



Directors Nomination Pack

Please find enclosed information relating to the Pacific Palms Recreation Club's Board of Directors Election.

Included in the pack:

- ✓ Board Election Nomination and Acceptance Form
 - The completed form is to be returned to the Club:
 - During office hours to the Secretary Manager
 - Outside of office hours to the Supervisor on Duty
 - Candidate will be notified within 2 business days if errors exist with the above mentioned form
 - **Closing date for all nominations is Saturday 21st October at 12:.00 noon.** After this time no further nominations will be accepted.
- Important Reading
 - Board Operations Information from Clubs NSW
 - IPART Club Industry Recommendations

Special Notes:

As a Director of Pacific Palms Recreation Club it is a requirement of the position to agree to undertake external training to comply with the new legislation regarding mandatory Director Training which came into effect on July 1, 2013.

Mandatory training modules are:

- ✓ Finance for Club Boards
- ✓ Director Foundation and Management Collaboration

Other training which may be required includes:

- ✓ Responsible Service of Alcohol (RSA) Training
- ✓ Responsible Conduct of Gaming (RCG) Training
- ✓ CLUBS NSW Governance Program
- ✓ CLUBS NSW Regional Seminars

Director Training is usually conducted during normal business hours - it is important to have the flexibility to attend these compulsory training sessions.



Board Election Nomination and Acceptance Form

THIS FORM MUST BE LODGED WITH THE CLUB NO LATER THAN 12 NOON ON 21/10/2017

I (Full Name) _____

Full Residential Address _____

Phone Number(s) _____ Member Number _____

HEREBY NOMINATE

Full Name _____

Full Residential Address _____

Phone Number(s) _____ Member Number _____

FOR A POSITION ON THE BOARD OF DIRECTORS OF PACIFIC PALMS RECREATION CLUB

Signature of Proposer _____ Date: _____

SECONDER

Full Name _____

Full Residential Address _____

Phone Number(s) _____ Member Number _____

Signature of Seconder _____ Date: _____

ACCEPTANCE

I (Full Name) _____

OF

Full Residential Address _____

Contact Phone Number(s) _____ Member Number _____

I HEREBY ACCEPT THE NOMINATION FOR A POSITION ON THE BOARD OF DIRECTORS. I HAVE RECEIVED AND UNDERSTOOD THE INFORMATION ON DUTIES OF A DIRECTOR & AGREE TO UNDERTAKE ALL REQUIRED TRAINING.

Signature of Candidate _____ Date: _____

Board Operations

This section contains important information relating to Club board operations for registered Clubs.

Directorship

Eligibility to become a director of a Club

Generally, a person may become a director of a Club except:

- a person under the age of 18 years of age;
- a person who is not a full member of the Club;
- an employee of the Club;
- an undischarged bankrupt;
- a person who in the last five years has been convicted under one more of a number of provisions specified in the Corporations Act including;
 - a person who has been convicted of an offence that concerns the making, or participation in the making, of decisions that affect the whole or a substantial part of the business of the company;
 - a person who has been convicted of an offence involving dishonesty;
- a person who by order of the Supreme Court is prohibited from being a director of a company or the Club;
- a person who the Independent Liquor and Gaming Authority has declared as being ineligible to stand for election or to be appointed to or hold office as a director of the Club; or
- a person who under the constitution of the Club is ineligible to hold office as a director of the Club.

Desirable attributes of a Club director

A Club board needs good people with the right skills and a willingness to learn to stand for election. The Club Directors Institute Pathways Program describes the desirable attributes for aspiring directors as:

- shows personal commitment - has the time and support, and knows why they are standing;
- demonstrates strong personal skills - good communication and listening skills, patient, team player, and motivated to work for service;
- works with a positive attitude;
- aware of the needs of Club members to help represent them - understands the varied and diverse needs beyond the noisy group;
- aware of external pressures on the Club Industry - seeks information through discussion with current directors and through current affairs media;
- networks within the local community - is aware of issues in local community and likes to be involved;
- is an active member and aware of Club policies - attends Club functions and the annual general meeting, uses Club facilities, and respects that all sub-Clubs are treated equally;
- supports the success of the Club - this could be by making positive suggestions for improvement and involvement in volunteer activity;

- supports the use of technology - is open to learn and use new technology and keen to see the latest technology used in the Club;
- is aware of legal frameworks, Club Code of Practice and Club constitution; and
- thinks strategically - problem solving to meet the needs of all stakeholders, creatively looks at possible future scenarios, outcome driven, consider the impact of strategies.

