



Document “A”: Corporate Governance Charter of the Victorian Aboriginal Health Service (VAHS)

2.1. Requirements of VAHS Directors

Directors share ultimate responsibility for VAHS’s success. Therefore, Directors have an individual responsibility to ensure that the Board is providing:

- ❖ leadership to VAHS, particularly in areas of ethics and culture
- ❖ a clear and appropriate strategic direction
- ❖ accountability to key stakeholders, including funding bodies and regulatory agencies
- ❖ oversight of policies and procedures
- ❖ oversight of all control and accountability systems including all financial operations and solvency as well as risk management and compliance
- ❖ timely and effective decisions on matters reserved to it

Members seeking to be elected to the Board should be informed before each election of:

- the skills and knowledge required of an effective Board;
- the personal qualities that Directors should possess; as well as
- the roles and duties of Directors and office bearers (see Section 4 below).

General characteristics of effective Boards

- ◇ At least one director with broad experience in corporate governance and Board development processes. If this experience is unavailable on the VAHS Board, then a suitable ‘skills-based Director’ could be appointed and at the same time the Board should focus its own training and development in this area.
- ◇ At least one director with extensive experience in the industry environment, with policy and strategy content – that is, in Aboriginal health.
- ◇ In-depth understanding of financial, risk-management and compliance matters.
- ◇ Thorough understanding of the organisation and its culture.
- ◇ Desirable to have had CEO-level or Chairperson-level experience.
- ◇ Sound business skills, to provide a focus on resource allocation. If this experience is unavailable on the VAHS Board, then a suitable ‘skills-based Director’ should be appointed

Personal qualities of Directors

The Board felt that it should spell out best practice in personal qualities, and reinforce them through a *Board Code of Conduct* that contains sanctions for breaches.

The Board of VAHS accepts that a group of successful Directors will share the following personal qualities:

Strategic thinkers

Directors understand stakeholder expectations (e.g. from funding bodies, partner organisations, VAHS staff)

Directors understand client environments (what clients want from VAHS)

Directors remain objective (personality and family considerations do not decide behaviours or decisions)

Commercial way of thinking (acumen)

Directors understand the business environment (what is happening to primary health care at State and Commonwealth levels; what is happening in “Indigenous Affairs”; who are potential competitors and partners or allies)

Directors focus on cost effectiveness

Directors advance VAHS’s interests and business opportunities

Communication and interpersonal skills

Directors are approachable, especially for the CEO

Directors ask questions, but also listen

Analytical skills

Directors focus on results; they do not micro-manage

Directors look ahead and plan, but they also pay attention to details

Directors seek training and development to improve their capabilities

Team players

Directors share the VAHS vision; they work with other Directors, the CEO and where appropriate with senior managers

Directors devote sufficient time to prepare for Board meetings and Board duties

Directors maintain high ethical standards and avoid unproductive conflicts

The VAHS Board will aim to emphasise these personal qualities through its training and development activities for Directors.

1. The Roles of Individual Directors

3.1. Duties of Directors

Directors have a legal duty to:

- (i) To act in good faith, including to avoid conflicts of interest
- (ii) To act with care and diligence in the performance of their duties (this means bringing a reasonable level of expertise and dedication to the position as Director)
- (iii) To act in the best interests of the corporation ('fiduciary duty')
- (iv) Not to gain advantage by improper use of their position
- (v) Not to misuse information
- (vi) Not to trade whilst insolvent

Directors need to be aware of any State legislation that might impose personal liability for breaches

3.2. Code of Conduct

The Board of Directors of VAHS have endorsed the following *Code of Conduct*:

(i) Behaviours

Act Honestly & In Good Faith

VAHS Directors must at all times by law act honestly, with reasonable skill, in good faith and in VAHS's best interests.

[The *Corporations Act* has penalties if Directors are found guilty of dishonest behaviour. The penalty is much higher if it can be shown that a Director deliberately intended to defraud the organization, its members, its creditors or anyone else.]

Act with Care and Diligence

Directors are expected to do their job with reasonable care.

Allowing VAHS to perform activities outside its purposes, ignore its *Constitution*, or sell property at a lower than market price could be seen in legal terms as not exercising due care.

Act Loyally and Avoid Conflicts Of Interest

Directors must disclose potential conflicts of interest as soon as they arise regarding financial, political or personal benefit from:

- Other business or professional activities
- Employment by or accountability to other people or organizations
- Membership of other organizations
- Ownership of property or other assets.

