

INFORMATION FOR THOSE INTERESTED IN BECOMING A MEMBER OF THE BOARD

Thank you for your interest in nominating for a position on the board of our club.

The choice to nominate shows your commitment to the future of our club, it is an important decision to make and can be a rewarding experience. However, it is important for you to be aware of the responsibilities of a director.

Clubs have undergone tremendous change in NSW since their advent in the early 1900s and they continue to change. As the legislative, commercial, consumer and service environments have become more complex and competitive, more and more is being expected of a club director in terms of quality and transparent decision making, and hence having the required knowledge, and commitment to ongoing professional development.



Our club needs to attract individuals with diverse skill sets and it is important that you have insight into the capabilities and behavior expected of a club director and importantly that you have a clear overview of club operations and law.

Benefits of clubs in the community

All registered clubs provide lifestyle and community-focused goods and services to their members and the community at large providing \$1.2 billion in community support. Over 5.6 million club memberships are held in NSW - equivalent to more than one membership for each adult in NSW. Club volunteers contribute over 1.6 million hours to their communities. Clubs have a significant influence on the NSW economy, through financial contributions made via taxes, donations and sponsorships. Clubs employ over 41,000 people throughout NSW and provide opportunities for over 49,000 volunteers. Clubs support a diversity of local community needs, from sport, health and education for a wide range of ages and situations. They also provide a range of entertainment, leisure facilities and services.

Responsibilities of a Director

ASIC have stated that there are 5 foundation legal responsibilities for directors:

-  Comply with the statutory duty of care and due diligence,
-  Exercise your powers and discharge your duties in good faith in the best interests of the company and for a proper purpose,

- Not improperly use your position to gain advantage for yourselves or someone else or cause detriment to the company,
- Not improperly use information you obtain as a director to gain an advantage for yourself or someone else or cause detriment to the company, and
- Disclose to other directors any material personal interest in a transaction.

As a director, you have a duty to question, request information and raise any issue which is of concern to you. You should also use your own judgement when questioning decision making in light of pre-empting the economic climate and any legislative or social changes that may affect club operations. When making decisions, directors should ensure they comply with:

- The law, particularly in the areas of conflict of interest and inducements; and
- The club's constitution.

In pursuing the commercial objectives of the club, ASIC expects that directors will ensure they are satisfied that management is ensuring the club is meeting all of its legal and financial obligations.

According to the Corporations Act 2001, directors must exercise their duties with good faith (Section 181) and honesty (Section 182). One of the most fundamental requirements of the Registered Clubs Act 1976, Section 10 (1) (a) states that the club shall be conducted in good faith as a club. This clearly sets out a director's minimum attributes and personal and professional qualities.

An effective future director shows a success orientation. That means someone who is clear what success looks like and seeks regular feedback about how well they are going, in whatever that is. A 'success orientation' is also about how to be a positive contributor towards success.

NOT A CYNICAL COMPLAINER WHO IS ALL TALK AND NOT A CONTRIBUTOR!

A future director of a club, who is able to contribute effectively to a board, looks for the reporting of a club's 'success position' and understands that this is a critical role for the board, ensuring that they are on track to achieve their plans in the various part of the clubs business. It is essentially a measure of performance. The monitoring of financial matters, ensures the long term financial success of the club. An important part of being a club director is to be able to understand, interpret and comment on complex financial matters such as financial statements, cash flow, depreciation schedules and other financial information. This is an increasingly important aspect of ensuring club viability. Clubs are operating in an increasingly complex and challenging commercial environment;



consequently it is critical that boards have the experience and confidence to make commercial decisions that ensure long term financial prosperity and sustainability for clubs.

YOU are the most important asset that you are offering to the club as a possible future director. The personal motivation for being on a club board, your attitude to service, confidentiality, team working, keenness to learn new things, etc. are extremely critical to your effectiveness if elected to a club board position. So, it is important for you to explore this more fully.

Directors must demonstrate dedication and enthusiasm for the club's mission (reason for existence) and values (the manner in which it operates) which are particularly highlighted in a club's community engagement.