The role of a Club director

All Club directors hold a responsible position of trust to uphold the traditions and public reputation of their Clubs.

The board must conduct the business and affairs of the Club in accordance with the constitution and in the best interests of the Club and members as a whole. The board must avoid at all costs pandering to a minority of members at the expense of the majority. At the same time, a balance must be struck to ensure the rights of individual members or groups of members are not ignored.

Directors acting alone have no power or authority unless the board has specifically delegated a specific task, function or responsibility to that director. A director can only effectively exercise power when acting in concert with the other directors constituted as the board of the Club, or, as a subcommittee acting within the scope of any authority delegated by the board to that subcommittee.

The Club Directors Institute has developed a Capabilities Map which provides a concise summary of the roles of an elected director and Chair. It also outlines the ideal characteristics of a person standing for election (Governance Orientation), the common shared values of Club directors and the priority areas that require focus across the industry. The Club Directors Institute provides more guidance on the role of a Club director as well as extensive resources and training opportunities to assist directors to carry out their role effectively. For further information please contact the ClubsNSW Member Enquiries Centre on 1300 730 001.

Interaction between directors and staff

It is the role of the directors to formulate policy and to ensure these policies are carried out by management. Directors should not interfere in the day-to-day running of the Club nor become involved with staff, unless the director has been appointed to perform those duties by the Board.

The chief executive officer, honorary secretary or some other suitable person nominated by the board alone should deal with the staff. If directors have any complaints about staff, these should be communicated to the officer appointed to deal with staff and not to the staff directly.

A commonsense approach to director/staff relations will prevent most disputes from occurring.

Staff are entitled to be directly answerable to one boss on the job and care must be taken to prevent the development of dual lines of reporting and responsibility between staff and board members and management. Confusion, overlapping responsibilities and communication breakdowns invariably occur which may result in industrial disputes, and at the very least disharmony and inefficiency.

It is good practice to insist that all complaints about staff from members should be in writing and that they should be directed to the secretary manager/chief executive officer or in the absence of such a person the honorary secretary or the president of the Club.

Directors' Duties

Directors must exercise their duties with honesty, good faith, loyalty, skill and care. These duties exist both at common law and in the Corporations Act. Sections 180-184 inclusive of the Corporations Act imposes various duties on directors including:

- ✓ to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise;
- ✓ to exercise their powers and discharge their duties:
 - in good faith in the best interests of the Club,
 - and for a proper purpose;
- ✓ to not improperly use their position to:
 - gain an advantage for themselves or someone else, or
 - cause detriment to the Club;
- ✓ to not improperly use the information they acquire as directors to:
 - gain an advantage for themselves or someone else, or
 - cause detriment to the Club.

These duties apply not only to directors but also to 'officers' who include senior management and other senior employees.

In addition, directors owe to their Club fiduciary duties of good faith and loyalty which fall into four overlapping categories:

- ✓ a duty to act bona fide in the interests of the Club as a whole;
- ✓ a duty to exercise powers for the purposes for which they were conferred and not for any ulterior, collateral or improper purpose;
- ✓ a duty not to fetter the future exercise of directors' powers; and
- ✓ a duty to avoid conflicts of interest.

Failure to carry out duties

Failure to properly carry out directors' duties can result in serious penalties including imprisonment and civil penalties as well as liability to pay damages and compensation.

In addition, under Section 35 of the Registered Clubs Act, the Independent Liquor and Gaming Authority has very wide powers to remove from office any director who in the opinion of the Independent Liquor and Gaming Authority is not a fit and proper person to continue office as a director. Under Section 17 of the Registered Clubs Act the Independent Liquor and Gaming Authority has an even wider discretion than under Section 35 to declare a person ineligible to hold office as an officer of a Club by reason of acts or omissions by that person in relation to the affairs of a Club.

