



## **Guidelines for Directors of Ability Centre**

### **INTRODUCTION**

The Cerebral Palsy Association of Western Australia Ltd (trading as Ability Centre) is run by a Board comprised of people with various interests and skills drawn from both the community and the organisation's membership base.

Under the organisation's Memorandum and Articles, members of the organisation have an opportunity to be considered for election as Directors of the Board when vacancies arise.

An appointment to the Board carries with it many serious responsibilities and obligations. Lack of knowledge of those responsibilities can damage both the individual and the organisation for whose performance they are accountable. Members also have responsibilities under The Corporations Law which is the key legislation covering the organisation as a Public Company.

A very important rule of company law is that a company is a separate legal "entity" to which duties are owed by its directors and other officers, regardless of the reasons for its establishment. In relation to some matters, such as the use of money and other property of a company, the law takes a very strict approach. The duties owed by directors and other officers are viewed as virtually the same as the duties owed by a trustee of the estate of a deceased person. While the test applied by the law in other situations, for instance in deciding the correctness of the day to day business decisions of a company, may not appear to be as strict, it must be remembered that in every situation directors and other officers are expected to have regard to the best interests of the company rather than to their own personal interest or advancement.

It is, therefore, vital that anyone currently nominating or newly-chosen for such an important position fully understands the scope of the task so that they are able to contribute in a meaningful and positive way to the administration of the organisation.

This document aims to give a general overview of the various obligations and responsibilities of Directors of the organisation. Should you require further information please contact the Chairman or the Chief Executive Officer.

## **ON APPOINTMENT**

For Directors to undertake adequately their specified duties and meet accountability obligations to the organisation, they should gain a sound understanding of the operations of the organisation.

This can be achieved by:

- becoming familiar with all the legislation under which the organisation operates;
- developing an understanding of the environment in which the organisation operates;
- staying informed of all significant matters affecting the organisation;
- attending all Board meetings and other related meetings such as committee meetings and public forums;
- thoroughly reading Board papers and external articles relevant to issues affecting the organisation; and
- actively participating as members of the Board.

## **FULFILLING YOUR OBLIGATIONS**

Governing bodies are established to provide general direction and control of, and to take overall responsibility for, the operations of agencies. They do not manage agencies - this is the role of management. Rather they oversee the management of agencies.

When appointed to the Board, Directors undertake a solemn obligation to carry out their duties in a fair, open, honest and accountable way to the benefit of the organisation and the people it serves. These are called fiduciary responsibilities.

## **FIDUCIARY RESPONSIBILITIES**

Because of their position of trust, Directors' actions and standards of behaviour are required to be exemplary. In fact, legislation to establish new agencies frequently includes details of fiduciary responsibilities and specifies penalties for any breaches.

Members are thus expected to always act, and be seen to act, in the best interests of the organisation and its service users by:

- being scrupulously honest and exercising all due care and diligence in the performance of their duties and functions;
- exercising independence of judgement on all organisation matters;
- maintaining the confidentiality of information made available and also of Board or Committee discussions;
- avoiding any action that could affect their judgement when dealing with organisation matters;

- never making improper use of their position, or of the information gained through that position, to the advantage of themselves or any other person;
- never taking any course of action that would disadvantage the organisation;
- consciously avoiding any conflict of interest;
- disclosing any material or personal interest in an organisation matter, and subsequently abstaining from any discussion or vote on the issue;
- always acting in the best interests of the organisation and not particular interest groups or individuals;
- being bound by, and committed to, decisions legitimately taken by the Board; and providing authorised persons, fellow members and auditors when asked with complete and correct information that is not misleading in any respect.

Overall, members are expected to be role models of corporate behaviour for the community and should at all times adhere to those high standards.

The general duties of company directors, and other company officers, are to act honestly, exercise care and diligence, not use inside information and not make improper use of information or their positions.

### **A director shall at all times act honestly**

A director shall at all times act honestly in the exercise of their powers and the discharge of the duties of their office. The duty to act honestly is an aspect of the principle that directors, as "fiduciaries", must act with the utmost good faith towards the companies with which they are associated. Breach of duty to act honestly covers more than outright dishonesty, such as theft of property belonging to a company or fraud. Directors who, without any intention to defraud, take a decision knowing that it cannot be in the overall best interests of a company would not act honestly.

### **A director must exercise care and diligence**

In the exercise of their powers and the discharge of their duties, a director or other officer of a company must exercise the degree of care and diligence that a reasonable person in a similar position in a company would exercise in similar circumstances. Directors cannot simply agree to proposals put forward by other directors without obtaining some information about the effect of these on the company's business. Nor can they allow themselves to remain uninformed about the state of their company's business. They cannot satisfy themselves that any decision is truly in the overall best interests of the company if they are just "rubber stamps" for various proposals. The court can look at the special skills or education of a particular director when deciding whether that director has met the required level of care and diligence.

It is suggested that in every case directors obtain ongoing information about their company's operations; take an active part in Board meetings; question

management; question the impact on their company's business performance of any proposal, particularly one involving a substantial financial commitment on the part of the company; and seek outside professional advice when they do not have sufficient information to properly allow them to make an informed decision about any matter that comes before the Board of Directors for decision.

