

CORPORATE GOVERNANCE STATEMENT FOR THE **TASMANIAN ABALONE COUNCIL (TAC Ltd)**

1. INTRODUCTION

Corporate Governance is core to ensuring the creation, protection and enhancement of membership value.

The Board of the Tasmanian Abalone Council recognise that the members have a legitimate right to expect the highest levels of governance from Executive members (Directors) and Council employees.

Corporate governance is the system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimised.

The corporate governance system detailed in this document is designed to encourage the Tasmanian Abalone Council to create value for its members (via entrepreneurship, innovation and development) and provide accountability and control systems commensurate with the risks involved.

As the peak abalone industry body in Tasmania, the Tasmanian Abalone Council provides a forum for communication between abalone divers, abalone quota holders and abalone processors, making representations on their behalf to a wide range of people and authorities including but not limited to;

Abalone Fishery Advisory Committee (ABFAC),

State and Federal Fisheries Ministers,

Tasmanian Marine Police,

Fisheries Research and Development Corporation (FRDC)

Tasmanian Department of Primary Industry and Water (DPIPW),

Tasmanian Department of Economic Development (DED),

Institute for Marine and Antarctic Studies Tasmanian (IMAS),

Tasmanian Fisheries Research Advisory Board (TASFRAB),

Abalone Council of Australia Ltd (ACA Ltd)

Abalone Association of Australasia Ltd (AAA Ltd),

Marine and Safety Tasmania (MAST).

In addition to the above entities, there is involvement with members of State and Federal Opposition parties who have an interest in and/or shadow portfolio responsibility for the seafood sector.

2. THE COMPANY

The Tasmanian Abalone Council Ltd is a “**Not for Profit**” **Public Company Limited by Guarantee**.

It was incorporated in 1994 and replaced the Tasmanian Abalone Divers Association (T.A.D.A.) as the peak abalone industry body in Tasmania.

The overarching principles and practices governing the activities of the Tasmanian Abalone Council Ltd are contained in the following principal documents;

- a. *Corporations Act 2001*
- b. The Tasmanian Abalone Council Constitution

3. THE BOARD

The Board is the body of directors of the Council – each director exercises individual judgement, and the Board is collectively responsible for the management and direction of the organisation.

“The Board’s role involves setting strategic direction, appointing management, reviewing progress in line with the strategic direction, and ensuring adequate internal controls, reporting mechanisms and accountability for these responsibilities to stakeholders.” (*Enhancing Board Performance*, Chartered Secretaries Australia Ltd, page 3, 2005)

The Tasmanian Abalone Council Board currently has 11 non executive directors;

President, Vice President, Treasurer, three sub council Chairmen (Diver, Quota holder and Processor) and five general members. The directors are voted into these positions by the members at the Council’s Annual General Meeting.

There are currently two Executive Officers – the Chief Executive Officer and the Office/Project Manager. These positions are contracted and are appointed by or on behalf of the Board.

The Tasmanian Abalone Council Board is responsible for;

- ensuring enduring value is created within the Tasmanian Abalone Council and within the Tasmanian Abalone Industry,
- improving the performance of the Council through strategy formulation and policy making,
- monitoring the Council’s performance and ensuring that performance is in the member’s interests and meets agreed goals and objectives,
- appointing, contracting and overseeing the CEO and any other officers of the Council,
- making available to management the resources necessary to achieve the goals and objectives of the Council,
- ensuring there are adequate processes in place to comply with all the relevant legal and accounting requirements,

- ensure that the risks to which the Council are exposed are clearly identified and that suitable processes are in place to manage those risks,
- report progress to the members as their appointed representatives and align the collective interests of the members, board and management,
- ensure that the Council can meet the challenges of the present without compromising its ability to meet the challenges of the future – to do this the Board must strike a balance between the short and long term as well as between the social, environmental and economic results of the organisation.

4. DIRECTORS DUTIES AND RESPONSIBILITIES

The nature of the legal relationship between the director and the Council is referred to as a **fiduciary** one, that is, it is built on the concept of trust and honesty.

This obliges each director to act honestly, in good faith and to the best of his or her ability in the Council's interests.

A director must not allow conflicting interests or personal advantages to override the Council's interests.

Nor should a director participate in the deliberations of the Council if the director has personal interests or duties that may conflict with those of the Council.