CLUB DIRECTOR VALUES

We are Member Focused

We meet members needs by supplying products and services they see as providing *"value for money"* supported by outstanding service.

We are Community Oriented

We have an external orientation and a clear understanding of the local communities in which we operate. We respond quickly to changing needs and create new opportunities when appropriate.

We are Committed to our Employees

We provide everyone with the opportunity to succeed; we recognise and reward performance; and we build on the diversity of our people.

We Achieve through Teamwork

We work together to improve our relationships with and service to members, and our business performance.

We are Results Driven

We are personally accountable for our contribution to the ultimate success of the club.

We Act with Integrity

We are honest and ethical in everything we do and say.

CHALLENGES FACING CLUB DIRECTORS

Be ready for them! Some of the current issues facing clubs include:

- Managing diverse demands from members,
- Ensuring clubs stay relevant to their communities,
- Managing negative perceptions of clubs as safe venues for socialising, and
- Ensuring relevant branding of your club, reflecting its service offerings matched to its customer base.
- Being up to date with technology and be contactable via emails and SMS.

Representing all members and the broader community is also a significant challenge facing directors. Members are the lifeblood of all clubs. Understanding the composition of your membership will ensure that the decisions you make as a board member will benefit all members and encourage growth and development of the club.

What most people are looking for when they join a club is a sense of belonging, being part of the good work the club does within the community and meeting friends and new people.

It is important not to base your decision on becoming a director on an intention to represent only one group of members or a single agenda item.

Listening well and representing others, not your own personal ideas, and hence acting as a faithful translator of others ideas is not easy but is the basis on which you, as a potential club director, build trust with members and customers. As you represent members and customers, across such a diverse group, you show yourself to be a trustworthy steward of members' assets – the club. This is a critical foundation skill of any future director

Clubs do not, and cannot, operate as 'islands' in the community. Therefore any future club director must be constantly able to scan the media and research well the current debates that might affect clubs and their future. As a future director you must show how you research the media and how you can quickly interpret information and determine possible impacts if you are to add value as a club director.

Some of the current issues facing clubs include:

- Harm minimisation in gaming.
- Staying in step with patrons' recreational expectations and needs.
- New legislation.
- Reducing dependence on gaming through business diversification.



Dealing with increased competition, especially from hotels.

So, what exactly is this Club Director position you are interested in?

According to the Corporations Act 2001 (Section 9), a director of a company or other body is a person who is appointed to the position of a director; or who is acting in the capacity of a director, regardless of their position title. You are also considered a director if you act in the position of a director, or if the directors of your organisation are accustomed to act in accordance with your instructions - even if you are not formally appointed as a director.

SoA Club Director's Role Specifically?

All club directors hold a responsible position of trust to uphold the traditions and public reputation of their clubs. The board must conduct the business and affairs of the club in accordance with their club's constitution and in the best interests of the club and members as a whole. The board must avoid at all costs pandering to a minority of members at the expense of the majority. At the same time, a balance must be struck to ensure the rights of individual members or groups of members are not ignored.

Acting in Concert

It is important to remember that directors acting alone have no power or authority, unless the board has specifically delegated a task, function or responsibility to that director. A director can only effectively exercise power when acting in concert with the other directors.

The Board's Role

The board members - the club's directors - are responsible for setting the policy and planning, the direction of the club and should ensure processes are in place that will deliver a satisfactory result for the members. Board members also have a responsibility to operate in a friendly, efficient manner with other board members, The President and stakeholders. There are various roles within our board comprising of a President/Chair, Vice President, Director of Finance and Directors.

The President

The President's role encompasses demonstrating leadership ensuring the effectiveness of the board and ensuring the full, effective and proper participation of all board members. The President usually sets the agenda ensuring all relevant issues are represented and minutes are documented and disseminated to the board in a timely manner. The President also provides guidance to the board on fulfilling their responsibilities under both the rules of the constitution, and policies and procedures of the club and the agreed ground rules

expressed in a board charter. The President is also responsible for the performance management of senior managers and directors.

Directors and Office Bearers

The directors and office bearers provide leadership and direction to the club. The board members reflect upon existing policy and procedure and propose changes as deemed necessary. They communicate and implement the strategic direction and performance targets adopted by the board. Board members need to be independent in their judgment and actions but can only exercise power when acting in concert.







