

CODE OF CONDUCT – COMPANY OFFICERS

1. Purpose

Keppel Bay Sailing Club (KBSC) aims to operate with transparency, integrity and honesty at all times. The purpose of this document is to clarify the standards of behaviour that are expected of Company Officers (Officers) in the performance of their duties.

All Officers are legally required to follow and abide by certain duties and obligations which form part of the *Corporations Act 2001 (Cth)* (the Act). This legislation governs companies and corporations within Australia. Failing to follow or breaking a duty or obligation can have serious consequences.

2. Scope

This document applies to all KBSC Officers including:

- Directors;
- General Manager;
- Members of the Senior Leadership Group including Assistant Manager, Finance Manager, Facilities Manager, Sailing Manager and HR Manager;
- any other person who makes, or participates in, making decisions for the whole or large part of the company, or;
- any other person who has a significant ability to affect the company's financial standing.

3. Policy Statement

KBSC is committed to complying with all applicable legislation, regulations, and recognised codes and guidelines, acknowledging that compliance with these obligations is both necessary and desirable.

4. General Duties Under the Act

4.1. Duty to Act with Due Care and Diligence

As noted in Section 180 of the Act, Officers must conduct due diligence and act with care in their dealings with company matters.

Any decision or action an Officer makes must be made after carefully considering where the company stands. This duty requires them to remain properly informed about company activities and operations, as well as the financial position and affairs of the company.

4.2. Duty to Act in Good Faith and Proper Purpose

As per Section 181 and Section 184 of the Act, all Officers have the duty to act in good faith. This means that they must not mislead or attempt to hide the true purpose of any decision, transaction or financial record.

Officers must act for a 'proper purpose', and they must only make decisions that are in the company's best interest. This means that an Officer must avoid jeopardising their company's interests for their own personal gain.

4.3. Duty to Not Improperly Use Position

Section 182 and Section 184 of the Act requires Officers to refrain from misusing their highly authoritative position to:

- gain an advantage for themselves or someone else, or;
- cause detriment to the company.

Some examples of an improper use of position include:

- improperly misuse company funds or mix company funds with personal funds.
- enter into unlawful contracts.
- take bribes, secret commissions or other undisclosed benefits.
- take corporate opportunities for themselves that should have gone to their company where it was clear the company did not consent or have knowledge or the opportunity.

4.4. Duty to Not Misuse Confidential Information

The duty to not misuse any confidential company information is provided for under Section 183 of the Corporations Act.

According to this duty under Section 183 of the Act, Officers must not improperly use the information to:

- take an advantage for themselves;
- take an advantage for someone else, or;
- cause a detriment to the company.

Confidential information can include:

- client database information.
- supplier database information.
- company finances.
- trade secrets.

4.5. The Duty to Avoid Conflicts of Interests

As a company is a separate legal entity, its affairs and interests are separate from those of the company's Officers. A conflict of interest, also known as a material personal interest, is any interest that has the ability to sway or influence an Officer's decisions and actions.

Under Sections 191-194 of the Act, Officers must avoid all potential and actual conflicts that arise between their personal interests and the interests of the company. The company does not need to suffer any harm or detriment for a breach to occur.

In order to fulfill their duty, Officers must disclose any conflict or material personal interest when a conflict arises.

4.6. Duty to Prevent Insolvent Trading

The definition of insolvency is 'a company that is unable to pay their debts when they are due and payable'. In other words, a company that continues with its business as usual even though it has debts that can't be paid, is deemed to be trading insolvently.

Section 588G of the Act provides that Officers may breach their solvency duties if:

- their company is already insolvent at the time the new debt was undertaken, or;
- by incurring that debt, or a range of debts, the company becomes insolvent.

4.7. Administrative Duties

Officers have general administrative duties in relation to managing a company, these include:

- ensuring that their company keeps adequate records of financial information, minutes, resolutions, books and accounts,
- ensuring the company maintains registers (members registers etc.),
- ensuring the company maintains the company's ASIC register (lodging changes to the company's members, address, directors, etc.),
- ensuring the company is holding an annual general meeting; and
- ensuring that any meeting is being called and held in accordance with the terms of the Constitution.

5. Breaches of Code of Conduct

A breach of this Code of Conduct can result in very serious consequences, and often varies according to what duty has been breached and what has subsequently happened because of the breach.

Consequences can include:

- personal liability (being held personally liable for civil penalties, compensation, debts and financial losses, and tax obligations),
- criminal conviction,
- disqualification as a director; or;
- commercial repercussion.

If there is an expected breach of this Code of Conduct, please refer to KBSC Whistleblower Protection Policy for reporting options.

6. Evaluation and Review

This Policy will be reviewed upon change of relevant legislation, or at a minimum of every two (2) years.

7. Document Information

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