If VAHS suffers from the Board entering into an agreement benefiting a Director personally or which results from a position of conflict, damages may be recovered from that Director.

Avoid Abuse of Opportunity and Information

Directors should not use their position and/or information gained from their position for personal benefit or advantage at the expense of VAHS.

Using 'inside' information about VAHS to obtain a job, or spreading information about a client where that information has been gained as a Director, are examples of abusing privileged access to information.

Act in the Best Interests of the Organization

Where there are conflicts of interest, common law requires Directors to put the interests of VAHS first. The interests of VAHS are regarded as being the interests of the member of the company as a whole and not the interests of any particular member or group of members.

Directors are also expected to use their position and power primarily for the benefit of VAHS.

Exercise Powers for their Proper Use

Directors can delegate their duties to paid staff but this does not remove their legal responsibility to ensure that competent people carry out delegated duties properly.

The critical financial management duties that Directors have legal responsibility for are:

- Approving an annual budget
- Examining the financial reports
- Checking that the financial reports are accurate, and
- Ensuring that VAHS is capable of paying its debts.

Directors have a clear legal responsibility to maintain VAHS as a solvent organization, which means that Directors must at all times be able to testify to VAHS's current financial viability.

(ii) Board Meeting Behaviours

- Behave honestly and with integrity
- Act with care and diligence
- Treat everyone with respect and courtesy, and without harassment
- Comply with all applicable laws
- Maintain appropriate confidentiality
- Disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent)
- Use VAHS resources in a proper manner
- Behave in a way that upholds the good reputation of VAHS at all times when in public
- Not provide false or misleading information to a request for information
- Not make improper use of inside information or one's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for oneself or for any other person.
- Minimise chatter and irrelevant remarks
- Ensure that others are given a reasonable opportunity to put forward their views

(iii) Performance Expectations

Board Directors are expected to be both collectively and individually accountable for all the decisions and actions that are taken as well as not taken by the Board of Directors.

The members of VAHS and the funding bodies expect that Directors will specifically:

- Assist in the Board working co-operatively and effectively as a group
- Act in a business-like manner
- Act with the level of skill, care and diligence expected of a Director of a medium sized company
- Undertake diligent analysis of all proposals presented to the Board
- Declare any conflicts of interest that arise
- Work for the benefit of VAHS rather than to benefit any particular group
- Keep all confidential information private
- Respect any special information obtained about VAHS's members, staff or clients
- Welcome any new Director elected or appointed to the Board.

(iv) Collective Obligations

Directors are obliged as a collective group to govern VAHS according to:

- The laws relating to VAHS as a legal entity
- The laws relating to the purpose for which VAHS was established
- The philosophy, objects, rules and by-laws set down in the *Constitution*
- The terms and conditions of any Service Agreements entered into by the Board
- The policies, procedures and practices formally endorsed by the Board
- The provisions contained in a range of documents, including:
 - Terms and Conditions of Service Agreements
 - Applicable industrial relations laws, Awards and agreements
 - Occupational Health and Safety legislation

(v) Individual Obligations

Each Director has a range of personal obligations as an individual Director, including:

- A Director working in another organization is obliged to put the interests of VAHS above those of his/her employer when sitting on the Board or when acting as a VAHS Director.
- A Director who is involved with an outside group is obliged to put VAHS's interests above the other group's interests when sitting on the Board or when acting as a VAHS Director.
- A Director who has either a direct or indirect pecuniary interest in a particular issue or contract is obliged to exclude themselves from the Board's decision-making on that matter (see definition below of 'pecuniary interest').
- A Director who has a partner or immediate family member employed by VAHS has an indirect pecuniary interest which must be disclosed to the Board. If the Director does not voluntarily exclude him/ herself from discussing and/or voting on any motions relating to the employment by VAHS of their partner or family member, the Board should move that they be excluded from doing so.
- Each Director is personally and individually responsible for assuring themselves that the Board's office-bearers are carrying out their designated functions and that the Board is following the rules and regulations as laid down in VAHS's *Constitution*.

(vi) Conflicts of Interest

Conflicts of interest are not harmful in themselves provided that Directors declare such conflicts to the Board. To protect both themselves and the Board, all Directors should as far as possible formally declare in advance all of their interests that might lead to conflict for them in their role as a Director. 'Declarations of any conflicts of interest' should be an opening template agenda item for all VAHS Board meetings.