Who can be a Director?

You must be at least 18 years of age to be appointed as a director.

Our club constitution states: A member will only be eligible to be nominated for or elected to the Board if he or she:

- i) has at least two consecutive years full membership of the Club immediately prior to his or her nomination or election;
- ii) is not a current director of any other registered club;
- iii) is a financial member;
- iv) is not currently under suspension;
- v) has not been suspended for a period of three (3) months or more within four (4) years before the date of nomination or election;
- vi) has not within the past ten (10) years been convicted of an offence which is punishable by imprisonment; and
- vii) is not a former employee of the Club within the last three (3) years, or whose employment was terminated for misconduct.

Under the Corporation Act a person **may not be eligible** to become a director if he or she:

-  Is employed by the club;
-  Is insolvent under administration;
-  Has been convicted in the last five years of an offence in relation to the promotion, formation or management of a body corporate;
-  Has been convicted of an offence involving fraud or dishonesty;
-  Has been declared as ineligible to stand for election, be appointed, or hold office as a director of the club by the Independent Liquor and Gaming Authority;
-  Is ineligible to hold office as a director of the club under the Rules of the club;



Is not a member of the club.

Key Governance Responsibilities of Directors and the Board

Operational governance is the board taking responsibility for good corporate governance of the club on behalf of members and senior managers. Corporate governance is a framework of rules, systems, procedures and relationships. As directors, understanding and practicing authority within corporate governance is a key element of high performing boards. Boards must be continuously aware of risk management, by quantifying and understanding the club's operational exposure to current and future risk. This is an aspect of board responsibility that involves knowledge, assessment and analysis. Directors must be aware of the operating environment which includes the legislation, regulations and guidelines that constitute the operational framework that the board and the club as a whole functions within.

Governance Policies and Procedures

It is recommended that the board should develop four areas of governance policy. These are based on John Carver's Policy Governance® model:

The Strategic Plan - This contains the outcomes, strategic shifts or key results that the board has identified for the organisation to achieve. These are often referred to as Key Performance Indicators (KPIs).

Board–Manager relationship - These define the nature of the Board–Manager relationship, specifying the details and extent of the Board's delegation to the Manager and the methods to be applied in evaluating managements effectiveness.

Manager Limitations - These define the extent of decision-making authority given to the Manager by the Board.

Governance Process - These describe the Board's own operating processes and practices, for example, a conflict of interest policy or a grievance procedure. So, future directors must be aware of what good corporate governance is and that there are industry best practice guidelines. Any future director must give an undertaking to members that they are prepared to ensure all decisions follow these guidelines, even if unpopular. Future directors must also be aware of possible legal and financial implications for them personally if they decide to continue with the process of nomination. It is expected that all future directors will have sought their own independent advice about taking up a director position at their local club. Some specific issues include –

Directors' and Officers' Liability - Directors have an exposure under both legislation and common law. Under the Corporations Act the duties of a director include:

- duty of care and diligence
- duty to act in good faith
- duty to exercise powers for a proper purpose
- duty not to misuse information or position.

Under the Trade Practices Act there are two areas to be aware of:

- restrictive trade practices which include contracts in restraint of trade, e.g. price fixing and exclusive dealing; and
- consumer protection, which covers misleading and deceptive conduct and false representations.

Discrimination and equal opportunity legislation covers:

- wrongful recruitment, promotion or dismissal;
- sexual harassment;
- discrimination; and
- victimisation.

The Work Health and Safety Act 2011 imposes stringent duties on clubs including directors to ensure there is a healthy and safe work environment and safe systems of work. Under the common law, negligence, defamation, breach of contract and contractual misrepresentation all constitute areas of possible liability for directors.

Who might bring an action?

Any of these bodies or groups may bring an action:

- Australian Securities and Investments Commission (ASIC)
- Australian Competition and Consumer Commission (ACCC)
- Australian Tax Office (ATO)
- members and their guests
- employees
- competitors
- creditors
- liquidators
- regulatory bodies.