The regulation of director's duties and responsibilities is enshrined / characterised / outlined by the following;

1. Statute Law (principally the *Corporations Act 2001*)
 2. Common Law (including negligence)
 3. "Fiduciary" relationships
 4. Australian Securities and Investment Commission (ASIC) guidelines
 5. Australian Institute of Company Directors (AICD) guidelines
 6. Chartered Secretaries Australia (CSA) guidelines
 7. Tasmanian Abalone Council Constitution
- **Statute Law;** Laws passed by Parliament become statute law –statute law overrides common law – e.g. *Corporations Act 2001, Living Marine Resources Management Act 1995, Trades Practises Ac 1974t, Environment Protection and Biodiversity Conservation Act etc etc*
 - **Common Law;** common law is created by judges making decisions and then applying those decisions as precedents. If Parliament has not spoken on the subject, then the common law is the applicable law.
 - **"Fiduciary" relationships;** directors are obliged to act honestly and to give preference to the well being of others – the High Court of Australia defines "fiduciary duty" as the "duty to act with fidelity and trust" to another.
 - **ASIC Guidelines;** the Australian Securities and Investment Commission is the regulatory body responsible for administering the *Corporations Act 2001*.
 - **TAC Ltd Constitution;** The constitution sets out the objectives and rules of the Council. The constitution is effectively a contract between;
 - o the Council and each director,
 - o the Council and each member,
 - o the member and each other member

A common question asked is; “To whom are director’s duties owed”? The general principle established for well over 100 years is that a director’s duties in relation to a company’s affairs are owed to the company as a whole (i.e. the collective corporate being of all shareholders/members). This reflects the distinction between the company and its members – it becomes an untenable position if director’s duties were also owed to each and every member – if this were the case, then directors would be exposed to a multiplicity of actions.

Clearly then, directors of the Tasmanian Abalone Council must act in the interest of the Council itself and in the collective interests of all members of the Council.

Directors’ duties can be broadly categorised into three areas;

4.1 Loyalty and good faith

This category includes the following duties;

- to act in good faith in the best interests of the organisation for a proper purpose – the concept of ‘proper purpose’ is determined by the facts of each case but a good starting point for TAC Ltd directors is to consider whether the power has been exercised for a purpose permitted under the Council’s constitution.
- to avoid conflicts of interest – directors must not allow a conflict of interest to compromise their position. If there is a potential conflict, then the director is obligated to declare the nature of the conflict which must then be minuted. The director must excuse himself from the meeting while the matter is being considered or voted on. He may remain only if those directors present are satisfied that the interest should not disqualify the director from voting or being present. The importance of disclosure to the board and recording the board’s decision in the minutes cannot be overstated.
- not to misuse position – section 182(1) of the *Corporations Act 2001* provides that directors and officers must not improperly use their position to;
 - gain an advantage for themselves or someone else, or
 - cause detriment to the organisationThis duty may be expressed by saying that a director must not act in a manner which promotes their personal interests where there is a conflict between those personal interests and those of the organisation.
- not to misuse information – Section 183(1) of the *Corporations Act 2001* provides that a person who obtains information because they are, or have been, a director or officer of a company must not improperly use the information to gain an advantage for themselves or someone else, or cause detriment to the company. This duty continues after the person stops being a director of the company.

4.2 Care and diligence

Directors have a duty to act with a degree of care and diligence that a reasonable person would exercise. There has long been a common law duty requiring directors to act with care and diligence – this duty is set out in section 180(1) of the *Corporations Act 2001* as follows;

“A director or other officer of a corporation must exercise their powers and discharge their duties with a degree of care and diligence that a reasonable person would exercise if they;

- (a) were a director or officer of a corporation in the corporation’s circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.”

The standard of care takes into account subjective elements such as the office held and the responsibilities of the particular director and the corporation’s circumstances but applies an objective test of what a reasonable person, with the knowledge and experience of the director, might have been expected to have done in those circumstances.

The “corporation’s circumstances’ refers to matters such as the type of company, the size and nature of its enterprise, its constitution, the board’s composition, the distribution of work between the board and other officers, the state of the corporation’s financial affairs and the urgency and magnitude of any problem.

One aspect of this duty of care and diligence is that a director must attend all meetings of directors unless there is a reasonable excuse for failure to attend a particular meeting or meetings. Further, when attending such meetings, the directors must be diligent and place themselves in a position to monitor and guide the management of the company. This requires them to;

- * acquire by all reasonable means an understanding of the business at hand,
- * keep informed and updated about the activities of the business,
- * monitor the organisations’ affairs and practises; and,
- * maintain familiarity with the ongoing financial performance of the organisation

4.3 Other specific duties

There are a number of other specific duties set out in the *Corporations Act 2001* that are relevant to an organisation such as the TAC Ltd, including;

- duty to prevent insolvent trading – directors must ensure, as they deal with the affairs of the organisation, that they do not allow the organisation to trade while insolvent, or not to incur a debt that would lead the organisation to insolvency
- duty to disclose director’s interests – directors have an obligation to disclose any interest which may give rise or lead to the occurrence of a conflict of interest with the objects or aims of the organisation.