Directors must disclose to the Board actual or potential conflicts that may or might reasonably be thought to exist between the interests of the Director and the interests of

VAHS. On election/appointment, Directors will have an opportunity to declare any such interests and they will be entered into VAHS's '*Register of Ongoing Conflicts of Interest*'. Directors should update this disclosure by notifying the Company Secretary in writing as soon as they become aware of any conflicts.

Directors are also expected to indicate to the Chairperson any actual or potential conflict of interest situation as soon as it arises. To ensure that Directors have an opportunity to disclose new conflicts of interest, one of the first agenda items for each Board meeting will be the disclosure of any conflicts of interest. Any amendments to disclosure are to be tabled at this time and entered into the '*Register of Ongoing Conflicts of Interest*'.

The Board can request the Director to take reasonable steps to remove any conflict of interest within a specified time limit. Where a Director cannot, or is unwilling to, remove a conflict of interest; and/or wherever a conflict of interest is disclosed, the Director must leave the room where the Board is meeting when it discusses and votes on matters to which the conflict of interest relates and this exit and re-entry will be recorded in the minutes of the Board meeting.

A Director may come to be faced at a Board meeting with a conflict of interest over some matter that they had not foreseen and thus had not declared in advance. They must immediately inform the Chairperson of the conflict of interest and remove themselves from the meeting while the Board discusses and votes on the matter.

Directors do not have to absent themselves when either:

- (a) a conflict of interest relates to an interest common to all members; or
- (b) the Board passes a resolution that identifies the Director, the nature and extent of the Director's interest and clearly states that the other Directors are satisfied that the interest should not disqualify the Director concerned from discussion and/or voting on the matter.

Pecuniary Interest

Direct Pecuniary Interest is:

When a Director stands to gain financially or otherwise benefits if the Board decides on a particular course of action and where the financial gain would be first-hand in the form of direct payments to the Director for supplying VAHS with goods or services as contracted by the Board.

Indirect Pecuniary Interest is:

(a) When a Director stands to gain financially or otherwise benefits if the Board decides on a particular course of action but where the gain would be second-hand or indirect in that the Director would gain through providing goods or services to a third party contracted by the Board to supply VAHS with goods or services,

Or

(b) When a Director may not gain financially or otherwise benefits but where the Director's partner or family member stands to gain if the Board chooses a particular course of action (see 'related party transactions'.)

Related Party Transactions

Related party transactions include any financial transaction between a Director or Officer and VAHS and are to be reported in writing to each Board meeting.

A related party means:

- i. a spouse or de factor spouse of the Director of Officer; or
- ii. a parent, son or daughter of the Director of officer or their spouse or de facto spouse; or
- iii. an entity over which the Director of Officer or a related party defined in (i) or (ii) has a controlling interest.

[Note: In general, the *Corporations Act* requires related party transactions to be approved by the Member organisations; the Board cannot approve these transactions. An exemption to this requirement occurs where the financial benefit is given on 'arm's length' terms.]

There is a process that the Board can follow to show that a financial benefit, such as awarding a contract to a company in which a Director is a partner, is given on 'arm's length' terms. This process involves:

- ❖ Documenting specifications for the services/products
- ❖ Inviting competitive tenders by a deadline
- ❖ Submitting sealed tenders to the Company Secretary
- ❖ Establishing a Tender Evaluation Committee of the Board to open and review all tenders received by the deadline. External, independent and expert/technical persons can be appointed to this Committee by the Board to ensure decisions are informed by knowledge and experience
- ❖ Applying five selection criteria to generate a written recommendation to the Board for its decision: value for money; enhancing the capabilities of VAHS; open and effective competition; ethical behaviour and fair dealing; advancement of Aboriginal self-determination.

But the Board of VAHS will resolve that, where a related party transaction on 'arm's length' terms is being considered for approval by the Board, the Director or Officer to whom the decision applies will exclude herself/himself from the approval process.

The Company Secretary will maintain a separate '*Register of Related Party Transactions*'.

(vii) Hospitality and Gifts

While VAHS recognises the need from time to time to give or accept customary business courtesies in accordance with ethical business practices, Directors and Officers will not solicit such courtesies and will not accept, gifts, services, benefits or hospitality that might influence, or appear to influence, the Directors' and Officers' conduct in representing VAHS.

(viii) Sanctions

If a Director breaches this *Code of Conduct*, the matter will be investigated by a Disputes Committee appointed by the Board. The Director may be suspended by the Board pending a recommendation from the Disputes Committee, and a final decision on the action to take - including dismissal from the Board - will be taken by the full Board at a meeting. The *Constitution* spells out the subsequent processes.