



NORTHERN TERRITORY CLAY TARGET ASSOCIATION INC

CODE OF CONDUCT FOR THE EXECUTIVE COUNCIL OF THE NORTHERN TERRITORY CLAY TARGET ASSOCIATION INC. (NTCTA)

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1. The Role of the Executive Council

The primary function of the Executive Council of the NTCTA, in accordance with its Constitution, is to manage the business of NTCTA and in particular to be responsible for the effective administration and control of the sport of clay target shooting in the Northern Territory.

In addition to this are the general key functions of the Executive Council, which is to monitor the performance of the management of the organisation and adopt an annual budget, ensure that internal control systems are in place, and monitor the progress and results associated with these functions.

The role of the Executive Council e and its members is to give direction to the organisation and to accept initial responsibility for its management. It is not the Executive Council members' role to take part in the day-to-day management of the organisation.

2. Appointment of Executive Council members

The composition of the Executive Council of NTCTA is prescribed in its Constitution. In order for the Executive Council to be effective, it is necessary for its members to have the necessary skills, experience and attributes of Executive Council members.

Representation of a full range of skills and experience is a prerequisite for ensuring the Executive Council can discharge its overall obligations to improve performance and protect the long-term viability of the organisation.

3. The President and the Executive Council

The President should identify the issues of significance to the Executive Council, provide the right environment for consideration of those issues, and ensure that all members have the opportunity to put their views and have them considered. A carefully structured Executive Council meeting must deal with routine matters quickly and efficiently, allowing time for attention to key areas of responsibility such as accountability, strategic thinking, monitoring and policy issues.

4. Role of Executive Council members

The Executive Council members are required to understand the needs of the organisation and their legal responsibilities as Executive Council members (see attached “Duties and Obligations of Executive Council members”). If appointed because of special skills (for example financial, legal), Executive Council members are expected to contribute those skills to the Executive Council and the organisation.

All public statements are made by either the President or Executive Council, members must direct all inquiries as to the affairs of the NTCTA to the Counsel.

5. Confidential Information

In terms of the Executive Counsel and the obligation of members of the Executive Council not to disclose “commercially sensitive information”, the information that is likely to be protected may not fall within one of the traditional categories of confidential information.

Information is commercially sensitive where it is of specific value to the group concerned, particularly where its disclosure would allow others to “reap without sowing” or would otherwise be detrimental. In the context of the NTCTA, this would involve any information that is of value to the NTCTA in the sense that its disclosure might cause damage to the NTCTA’s reputation, or disclose plans which the NTCTA would not want revealed to its competitors.

The Executive Council of NTCTA should not reveal any discussions or meetings or documents relating to policies of plans in their “fleshing out” stages.

Executive Council members will be required to return copies of all documents provided to them other than Executive Council minutes and financial summaries at the conclusion of all Executive Council meetings.

Guidelines as to how much information should be revealed can be taken, by analogy from association law principles. The NTCTA Executive Council should at the very least be informing its constituents of the major decisions which it has made and report on the reasons for these decisions. The Executive Council is justified in not disclosing all its activities on the basis that in doing so it is acting in the interests of the NTCTA, by preventing information which may be detrimental to it from being revealed and potentially distorted.

Executive Council members must remember that they have a duty to act in the interests of the association, which includes the interests of all stakeholders and not select individuals or groups.

An Executive Council member must always be sure that his/her actions are in the best interests of the association, rather than for political expediency.

DUTIES AND OBLIGATIONS OF EXECUTIVE COUNCIL MEMBERS

A. OVERVIEW – PRIMARY DUTIES

Certain duties apply to an Executive Council member in every aspect of the NTCTA’s business and to every transaction the association enters into. Executive Council members are regarded as owing a fiduciary duty to the NTCTA. This means that an Executive Council member has special obligations to the NTCTA because he or she occupies a position of trust.

In very broad terms, the principle statutory and common law duties imposed upon an Executive Council member of an association or association may be summarised as follows:

- (a) to act honestly and in good faith in the interests of the association as a whole;
- (b) exercise the degree of care and diligence that a reasonable person in a like position in an association would exercise in the association’s circumstances;

- (c) to exercise powers granted to the committee member honestly for the purposes for which they were conferred and not for collateral purposes;
- (d) to avoid any actual or potential conflict between the obligations owed by him or her to the association and his or her personal interest or other duties to which he or she may be subject;
- (e) to keep confidential information confidential, and to disclose an account for advantages or business opportunities acquired, in the course of the office of committee member;

B. GENERAL DUTIES OF GOOD FAITH AND CARE

1. Duty of Good Faith and Honesty

Executive Council members are almost without exception given broad discretion to manage the NTCTA's business under its Constitution. The duty of good faith applies to this discretion and decisions of the Executive Council.

