detailed inspection of day to day activities need not be undertaken;
- (e) maintain a familiarity of the financial status of the Association by regularly reviewing the financial statements; and

- (f) make enquiry into matters revealed by the financial statements which call for enquiry.

The common law duty to act with care and diligence is also reflected in the Associations Incorporation Act which provides that in exercise of his or her powers, a Board member must exercise “the degree of care and diligence that a reasonable person in a like position would exercise in the Association’s circumstances”.

It is considered that regard will be had to the special background, qualifications and management responsibilities of the particular Board member in determining whether that Board member has complied with the statutory duties. The standard care for a particular Board member may increase where a person is appointed to the Board because of particular skills.

## **10. Duties and Obligations relating to Conflicts of Interests**

### ➤ **Duty to Avoid Conflict and to Disclose Interests**

One of the clear rules of common law is that neither a Board member nor responsible officer should allow a conflict of interest to compromise their position in the Association. Accordingly, Board members’ “personal” interests (for example, a shareholding in another Association) or other duties (for example, being a committee member of another Association) and their duty to the Association must not be brought into conflict.

### ➤ **Confidential Information**

At common law, a Board member has a duty not to make unauthorised disclosure or use of information. For example, Board members must not disclose or exploit confidential information such as commercially or price sensitive information or information which is confidential by virtue of a contractual arrangement. Disclosure of information may be appropriate in certain circumstances, if the Board member satisfy themselves that disclosure is in the best interests of the Association.

The Associations Incorporation Act also imposes a statutory duty on a Board member not to make improper use of the information acquired by virtue of his or her office to gain, directly or indirectly, an advantage and/or gain for himself or herself or for any other person or to cause detriment to the Association.

### ➤ **Duty not to Divert Corporate Opportunities**

Misuse by a Board member of an Association’s property so as to make a personal gain or gain for any other person (for example, an Association in which the Board member is interested) without the authority of the Association is a clear breach of a Board member’s fiduciary obligation. In particular, a Board member must exploit corporate opportunities for the benefit of the Association. A Board member who breaches this duty may be liable to account for any gain or profit made.

This duty is also reflected in the Associations Incorporation Act which requires a Board member not to make improper use of his or her position (as a Board member) to gain, directly or indirectly, an advantage and/or gain for himself or herself or any other person or to cause detriment to the Association.

Breach of this duty may also involve a breach of a Board member’s duty of honesty imposed by the common law and by the Associations Incorporation Act.

## ATTACHMENT

### Roles and Responsibilities

#### President

- Spokesperson for the Board
- With CEO, spokesperson for SA and Board
- Chairman of the Board & Council meetings
- Compile agenda of Board meetings
- Ensure effective running of the Board and subsequently SA
- Work closely with CEO
- Ensure that the Board members maintain confidentiality of discussion in the meeting and publically support the agreed decision of the Board
- SA representative on FIRS

#### Board & Directors

- Governance
- Members individually to prepare for meetings & contribute to discussion
- Set strategic direction & policy for SA
- Approves operation plan and budget & monitor progress against strategic plan.
- Monitor financial performance of SA and Branches
- Ensure all legal, risk management and compliance responsibilities met
- Interact with outside agencies ASC, ASADA, funding bodies, sponsors, other Federations (in conjunction with CEO)
- Appoint CEO
- Set job description and monitor performance of CEO
- Ensure PD for CEO and Board members as needed
- Act honestly in the best interests of the organisation
- Declare conflict of interest
- Be aware of strengths and weaknesses of organisation, assess and act appropriately on opportunities, threats
- Be aware of business of organisation however do not be involved in day to day running of the organisation or with staff management
- Sanction International events
- Approval of representative teams and team officials as appointed by the Branches
- Support SA involvement in OCRS and FIRS committees

#### CEO

- Operational manager of the organisation
- Responsible to president and board
- Manages day to day running of the organisation
- Set cultural ambiance of organisation
- Liaison between States, Branches, members and the Board
- Draws up operational plan & Budget to implement strategic plan of the Board
- Monitors operational performance against SP & alerts board to variance
- Appoints, manages all staff against KPIs and initiates staff reviews.
- Advises the Board on strategic direction, changing industry environment and policies
- Ensures adherence to policies set by the Board
- Monitors day to day financial management & ensures financial records are kept

- Alerts Board to any impeding problems of significance
- Reporting to ASC and Board as required
- Sanction national events in consultation with Branch Chairman
- Keep database of members

**Branch Chair & Branch Committees**

- Chairman is President of the branch
- Responsible for governance of their branch.
- Set strategic direction of branch
- Set branch operational plan and budget
- Monitor financial performance of the branch
- Develop the branch from entry participation to elite level athletes, coaches, officials and administrators
- Sanction National and State Championships in conjunction with CEO
- Sets requirements for National Championship
- Oversees officials' and coaches' committees including officials and coaches accreditation course development through appropriate committees
- Organise Australian Championships / club Championships in the Branch
- Work co-operatively with State Branch Chairmen
- Source of advice on all matters of the Branch and Branch rules
- Select national teams and team officials for approval by Board
- Liaise with overseas committees of the Branch as required
- Ensure coaches and officials are provided with all necessary information
- Report to CEO and/or Board via CEO as required

Although there are some roles that are clearly the responsibility of one position many overlap. It is important that we all work together and listen to other points of view with respect. Looking at a situation from many angles, which depends on input from a variety of sources, will strengthen our decision making skills and usually make for better outcomes.