There are several final points regarding director's duties;

Business Judgement Rule; the law does not intend through the imposition of a duty of care and diligence to inhibit unnecessarily proper entrepreneurial activity. A director who makes a business judgement is taken to meet the requirements of the *Corporations Act 2001*, and their equivalent duties at common law and equity, in respect of the judgement if they;

- make the judgement in good faith and for a proper purpose
- do not have a material personal interest in the subject matter of the judgement
- inform themselves about the subject matter to the extent they reasonably believe appropriate and,
- rationally believe that the judgement is in the best interests of the organisation.

Duties arising from organisation's activities; As well as those general duties under the *Corporations Act 2001*, directors are subject to a wide range of specific responsibilities and corresponding liabilities in the legal areas of, for example, trade practises, occupational health and safety, environmental law, privacy, anti-discrimination, contract law and intellectual property law. Directors could rarely be said to be complying with their *Corporations Act 2001* duties if they do not ensure that the organisation was acting at all times in a legally compliant manner in these areas.

Directors' rights and powers; Directors have been given a wide range of rights and powers to enable them to fulfil their obligations and duties. The *Corporations Act 2001* provides that "the business of a company is to be managed by or under the direction of the directors" and that "the directors may exercise all the powers of the company except any powers that this Act or the company's constitution requires the company to exercise at a general meeting". Furthermore, directors have the right to;

- Delegate – unless the constitution provides otherwise, directors may delegate any of their powers provided the delegation is recorded in company minutes. Delegation does not excuse a director of their duty of care and diligence and if directors delegate a power, then the directors are responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.
- Access to documents and information – directors have a common law right to inspect and to take copies of documents belonging to the organisation, as long as the director is acting for a proper purpose and while he or she remains on the board.
- Access to professional advice – directors may seek expert professional advice in addition to the advice provided from within the organisation if they believe that advice to be necessary for them to adequately discharge their obligations as directors.

4.4 A Final Word

Ultimately, the best protection for a director is to act in good faith, to apply due care and diligence in carrying out their responsibilities for a proper purpose, without conflict of interest and without abuse of position, and to ensure that the organisation is not trading whilst insolvent.

4.5 The Board Chair

The Board Chair (President);

- Is to be a member of the Board
- Is not to exercise the role of Chief Executive Officer of the TAC Ltd

The Chair is responsible for;

- Leadership of the Board,
- Overseeing the board in its effective discharge of the role
- The efficient organisation and conduct of the Board's function and meetings
- Facilitating the effective contribution of all Board members
- The promotion of constructive and respectful relations between Board members and between Board and Management
- Committing the time necessary to discharge effectively his/her role as Chair

5. CODE OF CONDUCT FOR THE BOARD

Preamble;

Directors of the TAC Ltd are expected to adhere to the highest ethical standards and to ensure that these standards permeate the Council. Directors are charged with the responsibility to ensure that the Council's activities are sustainable – i.e. that they can meet the challenges of the future as well as the present. To do this, they must strike a balance between the short and long term as well as between the social, environmental and economic results of the organisation.

This Code of Conduct is designed to maintain confidence in the integrity of the Tasmanian Abalone Council Ltd.

Directors of the Tasmanian Abalone Council Ltd (the "Council");

- 1 Must act honestly, in good faith and in the best interests of the Council
- 2 Must use care and diligence in fulfilling the duties required of them as directors of the Council
- 3 Will uphold the Constitution and serve for the collective benefit of Members
- 4 Must not take improper advantage of the position of director or attempt to improperly influence other Board members
- 5 Will make decisions in the best interest of the Council ahead of their own personal or professional/business interest, or in the interests of their employer
- 6 Have an obligation to be independent in judgement and actions and take all reasonable steps to be satisfied as to the soundness of all decisions of the board
- 7 Shall not engage in conduct likely to bring discredit upon the Council
- 8 Must not disclose confidential information received in the course of the exercise of directorial duties unless otherwise authorised (this includes former directors)

