



MUSICA VIVA AUSTRALIA: Guidance Notes for Directors Code of Conduct¹

INTRODUCTION

The following Guidance Notes do not form part of the formal Directors' Code of Conduct but are provided to assist in interpretation of the Code.

In reading the Code and these Guidance Notes, Directors should bear in mind that their duties under the Code overlap. This is because, in practice, the behaviours and processes relevant to one duty (e.g. 'act with honesty and integrity') are also relevant to others (e.g. 'using your position appropriately').

¹ MVA acknowledges the co-operation of the State Services Authority (SSA) of Victoria in drawing this Code of Conduct and the supporting guidelines for its Directors which are based on the SSA Code of Conduct and guidelines for Members of Boards of Public Entities.

GUIDANCE NOTES

1. Duty to act with honesty and integrity

Honesty is concerned with being open and transparent

- Express genuine views clearly and without ambiguity
- Respect laws, policies and generally accepted standards of behaviour
- Explain reasons for views, including disclosing what information or considerations were relied on
- Be truthful
- Speak up when a decision or advice is being considered that may be detrimental to the interests of MVA

Members should act and advise with honesty and integrity in all aspects of their official duties. If a member believes an aspect of policy or administration may have unforeseen consequences or requires review, he or she should bring it to the attention of the Board.

Examples:

- Failing to express a view or ask a pertinent question because of feeling unsure about expressing that view;
- Using MVA's assets/resources to provide benefits for other Board members. For instance financing a social outing for members from the organisation's resources without Board agreement or appropriate delegation;
- Not providing crucial information to other Board members and allowing them to proceed on a course of action that will be detrimental to MVA;
- Abstaining from voting may be a breach of honesty in such a case.

Integrity is concerned with motive, and being consistent with espoused values. Directors should avoid actual and perceived conflicts of interest

- Declare any relevant outside interests
 - annually in a Declaration of Private Interests
 - when they arise if relevant (e.g., new appointments; new commercial interests)
 - prior to consideration of particular matters
- Withdraw from Board deliberations where an actual or apparent (perceived) conflict of interest arises
- Withdraw, or record a minority view, where a matter of conscience arises
- Do not be rushed into making decisions without time for proper consideration
- Ensure that the Minutes of the meeting record actions to declare conflicts

The duty to act with integrity overlaps with a member's other duties to act honestly and in and in good faith in the best interests of MVA.

The member should be:

- Honest, open and transparent in all dealings and acts in the public interest; and
- Committed to high standards of professionalism, service to the community and ethics

Board members need to participate actively in the work of the Board. A member who does not act with integrity might not be covered by Directors insurance or indemnity policy.

2. Duty to act in good faith in the best interests of MVA

Good faith is concerned with being cooperative and reasonable
In the best interests of MVA, is about proper purpose and reputation

- Commit to be an active member of the Board before accepting a role on that Board
- Be professional and positive in all dealings with fellow Board members
- Exercise powers responsibly and in the best interests of the organisation
- Be aware that gifts and favours of any kind, whether for Board members or for members of their families, may influence – or be perceived to influence – decision making
- Be mindful that your conduct in all aspects of your life can reflect on your standing as a Board member and the reputation of MVA

Board members should be sufficiently independent to provide balanced advice to the Board. They are more likely to make effective decisions if they pay close attention to making sure that each decision is made based on the best information available at the time and in the best interests of MVA.

An independent Board member is not connected personally, financially, commercially or professionally with the organisation's management or with any other business or relationship that could interfere with their independent judgement.

3. Duty to act fairly and impartially

Fairness and impartiality is concerned with being objective and acting with balance and justice

- Advise and behave in a manner that is free of favouritism, self-interest and preference
- Consider all relevant facts objectively when implementing MVA policy and programs to ensure equitable outcomes
- Act in accordance with anti-discrimination legislation
- Respect human dignity and foster a culture that is free of intimidation and bullying

Judgement of Board members should be formed on the basis of evidence without discrimination against any person or body. That is, members should act in accordance with anti-discrimination legislation which protects people from discrimination on the grounds of their sex; gender identity; sexual orientation; lawful sexual activity; marital, parental or carer status; pregnancy; breastfeeding; age; physical features; impairment; race; political or religious belief or activity; and industrial activity.

The Board should ensure there is a process for resolution of grievances from Board members themselves and from persons not on the Board such as employees, consumers, clients, contractors, and community groups that ensures fairness and gives confidence to members, that, where a problem is identified, it will be dealt with in an appropriate manner.

