



ABOUT THE IAHA BOARD

Introduction

This Governance Charter has been prepared as a guide and summarises key procedures, principles and standards affecting the involvement with IAHA of the Board and CEO (and through the CEO to the staff as a whole). It is IAHA policy that each Board member will be given a copy of this charter at the time of joining the Board of IAHA.

Board members are asked to read this charter carefully. Of course, it is not possible to cover everything that will affect a member of the Board. Any questions or feedback should be directed to the Chairperson, another Board Member or the Board-as-a-whole in meeting.

It is important that appointed IAHA Directors recognise that they do not “represent” the particular interests of, nor should they in their deliberations, think that they are obliged to reflect the position of, ‘represent’ or commit themselves to (or vote in favour of) the point of view of their own allied health profession.

Directors have a legal duty to:

- comply with IAHA's constitution;
- act in the best interests of IAHA as a whole;
- exercise due care, skill and diligence and form their independent opinion on matters before the Board;
- avoid conflicts of interest; and
- avoid insolvent trading.

Meeting ACNC Requirements

As IAHA is a registered charity with the Australian Charities and Not-for-profits Commission (**ACNC**) it has a number of ongoing obligations to the ACNC, including to:

- maintain the company's charity status by remaining not-for-profit and working towards the company's charitable purpose;
- comply with the ACNC's governance requirements and standards;
- submit an Annual Information Statement (**AIS**) each year; and
- notify the ACNC of changes to the company's name, address for service, directors (also referred to as 'responsible persons') or constitution.

Whilst majority of the company's ongoing reporting obligations are to the ACNC rather than the Australian Securities and Investments Commission (**ASIC**), the company is still required to notify ASIC in certain situations (i.e. events which concern the company's corporate status).

Responsibilities of Board Directors

The following information about directors' duties and other obligations includes information from the websites of the ACNC and ASIC.

It covers:

- who can be a company director or secretary;
- a director's duties responsibilities; and
- a company's record-keeping obligations.

A director or secretary of a company regulated by the ACNC must follow the requirements set out in the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) and the *Corporations Act 2001* (**Corporations Act**).

This information does not explain every obligation or cover every situation. At times directors may need to request professional legal advice.

What does the law expect of directors personally?

According to Governance Standard 5 of the ACNC, directors must:

- act with reasonable care and diligence;
- act honestly and fairly in the best interests of the charity and for its charitable purposes;
- not misuse their position or information they gain as a responsible person;
- disclose conflicts of interest;
- ensure that the financial affairs of the charity are managed responsibly; and
- not allow the charity to operate while it is insolvent.

As they are managing other people's money, directors must take extra care, stay informed of what the company is doing and ensure that the company keeps proper financial and operational records.

If a director has personal interests or other duties that might conflict with their duty as a director, they must generally disclose these at a directors' meeting.

What work must a director do?

Directors control the company's business. The company's constitution sets out the directors' powers and functions and the company's internal management rules.

A director must be fully up-to-date on what their company is doing:

- Find out and assess how any proposed action will affect their company's business performance, especially if it involves a lot of the company's money.
- Ensure that the company continues to run as a not-for-profit organisation and continues to work towards its charitable purpose.
- Get outside professional advice when more details are needed to make an informed decision.
- Question managers and staff about how the business is going.
- Communicate about the charity's activities and finances so that the company is open and accountable.
- Take an active part in directors' meetings.
- Only be a company director or a company secretary if willing, able and have enough time to put in the effort.

Can anyone be a director or secretary?

Directors must be 18 years or older.

If you become bankrupt, enter into a personal insolvency agreement, become disqualified from managing companies or corporations or are convicted of an offence at a time when you're a director or secretary then you must immediately disclose this to the other directors. This may mean that you will no longer be able to act as a director of the company. In this case, the company must then notify both the ACNC and ASIC that you're no longer a director or secretary of the company. For more information, see Information Sheet 14 *Bankruptcy and personal insolvency agreements* ([INFO 14](#)) and *Disqualification from being a responsible person*.

ASIC or the ACNC can also ban you from being a company director in certain situations.

What company records must be kept?

As a director, the law makes you responsible for keeping proper company records.

Under the ACNC Act, the company is required to keep two types of records:

- financial records; and
- operational records.

You must see that the company keeps up-to-date financial records that:

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

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.

The company is required to keep operational records to show that the charity:

- is entitled to be registered as a charity:
- meets its obligations under the ACNC Act; and
- meets its obligations under tax law.