Types of allegations

The types of allegations that directors may face include:

- breach of the Registered Clubs Act;
- breach of the Gaming Machines Act;
- breach of the Corporations Act;
- discrimination/harassment;
- failure to maintain insurance;
- incorrect statements in an annual report;
- insolvent trading;
- misleading and deceptive conduct;
- misrepresentation;
- unfair dismissal;
- unsafe work practices for employees; and
- unsafe conditions for patrons.

Indemnities and Insurance for Directors and Officers

Section 199A of the Corporations Act prohibits any arrangement (whether contained in the club's constitution or in any contract) whereby the club indemnifies any director or officer or auditor against any liability incurred by that director, officer or auditor arising out of his or her negligence, default, breach of duty or breach of trust in relation to the club.

Accordingly, if a director is sued or prosecuted for negligence, default, breach of duty or breach of trust in relation to his or her conduct as a director, and damages are awarded or a monetary penalty imposed, then the club cannot pay those damages or the penalty for the director. In addition, the director will have to pay his or her own legal costs, as well as those ordered to be paid to the other party to the proceedings. However, a club can indemnify a director, officer or auditor for his or her legal costs incurred in defending any proceedings, whether civil or criminal in which judgment is given in favour of the director, officer or auditor or in which the director, officer or auditor is acquitted in respect of any proceedings in which relief is granted under the Corporations Act to that director, officer or auditor. It is therefore recommended that all directors and other officers of clubs take out appropriate insurance cover for these risks. Directors and officers may also be entitled to an indemnity from the club under the constitution and/or by contract. Even if indemnity exists, it is important to remember that it is often discretionary – not mandatory. A director relies on the club to provide the indemnity.

The club cannot provide an indemnity for:

- a liability owed to the company;
- a liability for a pecuniary penalty order;
- a liability arising out of conduct that is not in good faith; and
- legal costs in defending criminal proceedings or actions if liability is established.

Care needs to be taken by directors of clubs that they make themselves aware of the extent to which any directors' and officers' liability insurance policy covers them for liability. As a separate issue, directors need to be aware of the extent to which insurance policies cover the club itself for any liability. It may be necessary to obtain expert advice on both of these issues from time to time. Directors' responsibility for club debts Section 588G of the Corporations Act provides that if at the time a company (such as a club) incurs a debt:

- the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- at that time, there are reasonable grounds to suspect that the company is insolvent, or would so become insolvent, or a reasonable person in a like position in the company would be so aware then a director of that company can be liable for the debt and can also be liable for a civil penalty.

However, if:

- because of illness or for some other good reason, the director did not take part in the management of the club at the time the debt was incurred; or
- the director took all reasonable steps to prevent the club incurring the debt. In determining this, the matters to which regard are to be given include but are not limited to:
 - any action the director took with a view to appointing an administrator of the club;
 - when the action was taken; and
 - the results of that action; or
- at the time the debt was incurred the director had reasonable grounds to believe and did believe:
 - that a competent and reliable person was responsible for providing to the director adequate information about whether the club was insolvent; and
 - that person was fulfilling that responsibility; and
 - on the basis of the information provided by that person the club was solvent at that time and would remain solvent if it incurred that debt and any other debts that it incurred at that time, then the director has defences to a claim for liability under Section 588G.

If there is the slightest risk that the club may have difficulty in paying any creditor, then directors should seriously consider obtaining financial, accounting and/or legal advice as soon as possible. It is not sufficient for directors to say that they were unaware of relevant facts, matters and circumstances relating to the business, affairs and finances of the club. Directors are not only entitled to receive all relevant information relating to the club's finances but if they are not getting that information they must insist that they do so. In short, ignorance is not a defense for directors. An organisation is insolvent if it is unable to pay debts as and when they become due and payable. Creditors can have an insolvent



organisation liquidated. At the completion of liquidation, the organisation will no longer exist.

I realise this all sounds rather daunting, however it is important for you to understand the role for which you have been nominated, please be assured that our club is up to date with all compliance matters, and we have excellent governance within the Club.

Thank you for your interest.

Regards
Management and the Board
Marks Point Sports Club