4. Duty to use information appropriately

Using information appropriately is concerned with respecting confidentiality and using discretion, prudence and good judgement

- Only use information gained as a Board member for purposes intended by the Board and for purposes that are in the interests of the public entity as judged by the Board;
- Be conscious that Board members hold privileged information and that strict rules of confidentiality apply to that information;
- Be well informed about privacy and whistleblower legislation;
- Never communicate official information for other than official purposes without the Board's permission. This includes leaking information to the media, clients of MVA or to stakeholders.

Board members must use information appropriately by ensuring it is only applied to proper purposes, maintaining confidentiality and not seeking to gain undue benefit for any party.

Board members must not take improper advantage of any information gained in the course of their Board duties. They may disclose information that is normally given to members of the public seeking that information or if they are called to give evidence in court, or when given proper authority. Comments should be confined to facts and members should not express personal opinion on official policy or practice.

Examples:

- A Board member is on a selection panel for the new cleaning contract. The Board member uses information gained about firms participating in this tender process to apply to his/her own business.
- A Board member is on the Membership Committee and has access to personal information provided by candidates as part of a selection process. The Board member uses contact information from that list to invite these people to join the local golf club.

Where a current or former Board member believes that 'improper conduct' involving Directors is occurring within MVA, he or she should raise the matter with the Chair.

5. Duty to use your position appropriately

Using your position appropriately is concerned with not abusing the influence or access to information that your role provides

- Do not misuse or abuse those powers for personal gain or some other motive
- Do not take decisions with any intention of malice
- Do not join a Board as a favour to a friend or colleague, or where you consider that the impartiality of your decisions may be compromised or would reasonably be perceived to be compromised
- Never seek to gain undue benefit for any party from information gained as a Board member

A Board member who improperly uses their position to gain an advantage for themselves or someone else or to cause detriment to MVA may be liable for their actions under both civil and criminal law.

Example:

- The Board is developing a tender for grounds maintenance services. A Board member gets drawn into a conversation about the work by a friend of his. His friend lets him know that his son-in-law will be starting a gardening business in two months and tells his friend how good it would be if the tender were to be advertised after the business has started. The Board member feels sorry for the young man who has a young family and has just been retrenched. He therefore argues strenuously against advertising the tender immediately but does not declare his conversation with his friend. The Board member knows the tender will be advertised and that the selection process will be thorough. He considers that holding off advertising to widen the field may be good for the public entity and would only provide a minor advantage to his friend's son-in-law or none at all if he does not win the tender. The Board member should not have spoken with his friend about the proposed tender. Having done so, he should have declared his conversation to the Board and abstained from any discussion around or decision on the tender.

6. Duty to act in a financially responsible manner

Financial responsibility is concerned with being accountable, vigilant, prudent and acting legally

- Understand MVA's financial accounts and financial position
- Ensure that MVA's financial management system is adequate and designed to minimise processes which can lead to errors
- Ensure that there are clear, consistent financial reports from the Chief Finance and Accounting Officer (CFAO) and take an active interest in the work of the audit committee
- Request financial reports to the Board that are clear and concise, using graphs and techniques to assist members to understand reports where appropriate
- Ask management for trend analysis and benchmarking data to assist the Board to constantly reassess the financial health of MVA
- Do not support a Board resolution that has financial implications that the members considers imprudent
- Record your disagreement, or abstain from voting, if you do not believe financial implications are sufficiently clear
- Raise questions if uncertain about any aspects of financial reports

Board members must become familiar with the business of the organisation and understand its financial accountability arrangements. They must exercise care in relation to funds and assets.

A Board member must be able to understand financial reports and the financial justifications for decisions taken by the Board. A Board member who needs training should ask to attend an appropriate course or training should be offered as part of the induction process.

Board members should actively inquire about the financial material put before the Board if that material is unclear or raises matters that may be of concern from a financial perspective.

A Board member may ask for reports from the Chief Finance Officer (CFO) from time to time. The Board should have a protocol in place to direct such requests through the CEO, as a matter of good governance.

MVA's finance audit and risk management committee will also report on a regular basis.