A director who has not been carrying out his or her duties as a director in accordance with the Corporations Act or contrary to the provisions of the Registered Clubs Act, could be held by the Independent Liquor and Gaming Authority to be not fit and proper to continue in office and could be removed from office and/or declared ineligible from holding that office in the future.

The courts require people in positions of responsibility or trust to exercise reasonable skill, to act honestly and in the best interest of those for whom they are responsible. Legislation has adopted,

modified and added to these common law fiduciary duties (a person to whom property is entrusted to hold, control or manage for another). Members of a board owe these duties primarily to the Club.

Not every relationship gives rise to fiduciary duties. A director or senior employee must act honestly, in good faith and to the best of their ability. While this fiduciary duty is owed to the organisation, in the event of insolvency it may also be owed to creditors of the Club. The best interests of the Club override the personal interests of the director.

The duty to act honestly and in good faith demands that a director must declare any conflict of interest (e.g. interest in a contract that the Club is about to enter into) at the first possible meeting of the board. This duty extends to not misusing position or information obtained as a director to gain directly or indirectly. Directors and employees are prohibited from taking advantage of a business opportunity at the expense of the Club.

The duty of skill and care requires reasonable attention be given to the affairs of the Club. The level of care is that which would be reasonably expected from a person with that person's knowledge and experience in the circumstances of the Club. Reasonable diligence is required in discharging that role although the courts recognise that directors delegate operational/day-to-day tasks to employed staff.

This duty of skill and care has been the subject of a number of court decisions and a high standard has been stated to exist for directors. This has specifically become an issue where a company becomes insolvent and directors have done nothing to address such a problem. The usual defence is that they were not involved in the day to day operations of the company. This is no longer a complete defence. It is all the more relevant for organisations who have non-executive directors and largely rely on the employed officers.

The question of whether a director has exercised a reasonable degree of care and skill is answered by a court asking whether the director has balanced the foreseeable risk of harm against the potential benefits that could reasonably be expected to accrue to the organisation from the conduct in question. To reach such a position directors may wish to consider establishing audit, compliance and resource committees, empowered with sufficient terms of reference, to ask and to receive sufficient information from employed staff from which the board can be satisfied that it is informed on such areas. Further, directors should be able to prove active involvement in the development of policy and the monitoring of corrective action and compliance measures.

A common law duty of care to avoid causing negligent loss is owed by directors in addition to their fiduciary duties.

Individually and collectively, the board must be able to answer in the affirmative the following questions:

- ✓ Is the exercise of a power by a board member conferred by the constitution of the Club?
- ✓ Do decisions of the board take into account reasonable commercial, legal and industry considerations?
- ✓ Before taking a decision or voting on an issue, are board members determining what is honestly in the best interests of the Club and the interests of those the Club seeks to serve?

- ✓ Are board members exercising a degree of care or skill which a reasonably prudent person would exercise if they were a director in similar circumstances facing the Club?
- ✓ Have all specific statutory and legal duties been identified and satisfied?

Directors' and Officers' Liability

Directors have an exposure under both legislation and common law. Under the Corporations Act the duties of a director include:

- ✓ duty of care and diligence;
- ✓ duty to act in good faith;
- ✓ duty to exercise powers for a proper purpose;
- ✓ duty not to misuse information or position.

Under the Trade Practices Act there are two areas to be aware of:

- restrictive trade practices which include contracts in restraint of trade, e.g. price fixing and exclusive dealing; and
- consumer protection, which covers misleading and deceptive conduct and false representations.

Discrimination and equal opportunity legislation covers:

- wrongful recruitment, promotion or dismissal;
- sexual harassment;
- discrimination; and
- victimisation.

The Occupational Health and Safety Act imposes stringent duties on Clubs including directors to ensure there is a healthy and safe work environment and safe systems of work. Under the common law, negligence, defamation, breach of contract and contractual misrepresentation all constitute areas of possible liability for directors.

Who might bring an action?