As a not-for-profit public company, IAHA will have to prepare and submit an AIS along with a financial report, have them audited and lodge them with the ACNC.

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.

IAHA seeks professional advice if there is any doubt about the content or type of financial records to keep.

Some financial records are kept electronically, but must be able to be converted into hard copy so that they can be given to anyone entitled to inspect them. Backup copies of electronic records should be made regularly.

Company housekeeping: Other records and registers

All company officers must make sure that the company attends to some basic 'housekeeping' matters.

The company must keep:

- registers of members
- minutes of general meetings
- minutes of meetings of directors
- financial records that enable an assessment of the company's financial position and performance and are sufficient for financial statements to be prepared (and audited if necessary) for at least seven years after the transactions are completed.

Annual Information Statement (AIS)

The standard ACNC reporting period is the financial year from 1 July to 30 June. The company's Annual Information Statement (**AIS**) and financial report are due within six months of the end of the reporting period.

The AIS is intended to provide the ACNC with information regarding the charity (i.e. name and address and any changes to its details), the charity's activities and resources, financial information and the details of each 'responsible person' (i.e. the company's directors and secretary). A guide to preparing an AIS can be found on the ACNC's website (<https://www.acnc.gov.au/ACNC/Manage/ACNC/Report/2014AISGuide.aspx>).

Responsible Persons Declaration

IAHA's Directors are required to make a responsible persons declaration as part of IAHA's annual financial report. This replaces ASIC's requirement for a solvency resolution. The form of the Declaration is as follows:

Responsible persons' declaration

(per section 60.15 of the Australian Charities and Not-for-profits Commission Regulation 2013)

The responsible persons declare that in the responsible persons' opinion:

(a) *there are [are not] reasonable grounds to believe that the registered entity is able to pay all of its debts, as and when they become due and payable; and*

(b) *the financial statements and notes satisfy [do not satisfy] the requirements of the Australian Charities and Not-for-profits Commission Act 2012.*

Signed in accordance with subsection 60.15(2) of the Australian Charities and Not-for-profit Commission Regulation 2013.

Responsible person

Responsible persons' declaration

Dated this xx day of xx 20xx

What if your company can't pay its debts?

Directors must ensure that the company is able to pay all of its debts as and when they become due for payment. A company is 'insolvent' if it cannot pay all of its debts as they become due and payable.

By law, a director must prevent the company from incurring a debt when it is insolvent or about to become so. This means a director must consider whether they have reasonable grounds to believe that the company will be able to pay a new debt when it becomes due, as well as pay all the other debts.

A director may expose themselves to criminal prosecution, substantial fines or to action by a liquidator, creditors of the company or ASIC to recover amounts lost by creditors due to their actions.

This is personal liability of a director. A director's personal assets—not just the company's—may be at risk.

Common signs of financial trouble are:

- low operating profits or cash flow from the main business;
- problems paying trade suppliers and other creditors on time;
- trade suppliers refusing to extend further credit to the company;
- problems with meeting loan repayments on time or difficulty in keeping within overdraft limits; and
- legal action taken, or threatened, by trade suppliers or other creditors over money owed to them.

If the company is in financial difficulty or in danger of being insolvent directors must seek immediate advice from an insolvency professional. They will be able to explain options to you. These may include re-structuring the company's affairs, changing the company's activities or appointing a voluntary administrator or liquidator to the company.



How to close down the company

Directors can apply to have the company deregistered (provided the company is solvent), if the following conditions are met - the company:

- is not carrying on business;
- has assets of less than \$1000;
- has paid all its fees and penalties under the Corporations Act;
- has no outstanding liabilities;
- is not a party to any legal proceedings;, and
- all its members have agreed to the deregistration.

If these conditions are not met, the process is more complex and directors will need the help of a professional adviser. The required process may involving winding down the company's operations under the director of the Board or, alternatively, the appointment of a liquidator under a voluntary members winding up.

If the company is wound up the company must cancel its registration with the ACNC.

As IAHA is primarily funded by the Australian Government, its funding agreements will impose certain obligations in winding up (including, for example, the return of certain funds to the Government).

Summary

As a responsible person of the company, a director must ensure they:

- act with reasonable care and diligence;
- act honestly and fairly in the best interests of the charity and for its charitable purposes;
- not misuse their position or information they gain as a responsible person;
- disclose conflicts of interest;
- ensure that the financial affairs of the company are managed responsibly;
- not allow the charity to operate while it is insolvent;
- ensure the company keeps financial and operational records; and
- ensure the company's submits an AIS and a financial report each year.