

1. WHAT IS A CONFLICT OF INTEREST?

A conflict of interest will arise where a representative of Orienteering Australia may directly or indirectly derive a benefit in relation to or as a consequence of a decision to be made or action to be taken by Orienteering Australia and that person participates in or is in a position of influence in relation to that decision or action.

2. DUTY TO AVOID CONFLICT AND TO DISCLOSE INTERESTS

Neither a director nor responsible officer of Orienteering Australia should allow a conflict of interest to compromise their position as a director or officer in the organisation. A director's "personal" interests (for example, a shareholding in another company) or other duties (for example, being a Director or a committee member of a related entity) and their duty to the organisation (of which they are a director) must not be brought into conflict.

This overlaps with the duty to act in good faith and for a proper purpose. Categories of situations which give rise to conflicts of interest are:

(a) Directors or officers taking advantage of opportunity

The general rule is that a director must not use his position to make a profit. If he does, then he must account to the organisation for the profit made. Some legislation provides for a similar rule.

(b) Directors taking advantage of an opportunity where the organisation is unable

A director has an obligation not to profit personally from his position as a director, and not to allow a conflict to arise between his duty as a director and his own self-interest.

A director is disqualified from taking for his own benefit or for the benefit of others, a business opportunity which the organisation is actively pursuing.

A director's liability to account to the organisation is not unlimited and depends upon the facts of the case. It is a defence that the profits or advantage were made with the informed consent of the organisation.

(c) Directors' contracts with a National Sporting Organisation (**NSO**)

The general rule is that contracts made by a director with the organisation are voidable at the option of the organisation. This includes contracts in which Directors have an indirect interest. The fairness of the contract is irrelevant, and this is applied as a strict rule.

The contract may be validated by ratification at a general meeting, provided there is full disclosure.



In addition, this policy requires a Director to declare the nature of any direct or indirect interest he/she has in a matter that relates to the affairs of the NSO.

(d) Conflict of external duties with Directors' duties

Where a Director holds an office or property, which creates duties in conflict with his duties as a Director of the NSO, they should declare the interest at the next meeting of the Board after they become aware of the conflict.

(e) Conflict arising as a result of holding office both in Orienteering Australia (OA) and another orienteering body

Sport Australia's preferred position is that members of an NSO board do not hold any official positions at a lower level (State or club). In part this is because holding multiple positions may give rise to a conflict of interest, as directors of an organisation are legally required to act in the best interests of that organisation, which creates a problem when multiple organisations have conflicting interests.

However, in common with many other smaller organisations, OA often struggles to fill board positions, and believes that moving strictly to the preferred ASC structure in this area will further limit OA's capacity to attract strong candidates to the Board. OA also believes that, within reason, conflicts of interests can be managed within the structure of this policy and the existing Constitution (with more rigour applied to existing procedures).

In keeping with the sentiments expressed in 1(e) above, in January 2014 Orienteering Australia adopted the following guidelines such that if a Board were elected which was not in accordance with these guidelines, the most-recently elected Board members would be expected to stand down from their State positions as soon as practicable.

-) The OA President should not be a director of a State or club Board (or equivalent)
-) No member of the OA Board should be a State President (or, if they are a State President at the time of their election to the OA Board, should step down at or before the next State AGM).
-) The OA Board should not contain two or more people who are State Board members in the same State.
-) At least half the members of the OA Board shall be people who are not Board members in any State. (This ensures that the Board remains quorate in the event of an issue which created a conflict of interest for all those who hold State positions).
-) Clause 18.2 of the Orienteering Australia Constitution be interpreted as encompassing the position of a Board member who is a Board member in a State when the OA Board is discussing a matter specific to that State. (In effect, this gives the Board meeting the power to determine the eligibility of that member to take part in discussion, or vote; a formal declaration of the interest



would seem redundant since the interest is already known, but may still need to be recorded in a register).

Clause 18.2 of the Orienteering Australia Constitution states –

Other Interests.

Any Member having a direct or indirect financial interest, or any other material conflict of interest, in any matter determined by a Board or General Meeting shall declare such interest to the chair of that meeting before discussing or voting on such matter. The meeting shall then determine the eligibility of that Member to vote on the matter under consideration.

Representatives of Orienteering Australia referred to in section 3 have a duty to disclose conflicts of interest to the relevant person or body.

Directors of Orienteering Australia and the delegates and appointees of the Board should disclose conflicts of interest to the President and to the Secretary of Orienteering Australia.

Employees and members of the committees, working group and panels established by the board of Orienteering Australia should disclose conflicts of interest to:

- (i) If applicable, the chair of the relevant committee, working group or panel; and
- (ii) The President of Orienteering Australia

3. WHO DOES THIS POLICY APPLY TO?

This Policy applies to:

- (a) President and Directors of Orienteering Australia,
- (b) Officers and employees of Orienteering Australia
- (c) Members of committees, Working Groups and panels established by the Board of Orienteering Australia
- (d) Delegates and appointees of the Board, including: National Selectors;

4. CONFIDENTIAL INFORMATION

Directors need to acknowledge that from time to time, information will be provided to them which will be considered to be “confidential”. “Confidential information” is any information:

- (a) determined by the Board, and so declared by marking “confidential; or
- (b) which may be reasonably considered by the Board to be commercially or otherwise sensitive or likely to be so to the Board.