Any of these bodies or groups may bring an action:

- ✓ Australian Securities and Investments Commission (ASIC)
- ✓ Australian Competition and Consumer Commission (ACCC)
- ✓ members and their guests
- ✓ employees
- ✓ competitors
- ✓ creditors
- ✓ liquidators
- ✓ regulatory bodies.

Types of allegations

The types of allegations that directors may face include:

- breach of the Registered Clubs Act;
- breach of the Gaming Machines Act;
- breach of the Corporations Act;

- discrimination/harassment;
- failure to maintain insurance;
- incorrect statements in an annual report;
- insolvent trading;
- misleading and deceptive conduct;
- misrepresentation;
- unfair dismissal;
- unsafe work practices for employees; and
- unsafe conditions for patrons.

Indemnities and insurance for directors and officers

Section 199A of the Corporations Act prohibits any arrangement (whether contained in the Club's constitution or in any contract) whereby the Club indemnifies any director or officer or auditor against any liability incurred by that director, officer or auditor arising out of his or her negligence, default, breach of duty or breach of trust in relation to the Club.

Accordingly, if a director is sued or prosecuted for negligence, default, breach of duty or breach of trust in relation to his or her conduct as a director, and damages are awarded or a monetary penalty imposed, then the Club cannot pay those damages or the penalty for the director. In addition, the director will have to pay his or her own legal costs, as well as those ordered to be paid to the other party to the proceedings.

However, a Club can indemnify a director, officer or auditor for his or her legal costs incurred in defending any proceedings, whether civil or criminal in which judgment is given in favour of the director, officer or auditor or in which the director, officer or auditor is acquitted in respect of any proceedings in which relief is granted under the Corporations Act to that director, officer or auditor.

It is therefore recommended that all directors and other officers of Clubs take out appropriate insurance cover for these risks.

Directors and officers may also be entitled to an indemnity from the Club under the constitution and/or by contract.

Even if indemnity exists, it is important to remember that it is often discretionary - not mandatory. A director relies on the Club to provide the indemnity.

The Club cannot provide an indemnity for:

- a liability owed to the company;
- a liability for a pecuniary penalty order;
- a liability arising out of conduct that is not in good faith; and
- legal costs in defending criminal proceedings or actions if liability is established.

Care needs to be taken by directors of Clubs that they make themselves aware of the extent to which any directors' and officers' liability insurance policy covers them for liability. As a separate issue, directors need to be aware of the extent to which insurance policies cover the Club itself for any liability. It may be necessary to obtain expert advice on both of these issues from time to time.

Directors' responsibility for Club debts

Section 588G of the Corporations Act provides that if at the time a company (such as a Club) incurs a debt:

- the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- at that time, there are reasonable grounds to suspect that the company is insolvent, or would so become insolvent, or a reasonable person in a like position in the company would be so aware
- then a director of that company can be liable for the debt and can also be liable for a civil penalty.

However, if:

- because of illness or for some other good reason, the director did not take part in the management of the Club at the time the debt was incurred; or
- the director took all reasonable steps to prevent the Club incurring the debt. In determining this, the matters to which regard are to be given include but are not limited to:
 - any action the director took with a view to appointing an administrator of the Club;
 - when the action was taken; and
 - the results of that action; or
 - at the time the debt was incurred the director had reasonable grounds to believe and did believe:
 - that a competent and reliable person was responsible for providing to the director adequate information about whether the Club was insolvent; and
 - that person was fulfilling that responsibility; and
 - on the basis of the information provided by that person the Club was solvent at that time and would remain solvent if it incurred that debt and any other debts that it incurred at that time, then the director has defences to a claim for liability under Section 588G.

If there is the slightest risk that the Club may have difficulty in paying any creditor, then directors should seriously consider obtaining financial, accounting and/or legal advice as soon as possible.

It is not sufficient for directors to say that they were unaware of relevant facts, matters and circumstances relating to the business and affairs and finances of the Club.

Directors are not only entitled to receive all relevant information relating to the Club's finances but if they are not getting that information they must insist that they do so. In short, ignorance is not a defence for directors.

An organisation is insolvent if it is unable to pay debts as and when they become due and payable. Creditors can have an insolvent organisation liquidated. At the completion of liquidation, the organisation will no longer exist.