7. Duty to exercise due care, diligence and skill

Due care, diligence and skill is concerned with being prudent, having commitment, and acting responsibly and professionally

- Get to know the business of MVA and the way the Board operates
- Read Board papers and be prepared to ask questions about matters before the Board
- Attend Board meetings and be focused on the work under consideration
- Consider issues completely, taking account of all relevant evidence
- Understand the strengths, weaknesses, opportunities and threats facing MVA. Ask management for detailed briefings and/or familiarisation tours of the detail of MVA's business and operations before strategic planning takes place
- Do not simply rubber stamp recommendations put by a committee or individual
- Ensure full compliance with the legal, ethical and policy obligations of MVA
- Ensure you can guide and monitor management of MVA. To do this:
 - monitor the affairs and practices of the organisation
 - review the organisation's financial statements and reports regularly
 - demand that board papers are prepared thoroughly and sent well in advance of board meetings
 - where appropriate, demand evidence-based documentation and seek further information if necessary to ensure that the Board's decisions are based on the best available information
 - Take an interest in the qualifications and experience of candidates for senior executive jobs in the organisation such as the Chief Executive Officer and the Chief Finance Officer

Board members must exercise powers and discharge duties with the degree of care diligence of an 'ordinary prudent' person.

This duty is related to the prudential management of not-for-profit funds and prudential management of risk. The Board usually delegates detailed consideration of issues to officers of MVA individual members of the Board or to committees. The individual or committee who is delegated to consider a matter cannot lawfully delegate that power or function to any other individual or body.

MVA, including the Board and its members, may be vulnerable to criticism or legal action if it gets into difficulties. This may happen if:

- There have been very few Board meetings;
- Members have failed to come to grips with the business of MVA.
- Members have not taken steps to ensure proper financial statements and records are kept;
- The Board has not ensured that there is a proper audit and control system to detect and prevent fraud by officers and employees;
- The Board has exercised its powers inconsistently with MVA policy

A Board member who has any special skills, for example a legal or accounting qualification, is expected to use them in working on the Board.

8. Duty to comply with establishing legislation

Complying with establishing legislation is concerned with having the power and authority to act and with having respect for boundaries

- Carry out duties in good faith and for a proper purpose as described in the MVA's establishing Act constitution or terms of reference document
- Ensure you have ready access to up-to-date copies of the establishing documents during Board meetings
- Ensure Board papers refer to relevant sections in the establishing documents, and any relevant policies and inform members of the powers under which they are acting
- Understand whether a decision is within MVA's power and ask questions if you do not understand
- Be conscious that matters reserved for the Board are clearly identified
- Be aware of the MVA's policies and priorities and of any other matters (eg government initiatives) that affect MVA while remaining apolitical in applying those policies.

Board members should be clear that if the Board wishes to do something not authorised under its establishing documents, but consistent with the objectives of MVA it may be necessary to seek external advice.

Example:

MVA owns an asset which requires government regulatory approval.

9. Duty to demonstrate leadership and stewardship

Leadership and stewardship are concerned with having foresight, providing an example and achieving sustainability

- Understand the importance that strategic direction plays in ensuring that MVA fulfils its purpose for stakeholders
- Be conscious of, and value, the assets that have been provided by others eg government grants, donations etc
- Assist in developing and promulgating the organisational culture the Board wishes for MVA
- Behave in a way that exemplifies ethical values
- Ensure the Board schedules time to focus on strategic matters and reflection and for proper consideration of programmable work
- Watch for signs that the Board is not performing well. These might include
 - getting bad news late
 - a poor accountability culture in MVA
 - Board decisions not implemented quickly
 - decisions made without Board approval or by officers lacking delegated powers
 - an uncooperative, evasive or aggressive CEO or CFO
 - inadequate auditing of past mistakes
 - inadequate or ineffective control systems

Stewardship is the careful and responsible management of something entrusted to one's care. The core roles of oversight and leadership played by the Board are critical to good governance and require each member to exercise independent judgement and goodwill.

The Board of MVA exercises its stewardship on behalf of those stakeholders which provide its funds and support it.

Board members should see their stewardship duty as being responsible for the MVA's tangible and intangible assets. Intangible assets include MVA's

- Reputation;
- Intellectual capital;
- Integrity and commitment to values;
- Goodwill resulting from working with other stewards such as the Department, the Minister and Parliament;
- Experience and corporate memory derived from product delivery; and
- Program outcomes over time.

Board members must always be conscious that their behaviour sets an example for others and can influence the way in which MVA is viewed. They must also ensure that the actions of MVA as a whole are consistent with relevant standards.

Risk management is an important aspect of a Board's stewardship obligations.