The duty of good faith and honesty of an Executive Council member arises at common law partly (as with most of the other common law duties of Executive Council members) because Executive Council members are regarded as being in a position of trust with respect to the NTCTA, although they are not strictly trustees.

This duty is also reflected in the Associations Act 2003 (NT), which requires that an officer of an association at all times act honestly in the exercise of his/her powers and the discharge of his/her duties.

In this context, the duty of honesty is equivalent to the duty to act for a proper purpose. If an Executive Council member's purpose is misguided or improper, the Executive Council member will breach the duty even though there is no question of personal gain or dishonesty in the generally understood sense. Accordingly, an Executive Council member can be dishonest without being fraudulent.

Principally, therefore, this duty requires Executive Council members to consider the interests of the members of the NTCTA. This may involve considering whether the short term or long-term interest of members should be paramount.

2. Duty to Act for a Proper Purpose (and not for a collateral purpose)

Since the Executive Council members of an association are fiduciary agents, powers given to Executive Council members may only be exercised for the purposes for which they are given. In particular, those powers may not be exercised in order for the Executive Council members to obtain a private advantage.

Whether a particular act by Executive Council members as fiduciaries, is a bona fide exercise of their power for the benefit of the association as a whole is generally determined by ascertaining the substantial motivating purpose for which the power is exercised and then by determining whether that purpose was proper or not.

3. Duty of Care and Diligence

Proper performance of the duties of a committee member of a particular association will be dictated by all the surrounding circumstances including the type of association, the size and nature of its enterprise, the composition of its Executive Council and the distribution of its work between the Executive Council and other officers.

The following are some of the broad principles which are relevant in the determination of whether a committee member has fulfilled his or her duty of care and diligence to the association.

Although the list is not exhaustive, the common law requires that Executive Council members at least:

- (a) take reasonable steps to place themselves in a position to guard and monitor the management of the association;
- (b) acquire a working knowledge of the fundamentals of the business of the association;
- (c) keep informed about the activities of the association and assess the safety and properness of the business practices of management;
- (d) generally, monitor corporate affairs and policies, although a detailed inspection of day-to-day activities need not be undertaken;

- (e) maintain a familiarity of the financial status of the association by regularly reviewing the financial statements; and
- (f) make enquiry into matters revealed by the financial statements which call for enquiry.

The common law duty to act with care and diligence is also reflected in the Associations Act 2003 (NT) which provides that in exercise of his or her powers, a council member must exercise “the degree of care and diligence that a reasonable person in a like position would exercise in the association’s circumstances”.

It is considered that regard will be had to the special background, qualifications and management responsibilities of the particular committee member in determining whether that committee member has complied with the statutory duties. The standard care for a particular committee member may increase where a person is appointed to the Executive Council because of particular skills.

C. DUTIES AND OBLIGATIONS RELATING TO CONFLICTS OF INTERESTS

1. Duty to Avoid Conflict and to Disclose Interests

One of the clear rules of common law is that neither a council member or responsible officer should allow a conflict of interest to compromise their position in the association. Accordingly, Executive Council members’ “personal” interests (for example, a shareholding in another association) or other duties (for example, being a committee member of another association) and their duty to the association must not be brought into conflict.

2. Confidential Information

At common law, a committee member has a duty not to make unauthorised disclosure or use of information. For example, Executive Council members must not disclose or exploit confidential information such as commercially or price sensitive information or information which is confidential by virtue of a contractual arrangement. Disclosure of information may be appropriate in certain circumstances, if the council member satisfy themselves that disclosure is in the best interests of the association.

The Associations Act 2003 (NT) also imposes a statutory duty on a committee member not to make improper use of the information acquired by virtue of his or her office to gain, directly or

indirectly, an advantage for himself or herself or for any other person or to cause detriment to the association.

3. Duty not to Divert Corporate Opportunities

Misuse by a committee member of an association's property so as to make a personal gain or gain for any other person (for example, an association in which the council member is interested) without the authority of the association is a clear breach of a council member's fiduciary obligation. In particular, a council member must exploit corporate opportunities for the benefit of the association. A council member who breaches this duty may be liable to account for any gain or profit made.

This duty is also reflected in the Associations Act 2003 (NT) which requires a committee member not to make improper use of his or her position (as a council member) to gain, directly or indirectly, an advantage for himself or herself or any other person or to cause detriment to the association.

Breach of this duty may also involve a breach of a council member's duty of honesty imposed by the common law and by the Associations Act 2003 (NT).