### **A director must not make improper use of information or position**

A director must not make improper use of information gained through their position to gain, directly or indirectly, an advantage for themselves or for any other person, or to cause detriment to the company. The Courts have held that this information need not be confidential. It is a question of how the information is used.

A director must not make improper use of his or her position to gain, directly or indirectly, an advantage for themselves or for any other person, or to cause detriment to the company.

Where directors have personal interests that might give rise to conflicts of interest with their duties as directors, the nature of these interests must be disclosed at a director's meeting.

Conflicts of interests may arise where an individual director's personal or family interests and/or loyalties conflict with those of the organisation. Such conflicts may inhibit the organisations ability to make appropriate decisions, conduct its business and or damage its reputation. Such conflicts may also impact on the individual and provide an appearance of impropriety.

There are two main areas in which conflicts of interest may arise for Board and committee members.

- **Pecuniary** - This is where members or their immediate families have an interest in a matter which is being discussed at Board or Board level or is the subject of business activity within the organisation and may result in financial gain to the Director or their immediate family. They may for example own, hold shares in, be partners in, or be employed by a business which is supplying or contracting to the organisation.
- **Personal** - This is where matters directly affect members or their families. A distinction needs to be drawn between matters which are specific to the member and matters which may affect the member or family as part of a general class within the membership. For example, in the matter of service charges, a Board or committee member would not necessarily have a conflict of interest, except if the member was involved in a grievance procedure as a result of these charges.

It is the responsibility of Board and committee members to declare any conflict of

interest. Board and committee members declaring a conflict of interest should not vote on the matter nor take part in the debate. They may, however, at the invitation of the Board or committee, speak to the matter.

### **It is the duty of a company director to prevent the company trading if it cannot meet its debts**

It is the duty of a company director to prevent the company incurring a debt if there are reasonable grounds for suspecting that the company is insolvent at the time the debt is incurred or would become insolvent by incurring the debt or a number of debts. A company is solvent only if it is able to pay all its debts as and when they become due and payable.

Directors should satisfy themselves about the accuracy of the financial information they receive and see that they get all the information they need.

## **LEGAL RESPONSIBILITIES**

Members' primary legal responsibilities are often included in an organisation's enabling legislation. In some cases this legislation may also provide for penalties where those responsibilities have not been properly carried out.

Under modern practice, organisations such as ours which are funded primarily by governments are expected to comply with the following principles:

### ***Management***

- The organisation is to be structured and administered so as to enable decisions to be made and action taken without excessive formality and with a minimum of delay.
- Administered responsibilities are to be clearly defined and authority is to be delegated sufficiently to ensure that persons to whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise.
- The organisation should have as its goal a continued improvement in the efficiency and effectiveness of its performance.
- Resources are to be deployed so as to ensure their most efficient and effective use.
- Proper standards of financial management and accounting are to be maintained.
- Proper standards are to be maintained in the creation, management, maintenance and retention of records.

## ***Human resource management***

- All selection processes are to be based on a proper assessment of merit and equity.
- No power is to be exercised on the basis of nepotism or patronage.
- Employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts.
- There is to be no unlawful discrimination against employees or persons seeking employment.
- Employees are to be provided with safe and healthy working conditions.

## ***Official conduct***

All bodies funded primarily by governments and their directors and employees are to:

- comply with generally accepted public standards and adopted codes of ethics and codes of conduct
- act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities
- exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.

## **Other Legislation**

Directors also have additional responsibilities and obligations under state and federal legislation, such as the:

*A New Tax System – Various Acts 1999, 2000 (Clth)*

*Charitable Collections Act 1946 (WA)*

*Copyright Act 1968 (Cwlth)*

*Corporations Act 2001 (Cwlth)*

*Disability Discrimination Act 1992 (Cwlth)*

*Disability Discrimination and Other Human Rights Legislation Amendment Act 2009 (Clth)*

*Disability Services Act 1986 (Cwlth)*

*Disability Services Act 1993 (WA)*

*Equal Employment Opportunity Act 1987 (Cwlth)*

*Equal Opportunity Act 1984 (WA)*

*Fair Work Act 2009 (Clth)*

*Freedom of Information Act 1982 (Cwlth)*

*Freedom of Information Act 1992 (WA)*

*Fringe Benefits Tax Act 1986 (Clth)*

*Hospitals and Health Services Act 1927 (WA)*

*National Health Act 1953 (Cwlth)*

*Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006 (Cwlth)*  
*Occupational Safety and Health Act 1984 (WA)*  
*Privacy Act 1988 (Cwlth)*  
*Residential Tenancies Act 1987 (WA)*  
*Superannuation Guarantee (Administration) Act 1992 (Cwlth)*  
*Superannuation Guarantee Charge Act 1992 (Cwlth)*  
*Therapeutic Goods Act 1989 (Clth)*  
*Therapeutic Goods Amendment (Medical Devices) Act 2002 (Clth)*  
*Therapeutic Goods Amendment Act (No1) 2006 (Clth)*  
*Trade Practices Amendment Act (No 1) 2001 (Cwlth)*  
*Workers' Compensation and Injury Management Act 1981 (WA)*  
*Working With Children (Criminal Record Checking) Act 2004 (WA)*

The organisation is also subject to industrial legislation, awards under which staff are employed, and various taxation statutes including sales tax, income tax and fringe benefits tax.

## **Relationship to National Standards for Disability Services**

Standard 6 : Service Management

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