- 9 Have an obligation at all times to comply with the spirit as well as the letter of the law and with the principles of this code and will actively promote compliance within the Council
- 10 Must be generally aware of their broader obligations as directors as specified by the Australian Institute of Company Directors
- 11 Must attend all meetings of directors unless there is a reasonable excuse for failure to attend a particular meeting or meetings. Where attendance is not possible, directors will notify the Chairman in advance. Leave of absence may be requested of the Board in advance if the director reasonably believes they will miss two consecutive meetings
- 12 Must acquire a clear understanding of the role and purpose of the Board and the Council, including the statutory and regulatory requirements
- 13 Must become familiar with the fundamentals of the business in which the Council is involved and the environment in which it operates
- 14 Are under a continuing obligation to keep informed about the activities of the Council
- 15 Should maintain familiarity with the financial status of the Council by a regular review of financial statements
- 16 Must treat other Board members with professionalism, courtesy and respect. They will work cooperatively with fellow members towards agreed goals – all directors will strive to achieve consensus within the Board, but if the final position is a majority decision, that will be the decision of the Board. All directors (including any dissenting directors) are then obligated to support (in word and deed) the majority decision. A dissenting director may have his/her vote recorded in the minutes upon request
- 17 Notwithstanding clause 16, Sub Council chairman retain the right to formally express a dissenting view provided the sub council members direct them to do so
- 18 Must not make public statements regarding Council business unless authorised by the Chairman to do so
- 19 Must disclose interests such as other directorships, partnerships, consultancies to the Board on joining. If a situation of actual or potential “conflict of interest” should arise, the director concerned will discuss the matter with the Chairman and will withdraw if requested while the Board discusses the potential conflict. If it is decided that a conflict does exist, then depending on the assessed significance, the director involved will be requested to take one of the following courses of action (in order of increasing significance);
1. Refrain from voting on a relevant matter during a Board meeting;
 2. Withdraw from discussion of relevant matter(s) during a Board meeting;
 3. Take leave of absence from the Board for a period;
 4. Resign from the Board

6. MATTERS RESERVED FOR THE BOARD

- Approval of strategy, business plans and objectives, and monitoring of performance against them.
- Approval of financial statements.
- Approval of extraordinary expenditure (outside of budget) over \$2 000.00
- Executive appointments; CEO and other executive staff.
- Monitoring of performance of executive staff.
- Appointment and terms of reference of Board committees.
- Delegation of authority to CEO when appropriate.
- Remuneration of CEO and executive staff.
- Corporate Governance principles and practice and codes of conduct.
- Appointment of auditor and principal professional advisers.
- Approval of policies such as health and safety, environmental, continuous disclosure and communications etc.

7. COMMUNICATION POLICY

The TAC recognises that disclosure and transparency is an integral part of maintaining the integrity of the organisation. The TAC therefore aims to ensure the timeliness, quality and clarity of communication to members and other stakeholders via;

- General meetings and the Annual General meeting
- Regular newsletters
- Regular updates to the TAC Ltd Website
- Broadcast emails when appropriate

8. FINANCIAL REPORTING, BUDGETING & CREDITOR PAYMENT

8.1 Financial Reporting

The Tasmanian Abalone Council is a Public Company and as such must comply with all of the relevant Australian Securities and Investments Commission (ASIC) filing and reporting requirements. The company accounts are audited and form part of the Annual Report which is distributed to all members by mail.

A detailed finance report is presented by the Treasurer at each Board meeting. The finance report and attached accounts are duly examined by the Board and are formally approved by a show of hands.

A financial report is given by the Treasurer at each General meeting and members are free to ask questions and request further detailed information.

8.2 Budgeting

A detailed budget is prepared prior to the Annual General Meeting by the Treasurer (on behalf of the Board) and is presented to the members for their consideration and approval.

Budget (actuals vs budget) is presented at each Board meeting as mentioned above and progress is monitored.

8.3 Creditor Payment Procedures

Two Board members, the Office Manager and the Chief Executive are currently signatories to the TAC Ltd cheque account (working account). Two signatures are required for each cheque with the Treasurer being one of the signatories.

The Office Manager prepares cheques for authorisation and presents them to the Treasurer for signing as and when payments/invoices are due.

Minor (under \$2 000) "Extraordinary Expenditure" (outside of annual budget) must be approved by the Treasurer.

Minor (between \$2 000 and \$10 000) "Extraordinary Expenditure" (outside of annual budget) are to be tabled and approved/disapproved by the Board.

Major (over \$10 000) "Extraordinary Expenditure" (outside of annual budget) must be approved at a General meeting of the members.

9. PERFORMANCE MANAGEMENT OF STAFF

The Board and its Chairman are involved in the performance management of TAC staff (Office/Project Manager and CEO) on a regular and ongoing basis. The Board recognises that ongoing performance management of staff is critically important insofar as achieving the strategic goals and objectives of the TAC Ltd.

The Board meets at least six times per annum and a detailed list of action items is compiled and updated at each of these meetings. Staff are required to report on progress for each item at each meeting and as such, the Board has regular opportunities to monitor staff performance against agreed Board goals and objectives. Staff performance between Board meetings is further monitored by the Chairman.

Additionally, a performance review will be conducted by a subcommittee of the Board (consisting President, Vice President and Treasurer) which will examine performance of each staff member. This process will examine not only progress towards agreed goals and objectives but also how well staff have performed relative to their formal "Statement of Duties". This process will also identify any staff development regarded as important for the next year in order to assist performance or for career enhancement.

If any members have queries regarding this document, please contact the Tasmanian Abalone Council.

Dean Lisson; Chief Executive; JUNE 2015