Directors have a duty not to make unauthorised disclosure or use of the NSO information and a duty not to disclose or exploit confidential information, such as commercially or price sensitive information or information which is confidential by virtue of a contractual arrangement.



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 to the NSO. In the context of the NSO, this would involve any information that is of value to the NSO in the sense that its disclosure might cause damage to the NSO’s reputation or disclose plans which the NSO would not want revealed to its competitors or third parties.

Practicality and convenience must be taken into account. The Board should at the very least be informing its members of the major decisions, which it has made and report on the reasons for these decisions. The Board is justified in not disclosing all its activities on the basis that in doing so it is acting in the interests of the NSO, by preventing information which may be detrimental to it from being revealed and potentially distorted.

Minutes of Board meetings and OA General Meetings will be published and made available to State Associations in a reasonable timeframe following the meeting. On occasions, it may be necessary to redact certain material from the externally published version of the minutes.

Board papers will normally be considered to be in confidence to the Board and other relevant OA officials, unless determined otherwise by the Board, the President, the Executive Officer or the responsible Director.

Directors must remember that they have a duty to act in the interests of the NSO as a whole, which includes the interests of all members.

Directors should support all determinations of the Board regardless of their support or dissent during the Board meeting. It is essential that discussions of the Board are freely entered into. However, it is imperative that beyond the meetings of the Board all Directors are united in the determination of the Board.

Directors must always be sure that their actions are in the best interests of the NSO, rather than for political expediency. This may from time to time place a Director in a difficult position, for example if asked to comment by a member, on a matter confidential to the NSO. The Directors duties to the NSO must always be upheld despite the relationship which may exist between the Director and the member.

5. PROCEDURES FOR MANAGING CONFLICTS OF INTEREST

The action which a representative of Orienteering Australia should take if he or she is faced with an actual or potential conflict of interest in relation to a particular matter being considered will depend on the nature and circumstances of the conflict.

Generally, it will include abstaining from voting on the matter and absenting himself or herself from all deliberations relating to the matter.

The President or Secretary of Orienteering Australia may also provide direction and guidance in relation to the procedures and steps to be taken at the time a representative of Orienteering Australia makes a disclosure under section 2.



6. DUTY NOT TO DIVERT CORPORATE OPPORTUNITIES

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

This duty is also reflected in the Act which requires a Director not to make improper use of his position (as a Director) to gain, directly or indirectly, an advantage for himself or any other person or to cause detriment to the NSO.

Breach of this duty may also involve a breach of a Director's duty of honesty imposed by the common law and by the Corporations Act 2001 (Cth).

7. DECLARATION OF DIRECTOR'S INTERESTS

7.1 Directors' Interests

Unless they have complied with the Constitution and have received prior written approval from the Board, a Director must not hold any other office or place of profit in the NSO. (For the purposes of this policy, reimbursement by Orienteering Australia of reasonable expenses incurred by a Director in the performance of their official functions is not considered an office of profit).

A Director must disclose the nature and extent of their interest where he/she:

- (a) holds any other office (whether voluntary or otherwise) or place of profit in the NSO;
- (b) holds any other office (whether voluntary or otherwise) or place of profit in any company in which the NSO is a shareholder or otherwise interested; or
- (c) seeks to contract with the NSO either as vendor, purchaser or otherwise,

Where such an interest is not disclosed, any contract or arrangement entered into by NSO in which any Director is in any way interested will be voided.

7.2 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or arrangement is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or arrangement after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.



General Disclosure

A Director may make a declaration in the form set out in **Appendix A** that the Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

7.3 Recording Disclosures

Any declaration of a conflict of interest made by a Director or any general notice provided to the Board must be recorded in the Board minutes.

Orienteering Australia must also maintain a register of all conflicts of interest in the form set out in **Appendix B**.

8. CONFLICTS - VOTING AT BOARD MEETINGS

A Director, notwithstanding their interest, may be counted in the quorum present at any meeting but cannot vote in respect of any contract or arrangement in which the Director is interested. If the Director votes, the vote should not be counted.

9. EXECUTION BY SEAL

A Director may not sign a document to which the seal of NSO is fixed where the Director is interested in the contract or arrangement to which the document relates.



APPENDIX A: DECLARATION OF INTERESTS BY BOARD AND/OR COMMITTEE MEMBERS NAME:

DATE:

BUSINESS OCCUPATION (if any):

NAME OF CORPORATION (ACN)	PLACE OF INCORPORATION	OFFICE HELD	BENEFICIAL INTEREST	DATE OF APPOINTMENT	INSURANCE FOR OFFICE BEARERS
ORGANISATIONS:					
PUBLIC / PRIVATE COMPANIES:					

